Fair Trade Commission Disposal Directions (Policy Statements) on Cable Television Related Enterprises

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1. Background

The cable television related enterprises are comprised mainly of upstream cable channel providers and downstream cable system operators, both of which are subject to oversight and regulation by the central regulatory agency. Most of activities of the cable television related enterprises are subject to and regulated by the Cable Radio and Television Act and the Satellite Broadcasting Act (hereinafter referred to as "the Radio and TV law"). However, conducts not explicitly regulated by the Radio and TV law, such as businesses engaged in various forms of restrictive or unfair competition, could lead to violations of some provisions of the Fair Trade Law. In view of the complexity of the market at present time, the Fair Trade Commission (hereinafter referred to as "the FTC") has undertaken compilation and analysis of assorted conducts in violation of the Fair Trade Law under the existing framework of cable television regulations. This Regulatory Policy Statement is made with an eye to facilitate enterprise compliance and to serve as a reference for the FTC while tackling with related cases.

2. Definitions

Terms used in the Regulatory Policy Statement are defined as follows:

(1)The term "cable television channel provider" means satellite broadcasting program supplier, foreign satellite broadcasting business, other type channel and program supply business, and channel agent.

(2)The term "cable television system operator" means cable radio and television system operator and multiple system operator.

(3)The term "multiple system operator (MSO)" means not only the enterprise having a controlling and subordinate relationship with one single shareholder, but also those have controlling and subordinate relations with two or more cable radio and television system operators.

(4) The term "channel agent" means a business, authorized to represent the satellite broadcasting program suppliers, the foreign satellite broadcasting business, or other type channel and program supply business, act as an intermediary for channel program’s broadcasting.

3. Market Definition

The relevant market for cable television related enterprises is reviewed by the FTC in accordance with the Commission’s Guidelines on the Definition of Relevant Market. In addition, the FTC will take into account the business model, transaction features, industrial characteristics, communication convergence, service content, and other factors of the cable television industry at issue when it conducts a substantive review on a specific case.

4. Merger

Unless otherwise provided in this Regulatory Policy Statement, cable television related enterprises should submit a merger notification to the FTC prior to the merger and the merger case will be reviewed under the FTC’ s Guidelines on handling merger filings.

In vertical merger cases of cable television related enterprises, if a cable television system operator having a controlling or subsidiary relationship with the vertically merged enterprise, whose number of subscribers is greater than one-quarter and less than one-third of the total number of subscribers nationwide, such circumstances would be treated by the FTC as likely to result in significant competition restrictions. In reviewing the overall economic interests, particular attention shall be given to the following factors:

(1) Whether the merger benefits the diversification of program content industry;
(2) Whether the merger facilitates cross-platform industry competition;
(3) Whether the merger promotes digital convergence and competition;
(4) Whether the merger offers consumers diverse options.

When one of the following circumstances applies to the vertical merger of cable television system operators, the disadvantages of its resulting restriction on market competition obviously outweighs the overall economic benefits:

(1) The total number of channel programs of cable television system operators participating in such a vertical merger with their affiliated enterprises exceeds one-quarter of available channels.
(2) The total number of subscribers of cable television system operators participating in such a vertical merger with their affiliated enterprises exceeds one-third of the number nationwide.

5. "Joint Sales" by Cable Television Channel Providers

When cable television channel providers, along with other enterprises, engage in joint channel programming sales, that is, if their trading counterparts are compelled to purchase together with the channel programming of each channel provider, or, if the trading counterparts are not explicitly demanded to make joint purchases, but the joint action nevertheless results in the possibility that trading counterparts purchase each participating channel program (for instance, by purchasing the programming of each participating channel provider, one may enjoy an obviously unreasonable package price), or, other vertical transaction restrictions adopted towards system operators for the purpose of horizontal concerted action, the joint sales actions among cable television channel providers as detailed above may constitute a violation of Article 15 of the Fair Trade Law.

If a joint sale among cable television channel providers has the appearance of one of the following situations, the risk of "concerted action" is high:

(1) Joint price quotations to trading counterparts.
(2) Joint negotiation with trading counterparts.
(3) Agree to collect transaction money jointly and then share apportioned costs.
(4) Offer assistance to the promotion of the channel programming of other channel providers. However, when the cable television channel provider who offers the help adopts coercion, inducement or other inappropriate means to set terms to restrict market competition and thus other enterprises cannot engage in price competition, it may constitute a violation of Subparagraph 4, Article 20 of the Fair Trade Law.

6. "Unified Purchasing" by Cable Television System Operators

When the joint purchase of cable television programming engaged by a cable television system operator with other cable television operators is sufficient to hinder market competition functions, it may constitute a violation of Article 15 of the Fair Trade Law.

If a cable television channel provider uses coercion, inducement, or other inappropriate means to make cable television system operators jointly purchase its channel programming, it may constitute a violation of Subparagraph 4, Article 20 of the Fair Trade Law when it is considered possible that the market competition would be therefore constrained.

7. Joint Pricing or Joint Sanctions by Cable Television System Operators

If cable television system providers behave in any of the following ways that results in an impact on the market function with respect to production, trade in goods or supply and demand of services, it is a concerted action in violation Article 15 of the Fair Trade Law:

(1) Jointly decide the pricing of cable television, refuse to broadcast certain channel programming, or require channel providers not to transact with other competitors (including other cable television system operators, direct satellite radio and television service operators, multimedia content transmission platform, on-line television operators, or other service providers transmitting signals via cable or wireless networks and etc.) by means of contract, agreement or any other forms of mutual understandings.

(2) Multiple system operators, with an agreement or any other forms of mutual understandings, jointly require major channel providers to adopt a licensing fee allocation arrangement, or negotiate to collect transaction money jointly and then share apportioned costs.

8. Abuse of Market Power by Cable Television System Operators

When a cable television system operator situated in a relevant market with a non-competitive condition or a dominant market position, abuses its market power to inappropriately setting prices, it may constitute a violation of Article 9 of the Fair Trade Law.

If a monopolistic cable television operator, taking advantage of the lengthy cable television channel program license negotiation process, collects more than one month in advance payment from its subscribers on the one hand, whilst on the other hand forcing channel providers to agree upon extending the licensing period so that their transmission services would not become unavailable and viewers' interests would not be damaged, it is an inappropriate setting, maintenance, or alteration of pricing for goods or remuneration for services, or it may cause difficulties for channel providers to continue their operations, that involves a violation of Article 9 of the Fair Trade Law.

Although a cable television system operator is not deemed as a "monopolistic enterprise" by the Fair Trade Law, abusing its dominant market position to impose improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement likely to restrain competition, or to compel viewers to accept unfair trading terms and conditions able to affect the trading order, may constitute a violation of Subparagraph 5, Article 20, or Article 25 of the Fair Trade Law.

9. Promotion Activities by Cable Television System Operators

If cable television system operators prevent their competitors from participating or engaging in market competition by inducements with low price or other improper means, this is likely to restrain market competition, or, through the provision of gifts or prizes, may be in violation of Regulations Governing the Amount of Gifts and Pries Offered by Businesses. Such conduct may constitute a violation of Subparagraph 3 of Article 20 or Article 23 of the Fair Trade Law.

If a cable television system operator makes false or misleading representations or symbols concerning gifts or prizes in its sales promotion advertisements, such conduct may constitute a violation of Article 21 of the Fair Trade Law.

10.Programming Tie-in Sales by Cable Television Channel Providers

When a cable television channel providers compels cable television system operators to negotiate prices for the majority of programming, use bundling, and other such programming "tie-ins", or force cable television system operators to purchase bundled channel packages in setting the "a la carte" and "package" prices of programming that, despite the fact the quotation for a single channel program has been provided, could objectively dampen the interest of cable television system operators in selecting single channel programming for purchase, this may constitute compelling tie-in channel sales. The aforesaid conducts may be in violation of Subparagraph 5, Article 20 of the Fair Trade Law if it is considered possible that the market competition would be therefore restrained.

11. Concealment of Important Transaction Information by Cable Television Channel Providers

A cable television channel provider engaging in one of the following conducts that are obvious unfair and sufficient to affect trading order, is likely to become in violation of Article 25 of the Fair Trade Law:

(1) Failure to disclose to its trading counterparts the license fee or other discount calculation methods for individual channel programs.

(2) Failure to disclose to its trading counterparts the discount calculation methods for other discount packages for the sale of two or more programs.

(3) Refusal to openly disclose license fee or discount calculation methods without any justifiable reason.

Adjustments to license fee or discount calculation methods must be disclosed to its trading counterparts in advance.

12. Other practices by channel agents that may be considered in violation of the Fair Trade Law

When a channel agent' s conduct is not regulated by the communication related regulations and may be in violation of the Fair Trade Law (such as boycotting, joint removal or quotation of a program, etc.), the FTC will deal with it in accordance with the relevant provisions of the Fair Trade Law.

13. Division of Responsibilities with the Competent Authority Concerning the Cable Television Industry

The division of responsibilities between the FTC and the central regulatory agency shall be administered in accordance with the coordination conclusions between the FTC and the National Communication Commission.

14. This Regulatory Policy Statement merely set out examples and explanations of some common types of practices of cable television related enterprises that may constitute violations of the Fair Trade Law.

How individual cases would be handled shall be determined by the specific facts of the case.