

Fair Trade Commission Directions on the Procedure of Public Hearings

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I. General principles

1. These Guidelines are enacted by the Fair Trade Commission (hereinafter referred to the "Commission") pursuant to the Administrative Procedure Act for the purpose of regulating public hearings and related issues. Matters not provided for herein shall be governed by relevant laws and regulations.
2. "Hearing" as referred to in these Guidelines means the hearing procedures provided for in Section 10, Chapter 1 of the Administrative Procedure Act. The hearing procedure as governed by these Guidelines provides the concerned party and other interested parties of the case an opportunity to state their opinions and present evidences. The disclosure

of facts for the case is stressed; neither judgment nor decision for the case itself is made during the hearing.

3. The participants of a hearing shall do their utmost to provide detailed explanation and information, enabling the Commission to discover facts from written documents, field investigation and hearing, hence conclude a correct and proper decision for the case.

II. Reasons for holding hearings

4. Hearings may be held if the nature of laws and regulations being enacted or amended falls under one of the following categories:
 - (1) Important matters that involve fair trade policies;
 - (2) Important matters that seriously affect the interests of enterprises and consumers;
 - (3) Matters that will have significant impact on industry;
 - (4) Matters to be regulated that fall within the scope of authorities of several governmental agencies.
5. A hearing may be held for a case that has any of the following circumstances:
 - (1) Cases regarded to have substantial influence on the interests of upstream and downstream industries and the public or to be major to fair trade policy after investigation in accordance with Article 27 of the Fair Trade Law.
 - (2) Other cases where hearings are deemed to be necessary.
6. A hearing shall be initiated by commissioners or the office handling hearing procedures, and shall be held only after a commissioners' meeting makes a decision for the hearing. The same procedure shall apply when a party files a written application explaining the need to hold a hearing. The Commission may deny an application referred to in the preceding paragraph if it deems the hearing unnecessary, and shall

provide written notice to the party of such decision. Hearings shall be conducted orally and in public. However, in the case that a public hearing is obviously and likely against the public interests or causes major harm to the interests of the party concerned, then the Commission may determine ex officio or upon application of the party concerned not to make the entire or part of the hearing proceeding open to the public.

III. Notification and announcement of holding hearings

7. Whenever the Commission makes a decision to hold a hearing for a specific case, unless the situation is urgent or agreed by the party concerned and the known interested party, a written notice (refer to example 1 for the format) including the following items shall be sent to the party concerned or the known interested party thirty days prior to the date of hearing:

- (1) The reasons and grounds for holding the hearing;
- (2) Name, domiciles, and office or place of business of parties;
- (3) Date and venue of the hearing;
- (4) Main proceedings of the hearing;
- (5) The right of the party/parties to choose agents to attend the hearing on their behalf;
- (6) The rights entitled by the party/parties according to Article61 of the Administrative Procedure Act;
- (7) The handling of absences of parties from the hearing;
- (8) The name of this Commission;
- (9) The deadline to indicate the will to attend the hearing.

The hearing and its minutes referred to in the preceding paragraph may, if necessary, be announced on the Commission's World Wide Web (WWW), in the Executive Yuan's (Cabinet's) Gazettes, or by other suitable means. The deadline of general public indicating their

will to attend hearing shall also be announced together with the aforesaid publication in the case that the hearing is open to the public.

8. When holding a hearing related to the enactment or amendment of laws and regulations, the Commission shall announce the following information:

- (1) The name of the Commission (and any other governmental agencies that should participate in such drafting or amendment under the law);
- (2) Basis for enactment or amendment of the law;
- (3) Complete text or main parts of the draft;
- (4) Date and venue of the hearing;
- (5) Main proceedings of the hearing.

The aforesaid announcement shall be published in the Executive Yuan's (Cabinet's)Gazettes and supplemented by the Commission's World Wide Web (WWW), or other suitable means.

IV. Indication of wills to attend hearings

9. The party concerned or the interested party, unless the situation is urgent, shall present their applications to attend hearing (refer to enclosed Table 1) to the Commission ten days prior to the date of the hearing. When the party concerned is unable to attend hearing on the date of the hearing, an agent may be appointed to attend on behalf of the party concerned. The application to attend hearing referred to in the preceding paragraph shall include the name of the organization to which the attendees belong, the titles, names, and contact telephone numbers of the attendees, and an indication of whether they wish to present opinions at the hearing. The application to attend hearing referred to in the preceding paragraph may be delivered personally, or by mail, express mail, fax, or email to the Commission.

V. Submission of written comments and relevant materials

- 10.If the hearing proceeding is open to the general public, any person who wishes to attend the hearing shall present his or her application to attend hearing to the Commission ten days prior to the date of the hearing. The Commission shall handle the applications to attend hearing according to the application's receiving order, as there are space limitations of hearing site and the number of attendees allowed
- 11.To facilitate proceedings and better management of time, persons planning to attend and present opinions in the hearing should submit their written opinions and materials with a cover page to the Commission ten days prior to the hearing.
- 12.A party or interested person who has additional opinions after the hearing is ended shall submit them to the Commission in writing within five days after the hearing.
- 13.Where a submitter of written opinions or materials in accordance with Paragraphs 10 or 11 indicates that there is a need for confidentiality, the reasons for a necessary confidentiality shall be specified in the written opinions at the time of submission, and an abstract thereof suitable for public disclosure shall be submitted to the Commission.

VI. Hearing proceedings

- 14.The hearing shall be hold at the location designated by the Commission on the date specified in the notification.
- 15.Prior to the commencement of a hearing, the unit in charge shall check the identification documents of the attendees and ascertain that they have met the qualification to attend the hearing. The persons attend the hearing shall voluntarily present their proof of identity for verification. The moderator may prevent the attendee who cannot present proof of identity and unable to duly supplement the proof of identity from attending the hearing, and such incident will be recorded in the minutes of the hearing.

16. The Chairperson or a person designated by the Chairperson shall preside over the hearing. All commissioners, unless having special reasons, must present throughout the hearing.

17. Hearings shall be conducted in our national language; foreign languages speakers shall bring their own interpreters. However, if there is any difficulty for the persons in bringing their interpreters, the Commission will take it into consideration and then offer the interpretation service to the persons in need.

18. Based on the complexity of the given case and the number of attendees at the hearing, preliminary hearings may be held before the scheduled hearing date to facilitate hearing and for the following purposes:

- (1) To decide the proceedings for the hearing.
- (2) To clarify the issues in the given case.
- (3) To submit relevant documents and evidence.
- (4) Other matters relevant to the hearing.

Content stated in documents submitted by the party or interested persons may be deemed a statement of their opinions. The proceedings of preliminary hearings shall be recorded.

19. The proceedings of a hearing shall be conducted as follows:

- (1) Prior to the commencement of hearing proceeding, the moderator shall give an introduction of the officials attending the hearing and ask the party concerned whether they have any objections about qualifications of these officials. If there is no objection, the moderator will explain the origin of the case under discussion, announce the order of the speakers and time allotted to each, and other guidelines.
- (2) A summary report from the agency in charge on details of the case and its handling situation.
- (3) Presentation of opinions or submission of evidence by attendees:

A. Order of presentation: either according to that prescribed at the preliminary hearings or the moderator will arrange the order of presentation according to the following category.

- (a) The party concerned for the case.
- (b) Other interested parties.
- (c) Witnesses, expert witnesses and the other third parties (including government agency, scholar, expert and the relevant agency).

B. Time allotted for the presentation:

- (a) The moderator shall allot time for each presenter according to the complexity of the case and the number of presenter.
 - (b) Each party concerned is reminded with a signal two minutes before the end of time allotted for his or her presentation, besides giving signal at the end of time allotted for presentation, the presenter must end his or her presentation immediately.
- (4) The moderator or, the commissioner of the Commission and agency in charge, with an approval from the moderator, also may inquire the party concerned and other interested party that have attended the hearing, only questions related to the case can be presented in the inquiry and the inquired is asked to respond to the questions.
- (5) With an approval from the moderator, the party concerned may inquire the staff designated by the Commission, witness, expert witness, other party or its agent.
- (6) Inquiry the party concerned or interested persons as to whether having any final statement.

20. The moderator shall preside over the hearing in an impartial manner. The moderator may exercise the following authorities during the course of a hearing:

- (1) To inquire a party or an attendee, or urge him/her to submit evidence regarding factual issues or legal issues.
- (2) To conduct necessary investigations ex officio or upon application of the party.
- (3) To notify witnesses, expert witnesses or relevant scholars or experts to the hearing.
- (4) To allow the party and other attendees to present opinions in the hearing.
- (5) To forbid presentation by the party and other attendees in the hearing to avoid prolonging the hearings; and to expel any person seriously disrupting the proceedings.
- (6) To commence or end the hearing when a party is absent without reasonable cause. However, when the party has submitted written materials in the preliminary hearing, the content stated in the aforesaid written materials may be considered as the party's statement of opinions.
- (7) When necessary, to decide on the dates and venues of further hearings before the end of the day.
- (8) To adopt necessary measures to facilitate the proceedings. Where the moderator decides on dates and venues of further hearings in accordance with subparagraph (7) of the previous paragraph, he/she shall notify the absent parties or known interested persons.

21. A party may immediately raise objections to what he/she considers to be any illegal or improper disposition rendered by the moderator.

The moderator shall withdraw such disposition when he/she finds the objection justifiable, or overrule the objection if he/she finds it unjustified.

22. The attendees must comply with the following regulations when attending a hearing:

- (1) Smoking, food and drink are prohibited, switch off mobile phones or set the ring tone to silent mode.
- (2) Avoid giving applaud or making uproar to the presenter's opinions and statements.
- (3) Do not interfere or raise any questions when other is presenting his or her opinions.
- (4) Only present opinions and statements relevant to the case; do not commit any personal attack.
- (5) Unless approved by the moderator, sound recording, video recording or photo taking is not allowed during the hearing.

VII. Records of hearings

23. In cases that hearing procedures have been conducted, records of the hearings shall be filed.

Records as referred to in the previous paragraph shall include the following items and shall be signed by the moderator:

- (1) The origin of the case.
- (2) Names and domiciles of parties and parties' agents attending the hearing.
- (3) Date and venue of the hearing.
- (4) Main points of the opinions presented by parties or their agents and the documentation and evidence submitted.
- (5) Reasons for objections raised by the party in the proceedings and the dispositions rendered by the moderator.
- (6) Summaries of questions inquired and the responses given.

In principle, the record of the information prescribed in subparagraph 6 of the preceding paragraph should be prepared in a summarized, question-and-answer format.

The records of the hearings may be supplemented by video or sound recordings.

24. Records completed at the hearing shall be signed or affixed with seals by attendees who present opinions or make inquiries, and who may raise immediate objections to the recorded content. The moderator shall make modification or amendment if he/she finds the objections justifiable; should he/she overrule the objections, he/she shall have the objections recorded.

Records that are not completed at the hearing shall be read and signed or affixed with seals at a date and place designated by the moderator. Objections raised by persons regarding the records of their opinions or inquiries shall be scrutinized, and, when necessary, the recording or videotape of the hearing shall be reviewed in order to decide on appropriate modification or amendment; objections thus raised and the dispositions rendered shall be recorded as a supplement to the hearing record for reference.

When presenters or inquirer in the two preceding paragraphs refuse to sign or affix seals or fail to review the records at the designated date and place, the reasons given for such failure or refusal shall be recorded. Where any additions, deletions, or alterations are made to the hearing record, seals shall be affixed to the places where the additions, deletions, or alterations were made, and the numbers of characters added or deleted in each line shall be stated on top of the document paper, which shall be signed and verified. Characters that are deleted shall remain recognizable after deletion.

25. When the moderator considers that the parties have fully presented their opinions and the case being discussed is ready for decision, he/she shall end the hearing proceedings.

After the hearing is ended but before a decision is made, the Commission may, when deemed necessary, hold further hearings.