

Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of April 14, 1947)

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Chapter I General Provisions

Article 1

The purpose of this Act is, by prohibiting private monopolization, unreasonable restraint of trade and unfair trade practices, by preventing excessive concentration of economic power and by eliminating unreasonable restraint of production, sale, price, technology, etc., and all other unjust restriction on business activities through combinations, agreements, etc., to promote fair and free competition, to stimulate the creative initiative of entrepreneurs, to encourage business activities, to heighten

the level of employment and actual national income, and thereby to promote the democratic and wholesome development of the national economy as well as to assure the interests of general consumers.

Article 2

- (1) The term “entrepreneur” as used in this Act means a person who operates a commercial, industrial, financial or any other business. Any officer, employee, agent or any other person who acts for the benefit of any entrepreneur shall be deemed to be an entrepreneur with regard to the application of the provisions of the following paragraph or of Chapter III.
- (2) The term “trade association” as used in this Act means any combination or federation of combinations of two or more entrepreneurs having as its principal purpose the furtherance of their common interest as entrepreneurs and shall include the following, provided, however, that a combination or federation of combinations of two or more entrepreneurs, which has capital, or contribution made by the constituent entrepreneurs, and whose principal purpose is to operate and which is actually operating a commercial, industrial, financial or any other business for profit shall not be included:
 - (i) Any incorporated association or other association of which two or more entrepreneurs are members (including equivalent thereof)
 - (ii) Any incorporated foundation or other foundation of which two or more entrepreneurs control the appointment and dismissal of directors or managers, the management of affairs or continuation of its existence
 - (iii) Any partnership of which two or more entrepreneurs are partners, or any contractual combination of two or more entrepreneurs.
- (3) The term “officer” as used in this Act means a director, an executive officer, a managing member, an inspector, an auditor, or an equivalent thereof, a manager, or a business manager of the main or branch office.
- (4) The term “competition” as used in this Act means a state in which two or more entrepreneurs, within the normal scope of their business activities and without making any material change to the facilities for, or kinds of, such business activities, engage in, or are able to engage in, any act listed in the following items.
 - (i) Supplying the same or similar goods or services to the same user
 - (ii) Receiving supplies of the same or similar goods or services from the same supplier
- (5) The term “private monopolization” as used in this Act means such business

activities, by which any entrepreneur, individually or by combination or conspiracy with other entrepreneurs, or by any other manner, excludes or controls the business activities of other entrepreneurs, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade.

(6) The term “unreasonable restraint of trade” as used in this Act means such business activities, by which any entrepreneur, by contract, agreement or any other means irrespective of its name, in concert with other entrepreneurs, mutually restrict or conduct their business activities in such a manner as to fix, maintain or increase prices, or to limit production, technology, products, facilities or counterparties, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade.

(7) The term “monopolistic situation” as used in this Act means circumstances in which each of the following market structures and negative effect in the market exist in any particular field of business where the aggregate total value (this term refers to the prices of the relevant goods less an amount equivalent to the amount of taxes levied directly on such goods) of goods of the same description (including goods capable of being supplied without making any material change to the facilities for, or kinds of, such business activities; hereinafter referred to as “particular goods” in this paragraph) and those of any other goods having an extremely similar function and utility thereto, which are supplied in Japan (excluding those exported), or the total value (this term refers to the prices of the relevant services less an amount equivalent to the amount of taxes levied on the recipient of such services with respect thereto) of services of the same description which are supplied in Japan, during the latest one-year period designated by a Cabinet Order, exceeds hundred billion yen:

(i) Where the share of a field of business (this term refers to the ratio of the volume (in cases where calculation in terms of volume is not appropriate, volume shall be replaced with value; hereinafter the same shall apply in this item) of the said particular goods and any other goods having an extremely similar function and utility thereto, which are supplied in Japan (excluding those exported), or by the volume of the services, which are supplied in Japan, which are supplied by the relevant entrepreneur, to the aggregate total volume of the said particular goods and any other goods having an extremely similar function and utility thereto or services; hereinafter the same shall apply in this item) of an entrepreneur exceeds one-half or where the combined share of a field of business of two entrepreneurs exceeds three-fourths during the said one-year period.

- (ii) Where there exist conditions which make it extremely difficult for any other entrepreneur to be newly engaged in the said particular field of business.
- (iii) Where the increase in the price of the said particular goods or services supplied by the relevant entrepreneur has been remarkable or the decrease therein has been slight for a considerable period of time in light of the changes in the supply and demand, or changes in the cost of supply, for such particular goods or services, and where, in addition thereto, the said entrepreneur falls under any of the following items during the said period.
 - (a) That the said entrepreneur has made a profit at the rate far exceeding profit rate which is specified by a Cabinet Order as the standard for the type of business specified by a Cabinet Order to which the said entrepreneur belongs
 - (b) That the said entrepreneur has expended selling and general administrative expenses which are considered to be far exceeding the standard selling and general administrative expenses for the field of business to which the said entrepreneur belongs
- (8) In the event any change has occurred in the economic conditions resulting in an extreme change in domestic shipments from producers and wholesale prices, the amount in the preceding paragraph may be revised, after reflecting such conditions, by virtue of a Cabinet Order.
- (9) The term “unfair trade practices” as used in this Act means any act falling under any of the following items:
 - (i) Without justifiable grounds, any of the following acts concertedly with a competitor:
 - (a) Refusing to supply to a certain entrepreneur or restricting the quantity or substance of goods or services pertaining to the supply to a certain entrepreneur
 - (b) Causing another entrepreneur to refuse a supply to a certain entrepreneur, or to restrict the quantity or substance of goods or services pertaining to the supply to a certain entrepreneur
 - (ii) Unjustly supplying goods or services continuously for a consideration which discriminates between regions or between parties, thereby tending to cause difficulties to the business activities of other entrepreneurs
 - (iii) Without justifiable grounds, supplying goods or services continuously for a consideration which is excessively below the cost required for the supply, thereby tending to cause difficulties to the business activities of other entrepreneurs
 - (iv) Supplying goods to another party who purchases the said goods from oneself while imposing, without justifiable grounds, one of the restrictive terms listed

below:

- (a) Causing the said party to maintain the selling price of the goods that one has determined, or otherwise restricting the said party's free decision on selling price of the goods
- (b) Having the said party cause an entrepreneur who purchases the goods from the said party to maintain the selling price of the goods that one has determined, or otherwise causing the said party to restrict the said entrepreneur's free decision on the selling price of the goods.
- (v) Taking any act specified in one of the following, unjustly in light of the normal business practices by making use of one's dominant bargaining position over the other party:
 - (a) Causing the said party in regular transactions (including a party with whom one intends to have regular transactions newly; the same shall apply in (b) below) to purchase goods or services other than the one pertaining to the said transactions
 - (b) Causing the said party in regular transactions to provide for oneself money, services or other economic benefits
 - (c) Refusing to receive goods pertaining to transactions from the said party, causing the said party to take back the goods pertaining to the transactions after receiving the said goods from the said party, delaying the payment of the transactions to the said party or reducing the amount of the said payment, or otherwise establishing or changing trade terms or executing transactions in a way disadvantageous to the said party
- (vi) Any act falling under any of the following acts, which tends to impede fair competition and which is designated by the Fair Trade Commission, other than the acts listed in the preceding items:
 - (a) Unjustly treat other entrepreneurs in a discriminatory manner
 - (b) Dealing with unjust consideration
 - (c) Unjustly inducing or coercing customers of a competitor to deal with oneself
 - (d) Dealing with another party on such conditions as will unjustly restrict the business activities of the said party
 - (e) Dealing with another party by unjust use of one's bargaining position
 - (f) Unjustly interfering with a transaction between an entrepreneur in competition with it in Japan with oneself or a corporation of which oneself is a shareholder or an officer and another transaction counterparty; or, in case such entrepreneur is a corporation, unjustly inducing, instigating or coercing a shareholder or an

director of such corporation to act against the interests of such corporation.

Chapter II Private Monopolization and Unreasonable Restraint of Trade

Article 3

No entrepreneur shall effect private monopolization or unreasonable restraint of trade.

Article 4 and Article 5

Deleted.

Article 6

No entrepreneur shall enter into an international agreement or an international contract which contains such matters as fall under unreasonable restraint of trade or unfair trade practices.

Article 7

- (1) In the case that there exists any act in violation of the provisions of Article 3 or the preceding article, the Fair Trade Commission may, pursuant to the procedures as provided in Section 2 of Chapter VIII, order the relevant entrepreneur to cease and desist from the said acts, transfer a part of his/her business, or take any other measures necessary to eliminate such acts in violation of the said provisions.
- (2) The Fair Trade Commission may, when it finds it particularly necessary, even when an act in violation of the provisions of Article 3 or the preceding article has already ceased to exist, pursuant to the procedures as provided in Section 2 of Chapter VIII, order the following person, to take measures to make public that the said act has been discontinued and any other measures necessary to ensure elimination of the said act; provided, however, that this shall not apply to cases where five years have passed since the date of discontinuation of the said act.
 - (i) Entrepreneurs who committed the said act
 - (ii) In the case that the entrepreneur who committed the said act is a juridical person, any juridical person surviving, or established as a result of the merger the said entrepreneur ceased to exist
 - (iii) In the case that the entrepreneur who committed the said act is a juridical person, any juridical person who has acquired all or part of the business pertaining to the said act from the said entrepreneur by virtue of a demerger

- (iv) Any entrepreneur who has acquired all or part of the business pertaining to the said act from the entrepreneur who committed the said act

Article 7-2

(1) In the case that any entrepreneur effects an unreasonable restraint of trade or enters into an international agreement or an international contract containing such matters as fall under unreasonable restraint of trade, and such act falls under any of the following items, the Fair Trade Commission shall order the said entrepreneur, pursuant to the procedures as provided in Section 2 of Chapter VIII, to pay to the national treasury a surcharge of an amount equivalent to an amount calculated by multiplying the sales amount of the relevant goods or services calculated pursuant to the method provided by a Cabinet Order (in the case that the said act is pertaining to the receipt of supply of goods or services, the purchase amount of the relevant goods or services calculated pursuant to the method provided by a Cabinet Order), for the period from the date on which the entrepreneur effected the business activities constituting the said act to the date on which the business activities constituting the said act were discontinued (in the case that such period exceeds three years, the period shall be the three years preceding the date on which the business activities constituting the said act were discontinued; hereinafter referred to as “period of implementation”) by ten percent (three percent in the case of retail business, or two percent in the case of wholesale business); provided, however, that in the case the amount thus calculated is less than one million yen, the Commission shall not order the payment of such a surcharge.

- (i) Pertaining to consideration of goods or services;
- (ii) Substantially restraining any of the following with respect to goods or services and thereby affecting the consideration:
 - (a) Supply or purchase volume
 - (b) Market share
 - (c) Transaction counterparties

(2) The provisions of the preceding paragraph shall apply mutatis mutandis to cases in which an entrepreneur effects private monopolization (limited to that arising from the control of the business activities of other entrepreneurs) that falls under any of the following items with respect to goods or services supplied by the said other entrepreneurs (hereinafter referred to as “controlled entrepreneurs” in this paragraph). In this case, the term “the sales amount of the relevant goods or

services calculated pursuant to the method provided by a Cabinet Order (in the case that the said act is pertaining to the receipt of supply of goods or services, the purchase amount of the relevant goods or services calculated pursuant to the method provided by a Cabinet Order)” in the preceding paragraph shall be deemed to be replaced with “the sales amount of the relevant goods or services supplied by the said entrepreneur to the controlled entrepreneurs (including goods or services necessary for supply by the said controlled entrepreneurs of the said goods or services in any particular field of trade pertaining to the said act) and of the said goods or services supplied by the said entrepreneur in the said particular field of trade (excluding those supplied to the said controlled entrepreneurs) calculated pursuant to the method provided by a Cabinet Order,” and the term “(three percent in the case of retail business, or two percent in the case of wholesale business)” shall be deemed to be replaced with “(three percent in the case that the said entrepreneur engages in retail business or two percent in the case that the said entrepreneur engages in wholesale business).”

(i) Pertaining to the consideration:

(ii) Substantially restraining any of the following and thereby affecting the consideration:

(a) Supply volume

(b) Market share

(c) Transaction counterparties

(3) The term “market share” provided in the preceding two paragraphs and paragraph (8) means the ratio of the volume of goods or services that one or two or more entrepreneurs supply or receive supply of, to the aggregate total volume of the said goods or services supplied in any particular field of trade within a particular period, or the ratio of the value of goods or services that one or two or more entrepreneurs supply or receive supply of, to the aggregate total value of the said goods or services supplied in any particular field of trade within a particular period.

(4) In the case that any entrepreneur effects private monopolization (limited to that achieved by excluding the business activities of other entrepreneurs, and excluding those that fall under the provision of paragraph (2)), the Fair Trade Commission shall order the said entrepreneur, pursuant to the procedures as provided in Section 2 of Chapter VIII, to pay to the national treasury a surcharge of an amount equivalent to that obtained by multiplying the sales amount of the goods or services supplied by the said entrepreneur in any particular field of trade pertaining to the said act (excluding goods or services supplied to other entrepreneurs who supply

goods or services in the said particular field of trade) and sales amount of the goods or services supplied by the said entrepreneur to other entrepreneurs who supply the said goods or services in the said particular field of trade (including goods or services necessary for supply of the said goods or services by the said other entrepreneurs who supply the said goods or services in the said particular field of trade), both of which are calculated pursuant to the method provided by a Cabinet Order for the period from the date on which the entrepreneur effected the said act to the date on which the said act was discontinued (in the case that such period exceeds three years, the period shall be the three years preceding the date on which the said act was discontinued; referred to as “Period of Violation” in paragraph (27)), by six percent (two percent in the case that the said entrepreneur engages in retail business, or one percent in the case that the said entrepreneur engages in wholesale business); provided, however, that in the case the amount thus calculated is less than one million yen, the Commission shall not order the payment of such a surcharge.

(5) In the case referred to in paragraph (1), the term “ten percent” appearing in that paragraph shall be “four percent,” the term “three percent” shall be “one point two percent,” and the term “two percent” shall be “one percent” if the said entrepreneur falls under any of the following items:

(i) Any company whose amount of stated capital or total amount of contribution is not more than three hundred million yen and any company or individual whose number of regular employees is not more than three hundred, which operates as its principal business, business belonging to manufacturing business, construction business, transportation business or any other business (excluding the business types listed in items (ii) to (iv) inclusive and the business types provided by a Cabinet Order pursuant to item (v)).

(ii) Any company whose amount of stated capital or total amount of contribution is not more than one hundred million yen and any company or individual whose number of regular employees is not more than one hundred, which operates as its principal business, business belonging to wholesale business (excluding business types provided by a Cabinet Order pursuant to item (v)).

(iii) Any company whose amount of stated capital or total amount of contribution is not more than fifty million yen and any company or individual whose number of regular employees is not more than one hundred, which operates as its principal business, business belonging to service business (excluding the business types provided by a Cabinet Order pursuant to item (v)).

- (iv) Any company whose amount of stated capital or total amount of contribution is not more than fifty million yen and any company or individual whose number of regular employees is not more than fifty, which operates as its principal business, business belonging to retail business (excluding the business types provided by a Cabinet Order pursuant to the following item).
- (v) Any company whose amount of stated capital or total amount of contribution is not more than the amount provided by a Cabinet Order for each of its business types and any company or individual whose number of regular employees is not more than the number provided by a Cabinet Order for each of its business types, which operates as its principal business, business belonging to any of the business types provided by such Cabinet Order.
- (vi) Of cooperative partnerships and other partnerships established pursuant to special acts with the principal purpose of cooperation in business (including federation of partnerships), any partnership which has a scale comparable to the scale provided in each of the preceding items for the individual business type in the preceding items as provided by a Cabinet Order.
- (6) In the case that an entrepreneur is ordered to pay a surcharge pursuant to the provisions of paragraph (1), the term “ten percent” appearing in paragraph (1) shall be “eight percent,” the term “three percent” shall be “two point four percent,” the term “two percent” shall be “one point six percent,” the term “four percent” in the preceding paragraph shall be “three point two percent,” the term “one point two percent” shall be “one percent,” and the term “one percent” shall be “zero point eight percent” if the said entrepreneur had discontinued the relevant violation (limited to cases where the period of implementation pertaining to the violation is less than two years) by the day one month prior to the date when the measure listed in item (iv) of paragraph (1) of Article 47 or the measure as provided in paragraph (1) of Article 102 was first made in relation to the case pertaining to the said violation (hereinafter referred to as “investigation start date” in this article) (if the said measure is not made, the day one month prior to the date when the said entrepreneur received the notice pertaining to the said violation pursuant to the provisions of paragraph (5) of Article 49, as applied mutatis mutandis pursuant to paragraph (6) of Article 50 after deemed replacement (hereinafter referred to as “advance notice” in next paragraph, paragraph (10) and Articles 20-2 to 20-5 inclusive); provided, however, that this shall not apply to a case where the said entrepreneur is subject to application of provisions of the following paragraphs (7), (8) and (9).

(7) In the case that an entrepreneur is ordered to pay a surcharge pursuant to the provisions of paragraph (1) (including cases where it is applied mutatis mutandis pursuant to paragraph (2) after deemed as replacement; hereinafter the same shall apply in this paragraph and in paragraphs (19), (22) and (23)) or pursuant to the provisions of paragraph (4), the term “ten percent” appearing in paragraph (1) shall be “fifteen percent,” the term “three percent” shall be “four point five percent,” the term “two percent” shall be “three percent,” the term “six percent” appearing in paragraph (4) shall be “nine percent,” the term “two percent” shall be “three percent,” the term “one percent” shall be “one point five percent,” the term “four percent” appearing in paragraph (5) shall be “six percent,” the term “one point two percent” shall be “one point eight percent,” and the term “one percent” shall be “one point five percent,” if the said entrepreneur falls under any of the following items; provided, however, that this shall not apply to cases where the said entrepreneur is subject to application of provisions of paragraph (9).

(i) A person having received an order pursuant to the provisions of paragraph (1) or (4) (limited to cases where the said order has become final and binding; the same shall apply in the following item), or a person having received a notice pursuant to the provisions of paragraph (18) or (21), or a decision pursuant to the provisions of paragraph (2) of Article 51 within ten years counting retroactively from the investigation start date.

(ii) A person having received an order pursuant to the provisions of paragraph (1) or (4), or a person having received a notice pursuant to the provisions of paragraph (18) or (21), or a decision pursuant to the provisions of paragraph (2) of Article 51 within ten years counting retroactively from the date when the entrepreneur received the advance notice pertaining to the said violation in the case that neither the measure listed in item (iv) of paragraph (1) of Article 47 nor the measure provided in paragraph (1) of Article 102 was made.

(8) In the case that an entrepreneur is ordered to pay a surcharge pursuant to the provisions of paragraph (1), the term “ten percent” appearing in paragraph (1) shall be “fifteen percent,” the term “three percent” shall be “four point five percent,” the term “two percent” shall be “three percent,” the term “four percent” appearing in paragraph (5) shall be “six percent,” the term “one point two percent” shall be “one point eight percent,” and the term “one percent” shall be “one point five percent,” if the said entrepreneur falls under any of the following items; provided, however, that this shall not apply to a case where the said entrepreneur is subject to application of provisions of paragraph (9).

- (i) Any person who has planned to effect the said violation and required, requested or instigated other entrepreneurs to perform, or not to discontinue, the said violation, either individually or in concert with others, thereby causing the said other entrepreneurs to commit, or not to discontinue, the said violation
- (ii) Any person who has, at the request of other entrepreneurs, made designations about consideration, supply volume, purchase volume, market share or transaction counterparty in relation to the goods or services pertaining to the said violation, continuously to other entrepreneurs, either individually or in concert with others
- (iii) Any person who has committed an act which falls under any of the following and which is a material act to facilitate the said violation, either individually or in concert with others, in addition to the person listed in the preceding items
 - (a) Requiring, requesting or instigating other entrepreneurs to perform, or not to discontinue, the said violation
 - (b) Making designations to other entrepreneurs about consideration, supply volume, purchase volume, market share or a transaction counterparty in relation to the goods or services pertaining to the said violation, or about business activities constituting the said violation (excluding designations exclusively about one's own transactions)
- (9) In the case that an entrepreneur is ordered to pay a surcharge pursuant to the provisions of paragraph (1), the term "ten percent" appearing in paragraph (1) shall be "twenty percent," the term "three percent" shall be "six percent," the term "two percent" shall be "four percent," the term "four percent" appearing in paragraph (5) shall be "eight percent," the term "one point two percent" shall be "two point four percent," and the term "one percent" shall be "two percent," if the said entrepreneur falls under any of the items in paragraph (7) and any of the items in the preceding paragraph.
- (10) Notwithstanding the provisions of paragraph (1), the Fair Trade Commission shall not order the entrepreneur to pay a surcharge if the relevant entrepreneurs who are to pay a surcharge pursuant to the provisions of paragraph (1) fall under both of the following items:
 - (i) The entrepreneur is the first among the entrepreneurs who committed the relevant violation to individually submit reports and materials regarding the facts pertaining to the said violation to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission (excluding cases where the said reports and materials are submitted on or after the investigation start date

(the date when the entrepreneur received an advance notice pertaining to the said violation in the case that neither the measure listed in item (iv) of paragraph (1) of Article 47 nor the measure provided in paragraph (1) of Article 102 was made; the same shall apply in the following item, the following paragraph and paragraph (25)) in relation to the case pertaining to the said violation).

(ii) The entrepreneur has not committed the relevant violation since the investigation start date in relation to the case pertaining to the said violation.

(11) In the case of paragraph (1), the Fair Trade Commission shall reduce the relevant surcharge by the amount calculated by multiplying by fifty percent the surcharge calculated pursuant to the provisions of paragraph (1) or paragraphs (5) to (9) inclusive in the case that the entrepreneur falls under items (i) and (iv) of this paragraph, or by the amount calculated by multiplying by thirty percent the surcharge calculated pursuant to the provisions of paragraph (1) or paragraphs (5) to (9) inclusive in the case that the entrepreneur falls under items (ii) and (iv) or items (iii) and (iv) of this paragraph, respectively:

(i) The entrepreneur is the second among the entrepreneurs who committed the relevant violation to individually submit reports and materials regarding the facts pertaining to the said violation to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission (excluding cases where the said reports and materials are submitted on or after the investigation start date in relation to the case pertaining to the said violation).

(ii) The entrepreneur is the third among the entrepreneurs who committed the violation to individually submit reports and materials regarding the facts pertaining to the said violation to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission (excluding cases where the said reports and materials are submitted on or after the investigation start date in relation to the case pertaining to the said violation).

(iii) The entrepreneur is the fourth or fifth among the entrepreneurs that committed the violation to individually submit reports and materials regarding the facts pertaining to the said violation (excluding reports and materials related to the facts already ascertained by the Fair Trade Commission through the report provided in paragraph (1) of Article 45, or the measures as provided in paragraph (4) of the same article, or other means) to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission (excluding cases where the said reports and materials are submitted on or after the investigation start date in relation to the case pertaining to the said violation).

(iv) The entrepreneur has not committed the relevant violation since the investigation start date in relation to the case pertaining to the said violation.

(12) In the case of paragraph (1), the Fair Trade Commission shall reduce the relevant surcharge by the amount calculated by multiplying by thirty percent the surcharge calculated pursuant to the provisions of paragraph (1) or (5) to (9) inclusive in the case that the entrepreneur who committed the relevant violation falls under both of the following items if the number of entrepreneurs who submitted reports and materials regarding the relevant violation pursuant to the provisions of item (i) of paragraph (10) or item (i) to (iii) of the preceding paragraph is fewer than five (limited to cases where the sum of the number of entrepreneurs who submitted reports and materials pursuant to the provisions of item (i) of paragraph (10) or item (i) to (iii) of the preceding paragraph and the number of entrepreneurs who submitted reports and materials pursuant to the provisions of item (i) below is five or fewer, and where the total number of entrepreneurs who submitted reports and materials pursuant to the provisions of item (i) below is three or fewer):

(i) The entrepreneur individually submitted reports and materials regarding the facts pertaining to the said violation (excluding reports and materials related to the facts already ascertained by the Fair Trade Commission through measures listed in the items of paragraph (1) of Article 47 or provided in paragraph (1) of Article 102 or other means) to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission, by the date set in the Rules of the Fair Trade Commission on or after the investigation start date in relation to the case pertaining to the said violation.

(ii) The entrepreneur has not committed the relevant violation since the date of submission of the reports and materials pursuant to the preceding item.

(13) In the case that two or more of the entrepreneurs (limited to cases where the entrepreneurs are corporations) who have committed a violation as provided in paragraph (1) have jointly submitted reports and materials regarding the facts pertaining to the said violation to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission, the said reports and materials shall be deemed to have been submitted individually and the provisions of the preceding three paragraphs shall apply to the said two or more entrepreneurs who have submitted the said reports and materials, to the extent that the said two or more entrepreneurs fall under item (i) below and either item (ii) or (iii) below. In such cases, the said two or more entrepreneurs shall be deemed as a single

entrepreneur in the calculation of the number of entrepreneurs who have submitted the reports and materials under the provisions of item (i) of paragraph (10), items (i) to (iii) of paragraph (11), and item (i) of the preceding paragraph.

(i) The said two or more entrepreneurs are mutually, at the time of the submission of the said reports and materials, in a relationship of subsidiaries or others (meaning a subsidiaries of an entrepreneur (meaning other corporation of which majority of voting rights (excluding voting rights pertaining to the shares whose voting rights cannot be exercised as to all matters regarding which a resolution can be passed at the shareholders' meeting, but including voting rights pertaining to the shares which are deemed to have the voting rights pursuant to the provisions of paragraph 3 of Article 879 of the Companies Act (Act No. 86 of 2005); hereinafter the same shall apply) of all shareholders (including all members; the same shall apply hereinafter) is held by a corporation. In such cases, any other corporation of which the majority of voting rights of all shareholders is held by a corporation and one or more subsidiaries of the corporation, or by one or more subsidiaries of the corporation shall be deemed as a subsidiaries of the said corporation; the same shall apply in this paragraph), a parent company of an entrepreneur (meaning another corporation of which the corporation is a subsidiaries; the same shall apply in this item), or another corporation whose parent company is identical to that of the said entrepreneur; the same shall apply in the following item and paragraph (25)).

(ii) Of the said two or more entrepreneurs, one who has committed the said violation in concert with another entrepreneur of the said two or more entrepreneurs had been in a relationship of a subsidiaries or others mutually with the said other entrepreneur for the entire period during which it committed the said violation concert with the said other entrepreneur (limited to within five years preceding the date on which the said reports or materials were submitted).

(iii) A fact that falls under either of the following applies to one of the said two or more entrepreneurs who has not committed the said violation in concert with another entrepreneur of the said two or more entrepreneurs:

(a) The entrepreneur has transferred all or part of the business pertaining to the said violation to another entrepreneur of the said two or more entrepreneurs or has alienated all or part of the business pertaining to the said violation through a demerger, and the said other entrepreneur commenced the said violation on the date of the said transfer or of the said demerger.

(b) The entrepreneur has received all or part of the business pertaining to the said

violation from another entrepreneur of the said two or more entrepreneurs or has succeeded all or part of the business pertaining to the said violation through a demerger, and commenced the said violation on the date of the said transfer or of the said demerger.

(14) In the case of the preceding paragraph, the voting rights held by a corporation or the voting rights held by a corporation and any one or more of its subsidiaries or by any one or more subsidiaries of a corporation shall include the voting rights pertaining to the shares which are not capable of duly asserting against the issuer pursuant to the provisions of paragraph (1) of Article 147 or paragraph (1) of Article 148 of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (Act No. 75 of 2001).

(15) When the Fair Trade Commission receives the submission of reports and materials pursuant to the provisions of item (i) of paragraph (10), items (i) to (iii) inclusive of paragraph (11), or item (i) of paragraph (12), the Fair Trade Commission shall promptly notify in writing the entrepreneurs who submitted the said reports and materials of that fact.

(16) Prior to issuing an order pursuant to the provisions of paragraph (1) or a notice pursuant to the provisions of paragraph (18) or (21) to an entrepreneur who falls under any of the provisions of paragraphs (10) to (12) inclusive, the Fair Trade Commission may additionally request the said entrepreneur to submit reports or materials regarding the facts pertaining to the relevant violation.

(17) If the Fair Trade Commission finds that a fact that falls under any of the following items exists before issuing an order pursuant to the provisions of paragraph (1) or a notice pursuant to the provisions of next paragraph to entrepreneurs who submitted reports and materials pursuant to the provisions of item (i) of paragraph (10), items (i) to (iii) inclusive of paragraph (11), or item (i) of paragraph (12), these provisions shall not apply, notwithstanding the provisions of paragraphs (10) to (12) inclusive:

(i) The reports or materials submitted by the relevant entrepreneur (meaning any one or more of the relevant entrepreneurs and other entrepreneurs who submitted the said reports and materials jointly with the said entrepreneur in the case that the relevant entrepreneur is one who submitted the reports and materials pursuant to the provisions of paragraph (13)); the same shall apply in the following item) contained false information.

(ii) In the case of the preceding paragraph, the said entrepreneur fails to submit the requested reports or materials or submits false reports or materials.

- (iii) In the case pertaining to the violation committed by the relevant entrepreneur, the said entrepreneur coerced other entrepreneurs (in the case that the relevant entrepreneur is one who submitted the reports and materials pursuant to the provisions of paragraph (13), any one or more of the relevant entrepreneurs who submitted the said reports and materials jointly coerced other entrepreneur who didn't submitted the said reports and materials jointly with the said entrepreneur) to commit the violation provided in paragraph (1) or blocked another entrepreneur from discontinuing the said violation.
- (18) If the Fair Trade Commission has decided not to order the payment of a surcharge pursuant to the provisions of paragraph (10), the Commission shall notify in writing the relevant entrepreneur of that decision at the time of issuing an order, pursuant to the provisions of paragraph (1), to entrepreneurs other than the said entrepreneur regarding the case pertaining to the violation committed by the entrepreneurs who falls under the provisions of paragraph (10) (by the time provided in the Rules of the Fair Trade Commission in the case that the Fair Trade Commission does not issue an order pursuant to the provisions of paragraph (1)).
- (19) In the case of paragraph (1) or (4), if there is a final and binding decision regarding the same case sentencing the relevant entrepreneur to a fine, the Fair Trade Commission shall, instead of the amount calculated pursuant to the provisions of paragraphs (1), (4) to (9) inclusive, (11) or (12), deduct from the said amount the amount equivalent to one-half of the amount of the said fine; provided, however, that this shall not apply if the surcharge amount calculated pursuant to the provisions of paragraphs (1), (4) to (9) inclusive, (11) or (12) does not exceed the amount equivalent to one-half of the amount of the said fine, or if the surcharge amount after the said deduction is less than one million yen.
- (20) In the case of the proviso in the preceding paragraph, the Fair Trade Commission shall not order payment of the surcharge.
- (21) In the case that the Fair Trade Commission does not order payment of a surcharge pursuant to the provisions of the preceding paragraph, the Commission shall notify in writing the fined entrepreneur of that fact at the time of issuing an order pursuant to the provisions of paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to paragraph (2) after deemed as a replacement) or paragraph (4) to entrepreneurs other than the said entrepreneur regarding the case pertaining to the violation provided in paragraph (1), (2) or (4) committed by the said entrepreneur (by the deadline provided for in the Rules of the Fair Trade Commission in the case that the Fair Trade Commission does not

issue an order pursuant to these provisions).

(22) Any entrepreneur who has received an order pursuant to the provisions of paragraph (1) or (4) shall pay the surcharge calculated pursuant to the provisions of paragraphs (1), (4) to (9) inclusive, (11), (12) or (19).

(23) In the case that the amount of surcharge calculated pursuant to the provisions of paragraphs (1), (4) to (9) inclusive, (11), (12) or (19) contains a fraction less than ten thousand yen, such a fraction shall be disregarded.

(24) In the case that the entrepreneur who has committed a violation provided in paragraph (1), (2) or (4) is a juridical person and if the said juridical person has ceased to exist by virtue of a merger with another juridical person, a violation committed by the said juridical person and an order pursuant to the provisions of paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to paragraph (2) after deemed as a replacement) and paragraph (4), a notice pursuant to the provisions of paragraphs (18) and (21), and a decision pursuant to the provisions of paragraph (2) of Article 51, received by the said juridical person (hereinafter referred to as “order, etc.” in this paragraph and the following paragraph) shall be deemed as a violation committed by the juridical person surviving, or established as a result of, the merger, or an order, etc. received by the juridical person surviving, or established as a result of the merger for the purpose of application of the provisions of the preceding paragraphs and the following paragraph.

(25) In the case that the entrepreneur who has committed a violation provided for in paragraph (1), (2) or (4) is a juridical person and transferred all of the business pertaining to the said violation to any one or more of its subsidiaries or others on or after the investigation start date in relation to the case pertaining to the said violation, or in the case that the said juridical person (limited to a corporation) had any one or more of its subsidiaries or others succeed all of the business pertaining to the said violation through a demerger on or after the investigation start date in relation to the case pertaining to the said violation, and ceased to exist due to a reason other than merger, the violation committed by the said juridical person and the order, etc. received by the said juridical person shall be deemed as a violation committed by the subsidiaries or others to whom all or part of the relevant business has been transferred or who has succeeded all or part of the relevant business through a demerger (hereinafter referred to as “subsidiaries, etc. that has succeeded specified business”) or as an order, etc. received by the subsidiaries, etc. that has succeeded specified business, respectively, for the purpose of application of

the provisions of the preceding paragraphs. In this case, where there are two or more subsidiaries, etc. that have succeeded specified business, the term “order the said entrepreneur” appearing in paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (2) after deemed as a replacement) shall be deemed to be replaced with “order subsidiaries, etc. that has succeeded specified business (meaning the subsidiaries, etc. that has succeeded specified business as provided in paragraph (25); the same shall apply hereinafter), jointly and severally with another subsidiaries, etc. that has succeeded specified business and that has received an order pursuant to the provisions of this paragraph (including the cases where it is applied mutatis mutandis pursuant to the following paragraph after deemed as a replacement),” the term “order the said entrepreneur” appearing in paragraph (4) shall be deemed to be replaced with “order subsidiaries, etc. that has succeeded specified business, jointly and severally with another subsidiaries, etc. that has succeeded specified business and that has received an order pursuant to the provisions of this paragraph,” and the term “Any entrepreneur who has received an order pursuant to the provisions of paragraph (1) or (4) shall pay appearing in paragraph(22)” shall be deemed to be replaced with “Any subsidiaries, etc. that has succeeded specified business and that has received an order pursuant to the provisions of paragraph (1) or (4) shall pay, jointly and severally with another subsidiaries, etc. who has succeeded specified business and who has received an order pursuant to these provisions.”

(26) In the case of the preceding two paragraphs, matters necessary for the application of the provisions of paragraphs (10) to (12) inclusive shall be provided by a Cabinet Order.

(27) After five years have passed since the end of the period of implementation (or since the end of the Period of Violation, which is applicable in the case of a violation provided in paragraph (4)), the Fair Trade Commission may not order payment of a surcharge pertaining to the said violation.

Chapter III Trade Associations

Article 8

No trade association shall engage in any act which falls under any of the following items:

- (i) Substantially restraining competition in any particular field of trade
- (ii) Entering into an international agreement or an international contract as

provided in Article 6

- (iii) Limiting the present or future number of entrepreneurs in any particular field of business
- (iv) Unjustly restricting the functions or activities of the constituent entrepreneurs (meaning an entrepreneur who is a member of the trade association; the same shall apply hereinafter)
- (v) Inducing entrepreneurs to employ such act as falls under unfair trade practices

Article 8-2

- (1) In the case there exists any act in violation of the provisions of the preceding article, the Fair Trade Commission may, pursuant to the procedures as provided in Section 2 of Chapter VIII, order the relevant trade association to cease and desist from the said act, to dissolve itself, or to take any other measures necessary to eliminate the said act.
- (2) The provisions of paragraph (2) of Article 7 shall apply mutatis mutandis to any act in violation of the provisions of the preceding article.
- (3) In the case of ordering a trade association to take measures provided in paragraph (1) or (2) of Article 7, as applied mutatis mutandis pursuant to the preceding paragraph, the Fair Trade Commission may, when it finds it particularly necessary, pursuant to the procedures as provided in Section 2 of Chapter VIII, also order an officer, manager or constituent entrepreneur (including the relevant entrepreneur when an officer, employee, agent or any other person acting for the benefit of an entrepreneur is a constituent entrepreneur; the same shall apply in paragraph (1) of Article 26 and paragraph (2) of Article 59) of the said association to take measures necessary to ensure the measures provided in paragraph (1) or (2) of Article 7, as applied mutatis mutandis pursuant to the preceding paragraph.

Article 8-3

The provisions of paragraphs (1), (3), (5) and (6) (excluding proviso), (10) to (18) inclusive (excluding items (ii) and (iii) of paragraph (13)), and paragraphs (22), (23), and (27) of Article 7-2 shall apply mutatis mutandis to cases where an act is committed in violation of the provisions of item (i) of Article 8 (limited to cases of committing an act which falls under unreasonable restraint of trade) or item (ii) thereof (limited to cases of entering into an international agreement or an international contract which contains such matters as fall under unreasonable restraint of trade). In this case, in paragraph (1) of Article 7-2, the term

“entrepreneur” shall be deemed to be replaced with “trade association”; and the term “order the said entrepreneur” shall be deemed to be replaced with “order the constituent entrepreneur of the said trade association (including the relevant entrepreneur when an officer, employee, agent or any other person acting for the benefit of an entrepreneur is a constituent entrepreneur; hereinafter referred to as “specified entrepreneur” in this article)”; in paragraph (5) of the said article, the term “entrepreneur” shall be deemed to be replaced with “specified entrepreneur”; in the main clause of paragraph (6) of the said article, the term “entrepreneur” shall be deemed to be replaced with “specified entrepreneur”; the term “had discontinued the relevant violation (limited to cases where the period of implementation pertaining to the violation is less than two years)” shall be deemed to be replaced with “had discontinued the business activities that constituted the relevant violation (limited to cases where the period of implementation of the business activities that constituted the relevant violation is less than two years)”; in paragraph (10) of the said article, the term “entrepreneur to pay” shall be deemed to be replaced with “specified entrepreneur to pay,” the term “relevant entrepreneur” shall be deemed to be replaced with “relevant specified entrepreneur”; the term “entrepreneurs who committed the relevant violation” shall be deemed to be replaced with “specified entrepreneurs of the trade association that committed the relevant violation”; and the term “has not committed” shall be deemed to be replaced with “has not effected the business activities that constituted”; in paragraph (11) of the said article, the term “entrepreneur” shall be deemed to be replaced with “specified entrepreneur”; the term “paragraphs (5) to (9) inclusive” shall be deemed to be replaced with “paragraph (5) or (6)”; the term “entrepreneurs who committed the relevant violation” shall be deemed to be replaced with “specified entrepreneurs of the trade association that committed the relevant violation”; and the term “has not committed” shall be deemed to be replaced with “has not effected the business activities that constituted”; in paragraph (12) of the said article, the term “entrepreneurs who committed the relevant violation” shall be deemed to be replaced with “specified entrepreneur of the trade association that committed the relevant violation”; the term “or (5) to (9) inclusive” shall be deemed to be replaced with “(5) or (6)”; and the term “has not committed” shall be deemed to be replaced with “has not effected the business activities that constituted”; in paragraph (13) of the said article excluding the items thereof, the term “the entrepreneurs who have committed a violation as provided in paragraph (1)” shall be deemed to be replaced with “specified entrepreneurs of the trade association that committed an act in violation

of the provisions of item (i) (limited to cases of committing an act which falls under unreasonable restraint of trade) or item (ii) (limited to cases of entering into an international agreement or an international contract which contains such matters as fall under unreasonable restraint of trade) of the following article,” the term “two or more of the entrepreneurs” shall be deemed to be replaced with “two or more of the specified entrepreneurs,” the term “fall under item (i) below and either item (ii) or (iii) below” shall be deemed to be replaced with “fall under item (i) below,” the term “the number of entrepreneurs who have submitted” shall be deemed to be replaced with “the number of specified entrepreneurs who have submitted,” and the term “an entrepreneur” shall be deemed to be replaced with “a specified entrepreneur”; in item (i) of the same paragraph, the term “two or more entrepreneurs” shall be deemed to be replaced with “two or more specified entrepreneurs,” and the term “the said entrepreneur” shall be deemed to be replaced with “the said specified entrepreneur”; in paragraphs (15) and (16) of the said article, the term “entrepreneur” shall be deemed to be replaced with “specified entrepreneur”; in paragraph (17) of the said article, the term “entrepreneurs who submitted” shall be deemed to be replaced with “specified entrepreneurs who submitted,” the term “the relevant entrepreneur (in the case that the relevant entrepreneur is” shall be deemed to be replaced with “the relevant specified entrepreneur (in the case that the relevant specified entrepreneur is,” the term “one or more of the relevant entrepreneurs” shall be deemed to be replaced with “one or more of the relevant specified entrepreneurs,” the term “jointly with the said entrepreneur” shall be deemed to be replaced with “jointly with the said specified entrepreneur,” the term “other entrepreneurs” shall be deemed to be replaced with “other specified entrepreneurs,” the term “one or more of the relevant entrepreneurs and other entrepreneurs” shall be deemed to be replaced with “one or more of the relevant specified entrepreneurs and other specified entrepreneurs,” the term “committed by the relevant entrepreneur” shall be deemed to be replaced with “committed by the relevant trade association,” the term “in the case that the relevant entrepreneur” shall be deemed to be replaced with “in the case that the relevant specified entrepreneur,” the term “an entrepreneur other than” shall be deemed to be replaced with “a specified entrepreneur other than,” the term “commit the violation provided in paragraph (1)” shall be deemed to be replaced with “effect the business activities that constituted the relevant violation,” and the term “discontinuing” shall be deemed to be replaced with “discontinuing the business activities that constituted”; in paragraph (18) of the said article, the term “entrepreneur” shall be deemed to be

replaced with “specified entrepreneur”; and the term “violation committed” shall be deemed to be replaced with “report submitted pursuant to the provisions of item (i) of the same paragraph”; in paragraph (22) of the said article, the term “ paragraph (1) or (4) “ shall be deemed to be replaced with “paragraph (1),” the term “paragraphs (1), (4) to (9) inclusive” shall be deemed to be replaced with “the same paragraph or paragraphs (5), (6),” and the term “(12), or (19)” shall be deemed to be replaced with “or (12)”; in paragraph (23) of the said article, the term “(4) to (9) inclusive” shall be deemed to be replaced with “(5), (6),” and the term “(12), or (19)” shall be deemed to be replaced with “or (12)”; and in the paragraph (27) of the said article, the term “the period of implementation (or since the end of the Period of Violation, which is applicable in the case that of a violation stipulated in paragraph (4))” shall be deemed to be replaced with “the period of implementation.”

Chapter III-II Monopolistic Situations

Article 8-4

- (1) When a monopolistic situation exists, the Fair Trade Commission may order the relevant entrepreneur, pursuant to the procedures as provided in Section 2 of Chapter VIII, to transfer a part of its business or to take any other measures necessary to restore competition with respect to the relevant goods or services; provided, however, that this shall not apply to cases where it is found that such measures may, in relation to the said entrepreneur, reduce the scale of business to such an extent that the expenses required for the supply of goods or services which the said entrepreneur supplies will rise sharply, undermine its financial position, or make it difficult to maintain its international competitiveness, or where such alternative measures may be taken that is found sufficient to restore competition with respect to the relevant goods or services.
- (2) In issuing an order pursuant to the preceding paragraph, the Fair Trade Commission shall give consideration, based on the matters listed in the following items, to the smooth operation of business activities by the relevant entrepreneur and entrepreneurs affiliated therewith and the stabilization of life of those employed by the said entrepreneur:
 - (i) Assets, income and expenditures and other aspects of accounting
 - (ii) Officers and employees
 - (iii) Location and other locational conditions of factories, workplaces and offices
 - (iv) Facilities and equipment for the business

- (v) The substance of patent rights, trademark rights, and other intellectual property rights and other technological features
- (vi) Capacity for and situations of production, sales, etc.
- (vii) Capacity for and situations of funding and acquisition of raw materials, etc.
- (viii) Situations of supply and distribution of goods or services.

Chapter IV Shareholdings, Interlocking Officers, Mergers, Split, Share Transfer and Acceptance of Assignment of Business

Article 9

- (1) Any company that may be to cause excessive concentration of economic power through holding of the shares (including shares held by a member; the same shall apply hereinafter) of other companies in Japan, shall not be established.
- (2) A company (including a foreign company; the same shall apply hereinafter) shall not become a company that may be to cause excessive concentration of economic power in Japan through acquisition or holding of the shares of other companies in Japan.
- (3) The term “excessive concentration of economic power” in the preceding two paragraphs means a situation in which the extreme largeness of comprehensive business scale over a considerable number of fields of business of a company and its subsidiary companies and other companies in Japan whose business activities are controlled by the said company through holding of their shares, the remarkably strong power of the said companies to influence other entrepreneurs due to transactions pertaining to the funds of, or the occupancy of influential positions over a considerable number of interrelated fields of business by the said companies, has a large effect on the national economy and impedes the promotion of fair and free competition.
- (4) Any company falling under any of the descriptions listed in the following items, when the sum of the total assets (meaning the amount of total assets calculated pursuant to the method provided in the Rules of the Fair Trade Commission; hereinafter the same shall apply in this paragraph) of the company and its subsidiary companies (limited to total assets of companies in Japan), as aggregated pursuant to the method provided in the Rules of the Fair Trade Commission, exceeds the amount provided in a Cabinet Order, which shall be not less than the amount listed in the relevant item, shall submit, pursuant to the provisions of the Rules of the Fair Trade Commission, a written report on the business of the said

company and its subsidiary companies to the Fair Trade Commission within three months from the end of each business year; provided, however, that this shall not apply if the said company is a subsidiary company of another company.

(i) A company whose ratio of the total acquisition value (or other value if it is so listed in the latest balance sheet) of the shares of subsidiary companies to the total assets of the said company exceeds fifty percent (referred to as “holding company” in the next item): Six hundred billion yen

(ii) A company that is engaged in banking, insurance or Type I Financial Instruments Business (meaning Type I Financial Instruments Business as provided in paragraph (1) of Article 28 of Financial Instruments and Exchange Act (Act No. 25 of 1948); the same shall apply in paragraphs (3) and (4) of the following article) (excluding holding companies): Eight trillion yen

(iii) A company other than those listed in the preceding two items: Two trillion yen

(5) The term “subsidiary companies” as used in the preceding two paragraphs means other companies in Japan of which the majority of voting rights of all shareholders is held by another company. In this case, any other company in Japan of which majority of voting rights of all shareholders is held by a company and any one or more of its subsidiary companies or by any one or more subsidiary companies of a company shall be deemed as a subsidiary company of the said company.

(6) In the case of the preceding paragraph, the voting rights held by a company or the voting rights held by a company and one or two or more of its subsidiary companies or by one or two or more of subsidiary companies of a company shall include the voting rights pertaining to the shares that are not capable of duly asserting against the issuer pursuant to the provisions of paragraph (1) of Article 147 and paragraph (1) of Article 148 of the Act on Book-Entry Transfer of Company Bonds, Shares, etc.

(7) A newly incorporated company that falls under the case provided in paragraph (4) shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Commission thereof within thirty days of the date of its incorporation.

Article 10

(1) No company shall acquire or hold shares of any other companies where the effect of such acquisition or holding of shares may be substantially to restrain competition in any particular field of trade, or shall acquire or hold shares of other companies through unfair trade practices.

(2) Every company whose domestic sales (meaning the amount stipulated by the

Rules of the Fair Trade Commission as the total amount of value of goods and services supplied in Japan in the most recent business year; the same shall apply hereinafter) as coupled with the domestic sales of companies, etc. other than the said company (meaning companies, partnerships (including equivalents of partnerships in foreign countries; the same shall apply hereinafter) and any other business entities that are similar to these; the same shall apply hereinafter in this article) which belong to the group of combined companies to which the said company belongs (meaning a group consisting of the said company, its subsidiary companies, its parent company which is not a subsidiary company of another company, and subsidiary companies of the said parent company (excluding the said company and subsidiary companies of the said company); the same shall apply hereinafter) in a method stipulated in the Rules of the Fair Trade Commission (hereinafter referred to as the “Total Amount of Domestic Sales”) exceeds the amount provided in a Cabinet Order ,which shall not be less than twenty billion yen (hereinafter referred to as “acquiring company” in this article), in the case that that it intends to acquire shares of another company whose domestic sales coupled with the domestic sales of subsidiary companies of the said other company in a method stipulated in the Rules of the Fair Trade Commission exceeds the amount provided in a Cabinet Order which shall not be less than five billion yen (hereinafter referred to as “issuing company” in this article) (including cases where the acquiring company is a settlor or beneficiary and may exercise the voting rights or give instructions to the trustee regarding the exercise of such voting rights with regard to the shares held in monetary or security trust, and intends to have the trustee acquire shares issued by the issuing company), so that the ratio of the number of voting rights, which combines the number of voting rights pertaining to the shares of the said issuing company to be held by the said acquiring company after the said acquisition with the number of voting rights pertaining to the shares of the said issuing company held by companies, etc. other than the said acquiring company which belongs to the group of combined companies to which the said acquiring company belongs (referred to as “companies, etc. other than the said acquiring company” in paragraph (4) below), to voting rights of all shareholders of the issuing company is to exceed the percentage figure provided in a Cabinet Order (in the case that more than one percentage figure is provided, any of such percentage figures pursuant to the provisions of such Cabinet Order) which shall not be less than twenty percent, shall give the Fair Trade Commission prior notification of a plan pertaining to the said acquisition, pursuant to the provisions of the Rules of the Fair Trade

Commission,; provided, however, that this does not apply in the case that the prior submission of such a plan is deemed difficult under the Rules of the Fair Trade Commission.

(3) In the case of the preceding paragraph, the voting rights pertaining to shares of the said issuing company to be held by the said acquiring company after the said acquisition shall not include voting rights pertaining to shares held in monetary or security trust (limited to cases where the settlor or beneficiary may exercise the voting rights or give instructions to the trustee regarding the exercise of such voting rights), voting rights pertaining to shares to be held by the said acquiring company after the said acquisition where the said acquiring company is engaged in banking or insurance (excluding companies engaged in insurance which are provided in the Rules of the Fair Trade Commission; the same shall apply in the following paragraph and paragraphs (1) and (2) of the following article) and intends to acquire shares of other companies in Japan (excluding companies engaged in banking or insurance and other companies provided in the Rules of the Fair Trade Commission; the same shall apply in the following paragraph and paragraphs (1) and (2) of the following article), and voting rights pertaining to shares to be held by the said acquiring company after the said acquisition where the said acquiring company is engaged in Type I Financial Instruments Business and intends to acquire the shares in the course of its business, but shall include voting rights pertaining to shares held in monetary or security trust which the acquiring company may exercise as the settlor or beneficiary or which allow the acquiring company to give instructions regarding their exercise (excluding voting rights provided in the Rules of the Fair Trade Commission; the same shall apply in the following paragraph), and voting rights pertaining to the shares that are not capable of duly asserting against the issuer pursuant to the provisions of paragraph (1) of Article 147 and paragraph (1) of Article 148 of the Act on Book-Entry Transfer of Company Bonds, Shares, etc.

(4) In the case of paragraph (2), voting rights pertaining to shares of the said issuing company to be held by companies, etc. other than the said acquiring company shall not include voting rights pertaining to shares held in monetary or security trust (limited to where the settlor or beneficiary may exercise such voting rights or give instructions to the trustee regarding the exercise of such voting rights), voting rights pertaining to shares of other companies in Japan held by companies, etc. other than the said acquiring company where the said acquiring company is engaged in banking or insurance, and voting rights pertaining to shares held by

companies, etc. other than the said acquiring company in the course of its business where the said acquiring company is engaged in Type I Financial Instruments Business, but shall include voting rights pertaining to shares held in monetary or security trust which the acquiring company may exercise as the settlor or beneficiary or which allow the acquiring company to give instructions regarding their exercise, and voting rights pertaining to the shares that are not capable of duly asserting against the issuer pursuant to the provisions of paragraph (1) of Article 147 and paragraph (1) of Article 148 of Act on Book-Entry Transfer of Company Bonds, Shares, etc.

(5) Where a partner in a partnership that is a subsidiary company of a company (limited to partnerships that were established by a partnership contract provided in paragraph (1) of Article 667 of the Civil Code (Act No. 89 of 1896), Investment LPS as provided in paragraph (2) of Article 2 of the Limited Partnership Act for Investment (Act No. 90 of 1998) (referred to simply as “investment limited partnership” in item (iv) of paragraph (1) of the following article), a Limited Liability Partnership as provided in Article 2 of the Limited Liability Partnership Act (Act No. 40 of 2005), and organizations similar to these which were established in accordance with laws and regulations in foreign countries (hereinafter referred to as “specified organization similar to a partnership” in this paragraph); the same shall apply hereinafter in this paragraph) (including a member of a specified organization similar to a partnership; the same shall apply hereinafter in this paragraph) intends to acquire shares of the issuing company as the partnership property (including property of specified organization similar to a partnership; the same shall apply hereinafter in this paragraph) (including where all the partners in a partnership that is a subsidiary company of a company may be settlors or beneficiaries and may exercise voting rights or give instructions to the trustee regarding the exercise of voting rights with regard to shares held in monetary or security trust, and intend to have the trustee acquire shares issued by the issuing company), the parent company of the said partnership (meaning, in the case that the said partnership has two or more parent companies, a parent company of the said partnership which is a subsidiary company of all the other parent companies; the same shall apply hereinafter in this paragraph) shall be deemed to intend to acquire all of the shares, and where the shares of the issuing company belong to the partnership property of a partnership that is a subsidiary company of a company (including cases where, regarding the shares held in monetary or security trust that belong to the partnership property of a partnership that is a subsidiary company of

a company, all the partners in the said partnership may be trustees or beneficiaries and may exercise the voting rights or may give instructions to the trustee regarding the exercise of such voting rights), the parent company of the said partnership is deemed to hold all the shares, for the purpose of application of the provisions of paragraph (2).

(6) The term “subsidiary company” as used in paragraph (2) and the preceding paragraph means what is provided in the Rules of the Fair Trade Commission as a stock company of which the majority of voting rights of all shareholders are held by a company or any other company, etc. whose management is controlled by the relevant company.

(7) The term “parent company” as used in paragraphs (2) and (5) means what is provided in the Rules of the Fair Trade Commission as a company that controls the management of a company, etc.

(8) Any company that gave notification in accordance with the provisions of paragraph (2) must not acquire the shares pertaining to the said notification until the expiration of the thirty-day waiting period from the date of acceptance of the said notification; provided, however, that the Fair Trade Commission may, when it finds it necessary, shorten the said period.

(9) The Fair Trade Commission shall, where it intends to order necessary measures regarding the relevant share acquisition pertaining to the said notification pursuant to the provisions of paragraph (1) of Article 17-2, notify the acquiring company pursuant to the provisions of paragraph (5) of Article 49 before the expiration of the thirty-day waiting period provided in the main clause of the preceding paragraph, or of any shortened period pursuant to the proviso thereof (in the case that the Fair Trade Commission requested the acquiring company to submit necessary reports, information or materials (hereinafter in this paragraph “Reports, etc.”) pursuant to the provisions of the Rules of the Fair Trade Commission during the relevant period, the period up to the date on which one hundred-twenty days from the date of acceptance of the notification stipulated in the preceding paragraph have passed, or the date on which ninety days from the date of acceptance of all the Reports, etc. have passed, whichever is later) provided, however, that this shall not apply to such cases falling under any of the following items:

(i) Of matters in the plan regarding the acquisition of shares pertaining to the said notification, those which are considered important in light of the provisions of paragraph (1) are not carried out by the deadline stipulated in the said plan.

- (ii) There has been a false statement with respect to important matters in the plan regarding the acquisition of shares pertaining to the said notification.
- (10) In cases falling under the provisions of item (i) of the preceding paragraph, the Fair Trade Commission shall send a notification under the main clause of the preceding paragraph within one year from the deadline in the same item if it intends to order necessary measures relating to the acquisition of shares pertaining to the said notification pursuant to the provisions of paragraph (1) of Article 17-2.

Article 11

- (1) No company engaged in banking or insurance businesses shall acquire or hold voting rights in another company in Japan if it results in its holding more than five percent (ten percent in the case of a company engaged in insurance business; the same shall apply in the next paragraph) of voting rights of all shareholders; provided, however, that this shall not apply to cases where approval of the Fair Trade Commission is obtained in advance pursuant to the provisions of the Rules of the Fair Trade Commission, or to cases falling under any of the following items:
- (i) Cases where voting rights are acquired or held by acquisition or holding of shares as a result of the exercise of a security interest, or of receipt of substitute performance
 - (ii) Cases where the ratio of the voting rights pertaining to the shares already held to voting rights of all shareholders of the said company increases, as a result of acquisition by another company in Japan of its own shares
 - (iii) Cases where voting rights are acquired or held by acquisition or holding of the shares in the form of trust property pertaining to monetary or security trust
 - (iv) Cases where voting rights are acquired or held by a limited liability partner in an investment limited partnership (hereinafter referred to as “limited liability partner” in this item) as a result of acquisition or holding of shares as partnership property; provided, however, that this shall not apply to cases where the limited liability partner may exercise the voting rights, cases where the limited liability partner may give instructions to an unlimited liability partner in the investment limited partnership regarding the exercise of such voting rights, and cases where the said voting rights are held in excess of the period provided in a Cabinet Order from the date when the said voting rights were acquired
 - (v) Cases where voting rights are acquired or held by a partner in a partnership that was established by a partnership contract provided in paragraph (1) of Article 667 of the Civil Code, whose purpose is operation of business to make investments

into companies (limited to partnerships where management of business is delegated with one or more partners) (excluding the partners delegated with the management of business; hereinafter referred to as “non-managing partner” in this item) as a result of acquisition or holding of shares as partnership property; provided, however, that this shall not apply to cases where the non-managing partner may exercise the voting rights, cases where the non-managing partner may give instructions to a partner delegated with the management of business regarding the exercise of such voting rights, and cases where the said voting rights are held in excess of the period provided in the Cabinet Order referred to in the preceding item from the date when the said voting rights were acquired

(vi) In addition to the cases listed in the preceding items, cases provided in the Rules of the Fair Trade Commission as cases where there is no danger of restriction on the business activities of another company in Japan

(2) Any company, in the cases of items (i) to (iii) inclusive and (vi) of the preceding paragraph (in the case of item (iii) of the same paragraph, excluding cases where the settlor or the beneficiary other than those acquired or hold the relevant voting rights may exercise the voting rights and the said settlor or beneficiary may instruct the trustee on the exercise of such voting rights), that attempts to hold the relevant voting rights of another company in Japan over a period of one year from the date of such acquisition resulting in holding in excess of five percent of total voting rights of all shareholders shall, pursuant to the provisions of the Rules of the Fair Trade Commission, obtain approval in advance from the Commission. The approval of the Fair Trade Commission in such cases shall, except for the case of item (iii) of the same paragraph, be granted on the condition that the company engaged in banking or insurance business promptly disposes of the relevant voting rights.

(3) When the Fair Trade Commission intends to grant approval under the provisions of the preceding two paragraphs, it shall, in advance, consult with the Prime Minister.

(4) The authority of the Prime Minister set forth in the preceding paragraph shall be delegated to the Commissioner of the Financial Services Agency.

Article 12

Deleted.

Article 13

- (1) Neither an officer nor an employee (meaning in this article a person other than officers engaged in the business of a company on a regular basis) of a company shall hold at the same time a position as an officer of another company where the effect of such an interlocking directorate may be substantially to restrain competition in any particular field of trade.
- (2) No company shall coerce another company in competition with it in Japan through unfair trade practices, admit its officers concurrently to the position of officer or employee of the latter company, or admit its employees concurrently to the position of officer of the latter company.

Article 14

No party other than a company shall acquire or hold shares of a company where the effect of such acquisition or holding of shares may be substantially to restrain competition in any particular field of trade, or shall acquire or hold shares of a company through unfair trade practices.

Article 15

- (1) No company shall effect a merger if any of the following items applies:
 - (i) When the effect of the merger may be substantially to restrain competition in a particular field of trade
 - (ii) When unfair trade practices have been employed in the course of the merger.
- (2) Every company that intends to become a party to a merger (hereinafter in this article “merging company”) shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its plan with regard to such a merger, in the case that the total amount of the domestic sales of any one of the companies intending to be parties to such a merger exceeds the amount provided in a Cabinet Order ,which shall not be less than twenty billion yen, and the total amount of the domestic sales of any one of the other merging companies exceeds the amount provided in a Cabinet Order ,which shall not be less than five billion yen; provided, however, that this shall not apply to cases where all the merging companies belong to the same group of combined companies.
- (3) The provisions of paragraphs (8) to (10) inclusive of Article 10 shall apply mutatis mutandis to the restriction of merger pertaining to the notification pursuant to the provisions of the preceding paragraph and to the orders made by the Fair Trade Commission pursuant to the provisions of paragraph (1) of Article 17-2. In this case, in paragraph (8) of Article 10, the term “acquire the shares” shall be deemed to be

replaced with “merge”; in paragraph (9) of the same article, the terms “share acquisition” and “acquisition of shares” shall be deemed to be replaced with “merger”; the term “notify the acquiring company” shall be deemed to be replaced with “notify the merging companies”; and the term “requested the acquiring company” shall be deemed to be replaced with “requested at least one of the merging companies”; and in paragraph (10) of the same article, the term “acquisition of shares” shall be deemed to be replaced with “merger.”

Article 15-2

(1) No company shall effect a joint incorporation-type company split (meaning an incorporation-type company split that a company effects jointly with another company; the same shall apply hereinafter) or an absorption-type split if any of the following items applies:

- (i) The effect of the joint incorporation-type company split or absorption-type split may be substantially to restrain competition in a particular field of trade
- (ii) Unfair trade practices have been employed in the course of the joint incorporation-type company split or absorption-type split

(2) Every company that intends to become a party to a joint incorporation-type company split shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its plan with regard to such a joint incorporation-type company split if any of the following items applies; provided, however, that this shall not apply to cases where all the companies intending to become parties to the joint incorporation-type company split belong to the same group of combined companies:

- (i) The total amount of domestic sales of any one of the companies that intend to become parties to the joint incorporation-type company split (limited to a company that intends to have the company incorporated through such a joint incorporation-type company split acquire all of its business (hereinafter in this paragraph “total succession company”)) exceeds the amount specified by a Cabinet Order, which shall not be less than twenty billion yen, and the total amount of domestic sales of any one of the other companies that intend to become parties to the same company split (limited to a total succession company) exceeds the amount specified by a Cabinet Order, which shall not be less than five billion yen.
- (ii) The total amount of domestic sales of any one of the companies that intend to become parties to the joint incorporation-type company split (limited to a total succession company) exceeds the amount specified by a Cabinet Order, which shall

not be less than twenty billion yen, and the domestic sales of any one of the other companies that intend to become parties to the same company split (limited to a company that intends to have the company incorporated through such a joint incorporation-type company split acquire a substantial part of its business (hereinafter in this paragraph “substantial part succession company”)), in connection with the part of the business to be succeeded to, exceeds the amount specified by a Cabinet Order, which shall not be less than three billion yen.

(iii) The total amount of domestic sales of any one of the companies that intend to become parties to the joint incorporation-type company split (limited to a total succession company) exceeds the amount specified by a Cabinet Order, which shall not be less than five billion yen, and the domestic sales of any one of the other companies that intend to become parties to the same company split (limited to a substantial part succession company), in connection with the part of the business to be succeeded to, exceeds the amount specified by a Cabinet Order, which shall not be less than ten billion yen (excluding cases that fall under the previous item).

(iv) The domestic sales of any one of the companies that intend to become parties to the joint incorporation-type company split (limited to a substantial part succession company), in connection with the part of the business to be succeeded to, exceeds the amount specified by a Cabinet Order, which shall not be less than ten billion yen, and the domestic sales of any one of the other companies that intend to become parties to the same company split (limited to a substantial part succession company), in connection with the part of the business to be succeeded to, exceeds the amount specified by a Cabinet Order, which shall not be less than three billion yen.

(3) Every company that intends to become a party to an absorption-type split shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its plan with regard to such an absorption-type split if any of the following items applies; provided, however, that this shall not apply to cases where all the companies intending to become parties to the absorption-type split belong to the same group of combined companies:

(i) The total amount of domestic sales of any one of the companies that intend to become parties to the absorption-type split (limited to a company that intends to alienate all of its business through such absorption-type split (referred to in the following item as “total succession company”)) exceeds the amount specified by a Cabinet Order, which shall not be less than twenty billion yen, and the total amount of domestic sales of the company that intends to succeed to the business

through such a split exceeds the amount specified by a Cabinet Order ,which shall not be less than five billion yen.

(ii) The total amount of domestic sales of any one of the companies that intend to become parties to the absorption-type split (limited to a total succession company) exceeds the amount specified by a Cabinet Order ,which shall not be less than five billion yen, and the total amount of domestic sales of the company that intends to succeed to the business through such a split exceeds the amount specified by a Cabinet Order ,which shall not be less than twenty billion yen (excluding cases that fall under the previous item).

(iii) The domestic sales of any one of the companies that intend to become parties to the absorption-type split (limited to a company that intends to alienate a substantial part of its business through such an absorption-type split (referred to in the following item as “substantial part succession company”)), in connection with the part of the business to be alienated, exceeds the amount specified by a Cabinet Order , which shall not be less than ten billion yen, and the total amount of domestic sales of the company that intends to succeed to the business through such a split exceeds the amount specified by a Cabinet Order , which shall not be less than five billion yen.

(iv) The domestic sales of any one of the companies that intend to become parties to the absorption-type split (limited to a substantial part succession company), in connection with the part of the business to be alienated, exceeds the amount specified by a Cabinet Order , which shall not be less than three billion yen, and the total amount of domestic sales of the company that intends to succeed to the business through such a split exceeds the amount specified by a Cabinet Order ,which shall not be less than twenty billion yen (excluding cases that fall under the previous item).

(4) The provisions of paragraphs (8) to (10) inclusive of Article 10 shall apply mutatis mutandis to the restriction of joint incorporation-type company split and absorption-type split pertaining to the notification under the provisions of the preceding two and to the orders made by the Fair Trade Commission pursuant to the provisions of paragraph (1) of Article 17-2. In this case, the term “acquire the shares” in paragraph (8) of Article 10 shall be deemed to be replaced with “become a party to the joint incorporation-type company split or to the absorption-type split”; in paragraph (9) of the same article, the terms “share acquisition” and “acquisition of shares” shall be deemed to be replaced with “joint incorporation-type company split or absorption-type split”; the term “requested the acquiring company” shall be

deemed to be replaced with “requested at least one of the companies intending to become parties to the joint incorporation-type company split or to the absorption-type split”; and the term “notify the acquiring company” shall be deemed to be replaced with “notify the company intending to be a party to the joint incorporation-type company split or to the absorption-type split”; and in paragraph (10) of the same article, the term “the acquisition of shares” shall be deemed to be replaced with “the joint incorporation-type company split or the absorption-type split.”

Article 15-3

(1) No company shall engage in a joint share transfer (meaning a share transfer committed by a company jointly with another company; the same shall apply hereinafter) in the case that it falls under either of the following items:

- (i) Where the effect of the joint share transfer may be substantially to restrain competition in a particular field of trade
- (ii) Where unfair trade practices have been employed in the course of the share transfer

(2) Every company that intends to engage in a joint share transfer shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its plan with regard to such a share transfer, in the case that the total amount of the domestic sales of any one of the companies intending to be parties to such a joint share transfer exceeds the amount provided in a Cabinet Order , which shall not be less than twenty billion yen, and the total amount of the domestic sales of any one of the other companies intending to be parties to the same joint share transfer exceeds the amount provided in a Cabinet Order , which shall not be less than five billion yen; provided, however, that this shall not apply to cases where all the companies intending to be parties to the joint share transfer belong to the same group of combined companies.

(3) The provisions of the paragraphs (8) to (10) inclusive of Article 10 shall apply mutatis mutandis to the restriction of joint share transfer pertaining to the notification pursuant to the provisions of the preceding paragraph, and to the orders made by the Fair Trade Commission pursuant to the provisions of paragraph (1) of Article 17-2. In this case, the term “acquire the shares” appearing in paragraph (8) of Article 10 shall be deemed to be replaced with “perform the joint share transfer”; in paragraph (9) of the same article, the terms “share acquisition” and “acquisition of shares” shall be deemed to be replaced with “joint share

transfer”; the term “notify the acquiring company” shall be deemed to be replaced with “notify at least one of the companies intending to be parties to the joint share transfer”; and the term “requested the acquiring company” shall be deemed to be replaced with “requested the company intending to be a party to the joint share transfer”; and in paragraph (10) of the same article, the term “acquisition of shares” shall be deemed to be replaced with “joint share transfer.”

Article 16

(1) No company shall perform an act falling under any of the following acts, where the effect of such an act may be substantially to restrain competition in any particular field of trade, or through unfair trade practices:

- (i) Accepting assignment of the whole or a substantial part of the business of another company
- (ii) Accepting assignment of the whole or a substantial part of the fixed assets used for the business of another company
- (iii) Taking on a lease of the whole or a substantial part of the business of another company
- (iv) Undertaking the management of the whole or a substantial part of the business of another company
- (v) Entering into a contract which provides for a joint profit and loss account for business with another company

(2) Any company whose total amount of domestic sales exceeds the amount provided by a Cabinet Order by not less than twenty billion yen (referred to in paragraph (4) as “assignee company”) shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its plan with regard to the acceptance of assignment of the business or the fixed assets used for the business (hereinafter in this article “business, etc.”) if either of the following items applies; provided, however, that this does not apply to cases where the company intending to accept assignment of the business, etc. and the company intending to assign the said business, etc. belong to the same group of combined companies.

- (i) The company intends to accept assignment of the whole business of another company whose domestic sales exceeds the amount provided by a Cabinet Order by not less than three billion yen.
- (ii) The company intends to accept assignment of a substantial part of the business or the whole or a substantial part of the fixed assets used for the business of

another company, and the domestic sales in connection with the subject of such acceptance of assignment exceeds the amount provided by a Cabinet Order by not less than three billion yen.

(3) The provisions of paragraphs (8) to (10) inclusive of Article 10 shall apply *mutatis mutandis* to the restriction of acceptance of assignment of business, etc. pertaining to the notification under the provisions of the preceding paragraph and the orders made by the Fair Trade Commission pursuant to the provisions of paragraph (1) of Article 17-2. In this case, the term “acquire the shares” appearing in paragraph (8) of Article 10 shall be deemed to be replaced with “accept assignment of the business or the fixed assets used for the business”; in paragraph (9) of the same article, the terms “share acquisition” and “acquisition of shares” shall be deemed to be replaced with “acceptance of assignment of the business or the fixed assets used for the business”; and the term “acquiring company” shall be deemed to be replaced with “company intending to accept assignment of the business or the fixed assets used for the business”; and in paragraph (10) of the same article, the term “the acquisition of shares” shall be deemed to be replaced with “the acceptance of assignment of the business or the fixed assets used for the business.”

Article 17

No acts in whatever name shall be committed that evade such prohibitions or restrictions as provided in the provisions of Articles 9 to 16 inclusive.

Article 17-2

(1) Where there exists any act in violation of the provisions of paragraph (1) of Article 10, paragraph (1) of Article 11, paragraph (1) of Article 15, paragraph (1) of Article 15-2, paragraph (1) of Article 15-3, paragraph (1) of Article 16, or the preceding article, the Fair Trade Commission may, pursuant to the procedures provided in Section 2 of Chapter VIII, order the entrepreneur concerned to dispose of all or some of its shares, transfer a part of its business or take any other measures necessary to eliminate such acts in violation of the said provisions.

(2) Where there exists any act in violation of the provisions of paragraph (1) or (2) of Article 9, Article 13, Article 14 or the preceding article, the Fair Trade Commission may, pursuant to the procedures provided in Section 2 of Chapter VIII, order the person violating such provisions to dispose of all or some of his/her shares, resign from his/her position as an officer of the company or take any other measures necessary to eliminate such acts in violation of the said provisions.

Article 18

- (1) The Fair Trade Commission may, in cases where companies have merged in violation of the provisions of paragraph (2) of Article 15 and of paragraph (8) of Article 10 which is applied mutatis mutandis pursuant to paragraph (3) of Article 15 after deemed replacement, bring a lawsuit to have the said merger declared invalid.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to the cases where companies have effected a joint incorporation-type company split or an absorption-type split in violation of the provisions of paragraphs (2) and (3) of Article 15-2 and of paragraph (8) of Article 10 which is applied mutatis mutandis pursuant to paragraph (4) of Article 15-2 after deemed as a replacement. In this case, the term “the said merger” in the preceding paragraph shall be deemed to be replaced with “the said joint incorporation-type company split or the said absorption-type split.”
- (3) The provisions of paragraph (1) shall be applied mutatis mutandis to cases where companies have effected a joint share transfer in violation of provisions of paragraph (2) of Article 15-3 and of paragraph (8) of Article 10 which is applied mutatis mutandis pursuant to paragraph (3) of Article 15-3 after deemed as a replacement. In this case, the term “the said merger” in paragraph (1) shall be deemed to be replaced with “the said joint share transfer.”

Chapter V Unfair Trade Practices

Article 19

No entrepreneur shall employ unfair trade practices.

Article 20

- (1) Where there exists any act in violation of the provisions of the preceding article, the Fair Trade Commission may, pursuant to the procedures provided in Section 2 of Chapter VIII, order the entrepreneur to cease and desist from the said act, delete the relevant clauses from the contract, or any other measure necessary to eliminate the said act.
- (2) The provisions of paragraph (2) of Article 7 shall apply mutatis mutandis to an act in violation of the provisions of the preceding article.

Article 20-2

In the case that an entrepreneur who falls under either of the following items has committed an act in violation of the provisions of Article 19 (limited to acts that fall under item (i) of paragraph (9) of Article 2), the Fair Trade Commission shall order the said entrepreneur, pursuant to the procedures provided in Section II of Chapter VIII, to pay to the national treasury a surcharge of an amount equivalent to an amount obtained by multiplying the sales amount of goods or services that are identical to goods or services as provided in (a) of the said item which were supplied by the said entrepreneur to a competitor of the entrepreneur to whom the said entrepreneur refused supply or restricted the quantity or substance of goods or services pertaining to the supply in the said violation (in the case of violation of provisions of (b) of the same item, the amount of sales of the goods or services that are identical to the goods or services as provided in (b) of the same item which were supplied by the said entrepreneur to the other entrepreneur as provided in (b) of the same item (hereinafter referred to as “refusing entrepreneur” in this article) (including goods or services necessary for supply by the said refusing entrepreneur of the said identical goods or services), the said identical goods or services which were supplied by the said entrepreneur to a competitor of the entrepreneur to whom the refusing entrepreneur refused supply or restricted the quantity or substance of goods or services pertaining to the supply, or the said identical goods or services that were supplied by the refusing company to the said entrepreneur), which is calculated pursuant to the method provided by a Cabinet Order for the period from the date on which the entrepreneur effected the said act to the date on which the said act was discontinued (in the that case such a period exceeds three years, the period shall be the three years preceding the date on which the said act was discontinued), by three percent (two percent in the case that the said entrepreneur engages in retail business, or one percent in the case that the said entrepreneur engages in wholesale business); provided, however, that the Commission may not order the payment of such a surcharge in the cases that, pertaining to the acts in relation to the said violation, the said entrepreneur has received an order pursuant to the provisions of paragraph (1) of Article 7-2 (including cases where the provisions therein are applied mutatis mutandis to paragraph (2) of the same article and to Article 8-3 after deemed replacement; the same shall apply in the following article to Article 20-5 inclusive) or an order pursuant to the provisions of paragraph (4) of Article 7-2 (limited to cases where the said order is final and binding; the same shall apply in Article 20-4 and Article 20-5), a notification pursuant to the provisions of paragraph

(18) or (21) of Article 7-2, or a decision pursuant to the provisions of paragraph (2) of Article 51, or in the case that the amount of surcharge pursuant to this article is less than one million yen:

(i) An entrepreneur who received an order pursuant to the provisions of the preceding article (limited to an order related to item (i) of paragraph (9) of Article 2; the same shall apply in the following item) or an order pursuant to the provisions of this article (limited to cases where the said order is final and binding; the same shall apply in the following item), or a decision pursuant to the provisions of paragraph (4) of Article 66 (limited to a decision related to item (i) of paragraph (9) of Article 2 and to the case of rescission of the entirety of the original order; the same shall apply in the following item) (limited to cases where the said decision is final and binding; the same shall apply in the following item), within ten years before the date when the measure listed in item (iv) of paragraph (1) of Article 47 was first made in relation to the case pertaining to the said violation (hereinafter referred to as “investigation start date” in the following article to Article 20-5 inclusive).

(ii) In the case that the measure listed in item (iv) of paragraph (1) of Article 47 was not made, an entrepreneur who received an order pursuant to the provisions of the preceding article or of this article or a decision pursuant to the provisions of paragraph (4) of Article 66 within ten years before the date when the relevant entrepreneur received a prior notification in relation to the said violation.

Article 20-3

In the case that an entrepreneur who falls under either of the following items has committed an act in violation of the provisions of Article 19 (limited to an act that falls under item (ii) of paragraph (9) of Article 2), the Fair Trade Commission shall order the said entrepreneur, pursuant to the procedures provided in Section II of Chapter VIII, to pay to the national treasury a surcharge of an amount equivalent to the amount obtained by multiplying the sales amount of goods or services provided in the same item that were supplied by the said entrepreneur in the said act, which is calculated pursuant to the method provided by a Cabinet Order for the period on which the entrepreneur effected the said act to the date on which the said act was discontinued (in the case that such a period exceeds three years, the period shall be the three years preceding the date on which the said act was discontinued), by three percent (two percent in the case that the said entrepreneur engages in retail business, or one percent in the case that the said entrepreneur engages in wholesale

business); provided, however, that the Commission may not order the payment of such a surcharge in the cases that, pertaining to the acts in relation to the said violation, the said entrepreneur has received an order pursuant to the provisions of paragraph (1) or (4) of Article 7-2 or provisions of the following article (limited to cases where the said order is final and binding), a notification pursuant to the provisions of paragraph (18) or (21) of Article 7-2, or a decision pursuant to the provisions of paragraph (2) of Article 51, or in the case that the amount of surcharge pursuant to this article is less than one million yen:

- (i) An entrepreneur who received an order pursuant to the provisions of Article 20 (limited to an order related to item (ii) of paragraph (9) of Article 2; the same shall apply in the following item) or an order pursuant to the provisions of this article (limited to cases where the said order is final and binding; the same shall apply in the following item) or received a decision pursuant to the provisions of paragraph (4) of Article 66 (limited to a decision related to item (ii) of paragraph (9) of Article 2 and to the case of rescission of the entirety of the original order; the same shall apply in the following item) (limited to cases where the said decision is final and binding; the same shall apply in the following item), within ten years before the investigation start date.
- (ii) In the case that the measure listed in item (iv) of paragraph (1) of Article 47 was not made, an entrepreneur who received an order pursuant to the provisions of the Article 20 or of this article or a decision pursuant to the provisions of paragraph (4) of Article 66 within ten years before the date when the relevant entrepreneur received a prior notification in relation to the said violation.

Article 20-4

In the case that an entrepreneur who falls under either of the following items has committed an act in violation of the provisions of Article 19 (limited to an act that falls under item (iii) of paragraph (9) of Article 2), the Fair Trade Commission shall order the said entrepreneur, pursuant to the procedures provided in Section II of Chapter VIII, to pay to the national treasury a surcharge of an amount equivalent to an amount obtained by multiplying the sales amount of goods or services provided in the same item that were supplied by the said entrepreneur in the said act, which is calculated pursuant to the method provided by a Cabinet Order for the period on which the entrepreneur effected the said act to the date on which the said act was discontinued (in the that case such a period exceeds three years, the period shall be the three years preceding the date on which the said act were discontinued), by three

percent (two percent in the case that the said entrepreneur engages in retail business, or one percent in the case that the said entrepreneur engages in wholesale business); provided, however, that the Commission may not order the payment of such a surcharge in the cases that, pertaining to the acts in relation to the said violation, the said entrepreneur has received an order pursuant to the provisions of paragraph (1) or (4) of Article 7-2, a notification pursuant to the provisions of paragraph (18) or (21) of the same article, or a decision pursuant to the provisions of paragraph (2) of Article 51, or in the case that the amount of surcharge pursuant to this article is less than one million yen:

- (i) An entrepreneur who received an order pursuant to the provisions of Article 20 (limited to an order related to item (iii) of paragraph (9) of Article 2; the same shall apply in the following item) or an order pursuant to the provisions of this article (limited to cases where the said order is final and binding; the same shall apply in the following item) or received a decision pursuant to the provisions of paragraph (4) of Article 66 (limited to a decision related to item (iii) of paragraph (9) of Article 2 and to the case of rescission of the entirety of the original order; the same shall apply in the following item) (limited to cases where the said decision is final and binding; the same shall apply in the following item), within ten years before the investigation start date.
- (ii) In the case that the measure listed in item (iv) of paragraph (1) of Article 47 was not made, an entrepreneur who received an order pursuant to the provisions of the Article 20 or of this article or a decision pursuant to the provisions of paragraph (4) of Article 66, within ten years before the date when the relevant entrepreneur received a prior notification in relation to the said violation.

Article 20-5

In the case that an entrepreneur who falls under either of the following items has committed an act in violation of the provisions of Article 19 (limited to an act that falls under item (iv) of paragraph (9) of Article 2), the Fair Trade Commission shall order the said entrepreneur, pursuant to the procedures provided in Section II of Chapter VIII, to pay to the national treasury a surcharge of an amount equivalent to an amount obtained by multiplying the sales amount of goods or services provided in the same item that were supplied by the said entrepreneur in the said act, which is calculated pursuant to the method provided by a Cabinet Order for the period on which the entrepreneur effected the said act to the date on which the said act was discontinued (in the case such a period exceeds three years, the period shall be the

three years preceding the date on which the said act were discontinued), by three percent (two percent in the case that the said entrepreneur engages in retail business, or one percent in the case that the said entrepreneur engages in wholesale business); provided, however, that the Commission may not order the payment of such a surcharge in the cases that, pertaining to the acts in relation to the said violation, the said entrepreneur has received an order pursuant to the provisions of paragraph (1) or (4) of Article 7-2, a notification pursuant to the provisions of paragraph (18) or (21) of the same article, or a decision pursuant to the provisions of paragraph (2) of Article 51, or in the case that the amount of surcharge pursuant to this article is less than one million yen:

- (i) An entrepreneur who received an order pursuant to the provisions of Article 20 (limited to an order related to item (iv) of paragraph (9) of Article 2; the same shall apply in the following item) or an order pursuant to the provisions of this article (limited to cases where the said order is final and binding; the same shall apply in the following item) or received a decision pursuant to the provisions of paragraph (4) of Article 66 (limited to a decision related to item (iv) of paragraph (9) of Article 2 and to the case of rescission of the entirety of the original order; the same shall apply in the following item) (limited to cases where the said decision is final and binding; the same shall apply in the following item), within ten years before the investigation start date.
- (ii) In the case that the measure listed in item (iv) of paragraph (1) of Article 47 was not made, an entrepreneur who received an order pursuant to the provisions of the Article 20 or of this article or a decision pursuant to the provisions of paragraph (4) of Article 66 within ten years before the date when the relevant entrepreneur received a prior notification in relation to the said violation.

Article 20-6

In the case that an entrepreneur has committed an act in violation of the provisions of Article 19 (limited to an act that falls under item (v) of paragraph (9) of Article 2 and that is performed on a regular basis), the Fair Trade Commission shall order the said entrepreneur, pursuant to the procedures provided in Section II of Chapter VIII, to pay to the national treasury a surcharge of an amount equivalent to an amount obtained by multiplying by one percent the sales from the counterparty in the said act, which is calculated pursuant to the method provided by a Cabinet Order for the period on which the entrepreneur effected the said act to the date on which the said act was discontinued (in the case that such a period exceeds three

years, the period shall be the three years preceding the date on which the said act were discontinued) (in the case that the said act is performed against a counterparty that receives the supply of goods or services, the purchase amount from the said counterparty, which is calculated pursuant to the method provided by a Cabinet Order, shall apply, or in the case that there exist multiple counterparties in the said act, the total amount of sales or total purchase amount from the respective counterparties in the said act, which is calculated pursuant to the method provided by a Cabinet Order, shall apply); provided, however, that the Commission may not order the payment of such a surcharge in the case that the amount of the said surcharge is less than one million yen.

Article 20-7

The provisions of paragraph (22) to (25) inclusive and paragraph (27) of Article 7-2 shall be applied *mutatis mutandis* to cases where violations as provided in Article 20-2 to the preceding article inclusive have been committed. In this case, in paragraph (22) of Article 7-2, the term “paragraph (1) or (4)” shall be deemed to be replaced with “Article 20-2 to Article 20-6 inclusive”; and the term “paragraphs (1), (4) to (9) inclusive, (11), (12) or (19)” shall be deemed to be replaced with “these paragraphs”; in paragraph (23) of the same article, the term “(1), (4) to (9) inclusive, (11), (12) or (19)” shall be deemed to be replaced with “Article 20-2 to Article 20-6 inclusive”; in paragraph (24) of the same article, the term “paragraph (1), (2) or (4)” shall be deemed to be replaced with “Article 20-2 to Article 20-6 inclusive”; the term “and an order pursuant to the provisions of paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to paragraph (2) after deemed replacement) and paragraph (4), a notice pursuant to the provisions of paragraph (18) and paragraph (21), and a decision pursuant to the provisions of paragraph (2) of Article 51, received by the said juridical person (hereinafter referred to as ‘order, etc.’ in this paragraph) shall be deemed as a violation committed by the juridical person surviving, or established as a result of, the merger, or an order, etc. received by the juridical person surviving, or established as a result of, the merger,” shall be deemed to be replaced with “shall be deemed as a violation committed by the juridical person surviving, or established as a result of, the merger,”; and the term “the preceding paragraphs and the following paragraph” shall be deemed to be replaced with “the preceding two paragraphs and the following paragraph, which are applied *mutatis mutandis* pursuant to Article 20-7 after deemed replacement, and of Article 20-2 to Article 20-6 inclusive”; in paragraph (25) of the same article, the term “paragraph (1),

(2) or (4)” shall be deemed to be replaced with “Article 20-2 to Article 20-6 inclusive”; the term “the violation committed by the said juridical person and the order, etc. received by the said juridical person” shall be deemed to be replaced with “the violation”; the term “or as an order, etc. received by the subsidiary company, etc. that has succeeded specified business, respectively” shall be deleted; the term “the preceding paragraphs” shall be deemed to be replaced with “the preceding three paragraphs which are applied mutatis mutandis pursuant to Article 20-7 after deemed replacement and Article 20-2 to Article 20-6 inclusive”; the term “the term ‘order the said entrepreneur’ appearing in paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (2) after deemed replacement)” shall be deemed to be replaced with “the term ‘order the said entrepreneur’ appearing in Article 20-2 to Article 20-6 inclusive”; the term “order subsidiary company, etc. that has succeeded specified business (meaning the subsidiary company, etc. that has succeeded specified business as provided in paragraph (25); the same shall apply hereinafter), jointly and severally with another subsidiary company, etc. that has succeeded specified business and that has received an order pursuant to the provisions of this paragraph (including the cases where it is applied mutatis mutandis pursuant to the following paragraph after deemed replacement),’ the term ‘order the said entrepreneur’ appearing in paragraph (4) shall be ‘order subsidiary company, etc. that has succeeded specified business, jointly and severally with another subsidiary company, etc. that has succeeded specified business and that has received an order pursuant to the provisions of this paragraph” shall be deemed to be replaced with “order subsidiary company, etc. that has succeeded specified business, jointly and severally with another subsidiary company, etc. that has succeeded specified business and that has received an order pursuant to the provisions of this article”; the term “paragraph (22)” shall be deemed to be replaced with “paragraph (22), which is applied mutatis mutandis pursuant to Article 20-7 after deemed replacement,”; and the term “Any subsidiary company, etc. that has succeeded specified business and that has received” shall be deemed to be replaced with “Any subsidiary company, etc. that has succeeded specified business (meaning subsidiary company, etc. that has succeeded specified business as provided in paragraph (25) which is applied mutatis mutandis pursuant to Article 20-7; the same shall apply hereinafter in this paragraph); and in paragraph (27) of the same article, the term “the end of the period of implementation (or since the end of the Period of Violation, which is applicable in the case of a violation stipulated in paragraph (4))” shall be deemed to be replaced with “the date on which the said

violation was discontinued”.

Chapter VI Exemptions

Article 21

The provisions of this Act shall not apply to such acts recognizable as the exercise of rights under the Copyright Act, Patent Act, Utility Model Act, Design Act or Trademark Act.

Article 22

The provisions of this Act shall not apply to such acts of a partnership (including a federation of partnerships) which conforms to the requirements listed in each of the following items and which has been formed pursuant to the provisions of the act; provided, however, that this shall not apply to cases where unfair trade practices are employed, or where competition in any particular field of trade is substantially restrained, resulting in unjust increases of prices:

- (i) The purpose of the partnership is mutual support among small-scale entrepreneurs or consumers
- (ii) The partnership is voluntarily formed, and the partners may voluntarily participate in and withdraw from the partnership
- (iii) Each partner possesses equal voting rights
- (iv) If distribution of profits among partners is contemplated, the limits of the distributions are prescribed by laws and regulations or in the articles of partnership

Article 23

(1) The provisions of this Act shall not apply to legitimate acts performed by an entrepreneur who produces or sells a commodity, which is designated by the Fair Trade Commission and the uniform quality of which is easily identifiable, in order to fix and maintain the resale price thereof with another entrepreneur who purchases such a commodity (this term “resale price” means the price at which the latter entrepreneur or an entrepreneur who purchases such a commodity from the latter entrepreneur for sale sells it; the same shall apply hereinafter); provided, however, that this shall not apply to cases where the said act tends to unreasonably harm the interests of general consumers, or where it is committed by an entrepreneur who sells the said commodity against the will of the entrepreneur who produces the said commodity.

- (2) The Fair Trade Commission shall not designate a commodity under the provisions of the preceding paragraph unless each of the following items applies:
 - (i) The commodity is for daily use by general consumers
 - (ii) Free competition exists with respect to the commodity
- (3) The designation of a commodity under the provisions of paragraph (1) shall be made via a public notice
- (4) The same as is provided in paragraph (1) shall apply to legitimate acts performed by an entrepreneur who publishes works or an entrepreneur who sells such published works in order to fix and maintain the resale price thereof with another entrepreneur who purchases such works.
- (5) Organizations formed pursuant to the provisions of any of the following acts shall not be included in another entrepreneur who purchases commodities or works provided in paragraph (1) or the preceding paragraph; provided, however, that this shall, in the case of organizations formed pursuant to the provisions of any of the acts listed in items (viii) and (viii-ii), only apply to the cases where a business cooperative, a minor business cooperative, a federation of cooperatives, a commercial and industrial partnership, or a federation of commercial and industrial partnerships purchases such commodities as provided in paragraph (2) or such works as provided in paragraph (4), for the consumption of persons directly or indirectly constituting the said business cooperative, federation of cooperatives, commercial and industrial partnerships, or a federation of commercial and industrial partnerships:
 - (i) National Public Service Act
 - (ii) Agricultural Cooperatives Act
 - (iii) National Public Officers Mutual Aid Association Act
 - (iii-ii) Local Public Officers, etc. Mutual Aid Association Act
 - (iv) Consumer Cooperatives Act
 - (v) Fishery Cooperatives Act
 - (vi) Act on Labor Relationship of Specified Independent Administrative Agency, etc.
 - (vii) Labor Union Act
 - (viii) Small and Medium-Sized Enterprise Cooperatives Act
 - (viii-ii) Act on the Organization of Small and Medium-Sized Enterprise Association
 - (ix) Local Public Service Act
 - (x) Forestry Cooperatives Act
 - (xi) Local Public Enterprise Labor Relationships Act
- (6) When an entrepreneur as provided in paragraph (1) has entered into a contract which fixes and maintains the resale price as provided in the said paragraph, the

entrepreneur shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission thereof within thirty days of the date of the contract; provided, however, that this shall not apply if the Rules of the Fair Trade Commission prescribes otherwise.

Chapter VII Injunctions and Damages

Article 24

A person whose interests are infringed upon or likely to be infringed upon by an act in violation of the provisions of item (v) of Article 8 or Article 19 and who is thereby suffering or likely to suffer extreme damage is entitled to seek the suspension or prevention of such infringements from an entrepreneur or a trade association that infringes upon or is likely to infringe upon such interests.

Article 25

- (1) Any entrepreneur who has committed an act in violation of the provisions of Articles 3, 6 or 19 (in the case of entrepreneurs who have committed acts in violation of the provisions of Article 6, limited to those entrepreneurs who have effected unreasonable restraint of trade or employed unfair trade practices in the international agreement or contract concerned) and any trade association that has committed an act in violation of the provisions of Article 8 shall be liable for damages suffered by another party.
- (2) No entrepreneur or trade association may be exempted from the liability provided in the preceding paragraph by proving the non-existence of intention or negligence on its part.

Article 26

- (1) The right to claim for damages pursuant to the provisions of the preceding article may not be alleged in court until the cease and desist order provided in the provisions of paragraph (1) of Article 49 (in the case that no such order is issued, the payment order provided in paragraph (1) of Article 50 (excluding those issued against an entrepreneur that constitutes a trade association that has committed an act in violation of the provisions of item (i) or (ii) of Article 8)) or the decision set forth in the provisions of paragraph (4) of Article 66 has become final and binding.
- (2) The right set forth in the preceding paragraph shall expire by prescription after a lapse of three years from the date on which the cease and desist order or the payment order or the decision set forth in the said paragraph became final and binding.

Chapter VIII Fair Trade Commission

Section 1 Establishment, Duty, Affairs under the Jurisdiction and Organization, Etc.

Article 27

- (1) The Fair Trade Commission shall, pursuant to the provisions of paragraph (3) of Article 49 of the Act for Establishment of the Cabinet Office (Act No. 89 of 1999), be established. Its duties shall be to achieve the purposes set forth in Article 1.
- (2) The Fair Trade Commission shall be administratively attached to the office of the Prime Minister.

Article 27-2

In order to perform the duty set forth in paragraph (1) of the preceding article, the Fair Trade Commission shall take charge of the following affairs:

- (i) Matters relating to regulation on private monopolization
- (ii) Matters relating to regulation on unreasonable restraint of trade
- (iii) Matters relating to regulation on unfair trade practices
- (iv) Matters relating to regulation pertaining to monopolistic situations
- (v) Matters relating to international cooperation pertaining to affairs under the jurisdiction of the Fair Trade Commission
- (vi) Affairs that are assigned to the Fair Trade Commission pursuant to an act (including an order pursuant to an act), in addition to what is listed in any of the preceding items

Article 28

The chairman and commissioners of the Fair Trade Commission shall perform their authority independently.

Article 29

- (1) The Fair Trade Commission shall consist of a chairman and four commissioners.
- (2) The chairman and commissioners shall be appointed by the Prime Minister with the consent of both Houses of the Diet from among persons aged thirty-five or above and who have knowledge and experience in law or economics.
- (3) The appointment or dismissal of the chairman shall be certified by the Emperor.

(4) The chairman and commissioners shall be public officials.

Article 30

(1) The term of office of the chairman and commissioners shall be five years. However, the term of office of the chairman and commissioners appointed to fill a vacancy shall be the remaining term of office of his/her predecessor.

(2) The chairman and commissioners may be reappointed.

(3) The chairman and commissioners shall retire from the office upon reaching the age of seventy.

(4) If the term of office of the chairman or the commissioners expires, or a vacancy therefor occurs at the time when the consent of both Houses of the Diet is unobtainable because the Diet is not in session or the House of Representatives is dissolved, the Prime Minister may appoint the chairman or a commissioner from among persons who have such qualifications as provided in paragraph (2) of the preceding article. In this case, the subsequent approval of both Houses of the Diet shall be obtained in the first session of the Diet after the appointment.

Article 31

The chairman or a commissioner may not, against his/her will, be dismissed from office while (s)he is in office, except in cases falling under any of the following items:

(i) When a decision of the commencement of bankruptcy proceedings has been made against him/her

(ii) When (s)he has been dismissed by disciplinary action

(iii) When (s)he has been punished for violation of the provisions of this Act

(iv) When (s)he has been punished by imprisonment without work or severer punishment

(v) When the Fair Trade Commission has decided that (s)he is incapable of executing his/her duties due to mental or physical disorder

(vi) When the subsequent approval of both Houses of the Diet could not be obtained in the case referred to in paragraph (4) of the preceding article

Article 32

In the case referred to in items (i) or (iii) to (vi) inclusive of the preceding article, the Prime Minister shall dismiss the chairman or the commissioner concerned from office.

Article 33

- (1) The chairman shall preside over the affairs of the Fair Trade Commission and shall represent it.
- (2) The Fair Trade Commission shall choose in advance a commissioner from among the commissioners to act as the representative of the chairman in the case where (s)he cannot execute the chairman's duties.

Article 34

- (1) Meetings of the Fair Trade Commission shall not be declared open, and a resolution shall not be made without the attendance of the chairman and two or more commissioners.
- (2) All decisions of the Fair Trade Commission shall be made by a majority of the attendees. In the case that the votes are evenly divided, the chairman shall have the power to decide the vote.
- (3) The decision of the Fair Trade Commission under the provisions of item (v) of Article 31 shall, notwithstanding the provisions of the preceding paragraph, be made with the unanimous concurrence of all commissioners and the chairman except for the commissioner or chairman concerned.
- (4) For the purpose of applying the provisions of paragraph (1) in the case that the chairman cannot execute the chairman's duties, the commissioner chosen to act as the representative of the chairman pursuant to the provisions of paragraph (2) of the preceding article shall be deemed to be the chairman.

Article 35

- (1) A general secretariat shall be established at the Fair Trade Commission for the administration of its affairs.
- (2) The general secretariat shall have a secretary general.
- (3) The secretary general shall preside over the affairs of the general secretariat (excluding those affairs that the Fair Trade Commission decides, pursuant to the provisions of paragraph (1) of Article 56, to designate hearing examiners and cause them to conduct).
- (4) The secretariat and bureaus shall be established at the general secretariat.
- (5) The provisions of paragraphs (2) to (8) inclusive of Article 17 of the Act for Establishment of the Cabinet Office shall apply mutatis mutandis to the establishment, the scope of the affairs under the jurisdiction, and the internal organization of the secretariat and bureaus referred to in the preceding paragraph.
- (6) The secretariat and bureaus established pursuant to the provisions of paragraph (4)

shall not exceed three in number.

(7) Hearing examiners shall be posted at the general secretariat to conduct all or part of the hearing proceedings (excluding the rendering of a decision).

(8) The number of hearing examiners shall be prescribed by a Cabinet Order.

(9) Hearing examiners shall be selected by the Fair Trade Commission from among the staff members of the general secretariat who have been found to have the knowledge and experience in law and economics necessary to conduct the hearing proceedings and to be capable of making a fair judgment.

(10) A public prosecutor, an attorney practicing at the time of the appointment or a person qualified to be an attorney shall be among the staff members of the general secretariat.

(11) The duties of the staff member who is the public prosecutor referred to in the preceding paragraph shall be limited to matters relating to cases in violation of the

Article 35-2

(1) Local offices shall be established at necessary locations as local organizations of the general secretariat of the Fair Trade Commission.

(2) The names, locations and jurisdictional districts of the local offices referred to in the preceding paragraph shall be provided by a Cabinet Order.

(3) Branches may be established at necessary locations under the local offices referred to in paragraph (1) to conduct some of the affairs of the local offices.

(4) The names, locations and jurisdictional districts of the branches referred to in the preceding paragraph shall be provided by the Cabinet Office Ordinance.

Article 36

(1) The remuneration of the chairman and commissioners shall be provided separately.

(2) The remuneration of the chairman and commissioners may not, against their will, be reduced in amount while they are in office.

Article 37

The chairman, the commissioners and such staff members of the Fair Trade Commission as may be prescribed by a Cabinet Order may not engage in any of the following acts while they are in office:

(i) Becoming a member of the Diet or of the council of a local public entity, or actively engaging in political activities

(ii) Engaging in any other remunerative duties except as permitted by the Prime

Minister

(iii) Engaging in commerce or any other business for monetary gain

Article 38

The chairman, commissioners and staff members of the Fair Trade Commission shall not express their opinions outside the Fair Trade Commission on the existence or non-existence of facts or the application of laws and regulations with regard to a case; provided, however, this shall not apply to the cases provided in this Act or the cases where the results of their research on this Act are published.

Article 39

The chairman, commissioners and staff members of the Fair Trade Commission and any person who once held such a position shall not divulge to others or make surreptitious use of the secrets of entrepreneurs that came to their knowledge in the course of their duties.

Article 40

The Fair Trade Commission may, if necessary for the performance of its duties, order public offices, juridical persons formed by special laws and regulations, entrepreneurs or organizations of entrepreneurs, or their personnel to appear before the Fair Trade Commission, or require them to submit necessary reports, information or materials.

Article 41

The Fair Trade Commission may, if necessary for the performance of its duties, commission public offices, juridical persons formed by special laws and regulations, schools, entrepreneurs, organizations of entrepreneurs, persons with the relevant knowledge and experience, or others to carry out necessary investigations.

Article 42

The Fair Trade Commission may, if necessary for the performance of its duties, hold public hearings to obtain the opinions of the public.

Article 43

The Fair Trade Commission may, in order to ensure proper operation of this Act, make public any necessary matters except for the secrets of entrepreneurs.

Article 43-2

- (1) The Fair Trade Commission may provide any foreign authority responsible for enforcement of that executes any laws and regulations of a foreign country corresponding that are equivalent to this Act (hereinafter referred to in this article as a “foreign competition authority”) with information that is deemed helpful necessary for the execution performance of its duties (limited to duties corresponding that are equivalent to the duties of the Fair Trade Commission as provided in this Act; the same shall apply in the following paragraph); provided, however, that this does not apply to cases where the provision of such the said information is deemed likely to interfere with proper executions of this Act or to infringe on the interests of Japan in any other way.
- (2) When providing the information pursuant to the provisions of the preceding paragraph to a foreign competition authority, the Fair Trade Commission shall confirm matters listed in the following items:
 - (i) That the relevant foreign competition authority is capable of providing information corresponding to that is equivalent of the information provided pursuant to the provisions of the preceding paragraph
 - (ii) That the secrecy of the information provided as a secret pursuant to the provisions of the preceding paragraph and as a secret will be protected under the laws and regulations of the relevant foreign country to a degree that is equivalent of a degree to which the secrecy of such information is protected in Japan
 - (iii) That the information provided pursuant to the provisions of the preceding paragraph will not be used by the relevant foreign competition authority for a purposes other than that those contributing that will contribute to execution performance of its duties
- (3) Appropriate measures shall be taken so that the information provided pursuant to the provisions of paragraph (1) will not be used for criminal proceedings to be taken by courts or judges of foreign countries.

Article 44

- (1) The Fair Trade Commission shall report annually to the Diet, through the Prime Minister, on the enforcement of this Act.
- (2) The Fair Trade Commission may submit to the Diet, through the Prime Minister, its opinions on matters necessary to attain the purpose of this Act.

Section 2 Proceedings

Article 45

- (1) Any person may, when (s)he considers that a fact involving violation of the provisions of this Act exists, report the said fact to the Fair Trade Commission and ask for appropriate measures to be taken.
- (2) The Fair Trade Commission, upon receipt of such a report as provided in the preceding paragraph, shall make necessary investigations with respect to the case.
- (3) In the case where a report made pursuant to the provisions of paragraph (1) presents in writing a specific fact pursuant to the provisions of the Rules of the Fair Trade Commission, and where the Fair Trade Commission decides to take, or not to take, appropriate measures with respect to the case pertaining to such a report, the Fair Trade Commission shall promptly notify thereof to the person who made such a report.
- (4) The Fair Trade Commission may, where it considers that there exists a fact involving violation of the provisions of this Act or a fact falling under the purview of a monopolistic situation, take appropriate measures on its own authority.

Article 46

- (1) The Fair Trade Commission shall, if it considers that there exists a fact which falls under the purview of a monopolistic situation, and if it decides to take measures set forth in paragraph (4) of the preceding article, notify thereof to the competent minister pertaining to the business that the entrepreneur concerned operates.
- (2) In the case that a notice set forth in the preceding paragraph has been given, the competent minister may express to the Fair Trade Commission his/her opinion regarding the existence or non-existence of a monopolistic situation and other measures that (s)he considers would be sufficient to restore competition as provided in the proviso to paragraph (1) of Article 8-4.

Article 47

- (1) The Fair Trade Commission may, in order to conduct necessary investigation with regard to a case, make the following measures:
 - (i) Order persons concerned with a case or witnesses to appear to be interrogated, or collect their opinions or reports
 - (ii) Order expert witnesses to appear to give expert opinions
 - (iii) Order persons holding books and documents and other materials to submit such materials, or keep such submitted materials at the Fair Trade Commission

- (iv) Enter any business office of the persons concerned with a case or other necessary sites, and inspect conditions of business operation and property, books and documents, and other materials
- (2) The Fair Trade Commission may, where it finds it appropriate, designate, pursuant to the provisions of a Cabinet Order, staff members of the Fair Trade Commission as investigators and cause them to make the measures set forth in the preceding paragraph.
- (3) In the case where the staff members are instructed to conduct an on-site inspection pursuant to the provisions of the preceding paragraph, the Fair Trade Commission shall instruct them to carry their identification cards and present them to the persons concerned.
- (4) The authority to make measures pursuant to the provisions of paragraph (1) shall not be construed as granted for criminal investigation.

Article 48

The Fair Trade Commission shall, when it has conducted necessary investigations with regard to a case, keep an investigation record of the substance of the investigations, and when it has made any measures as provided in paragraph (1) of the preceding article, set out the date of making the measures and the result thereof.

Article 49

- (1) An order issued pursuant to the provisions of paragraph (1) or (2) of Article 7 (including cases where they are applied mutatis mutandis pursuant to paragraph (2) of Article 8-2 and paragraph (2) of Article 20), paragraph (1) or (3) of Article 8-2, Article 17-2 or paragraph (1) of Article 20 (hereinafter referred to as a “cease and desist order”) shall be rendered in writing, and the written cease and desist order shall indicate the measures necessary to eliminate the violation or to ensure that the violation is eliminated, and the facts found by the Fair Trade Commission and the application of laws and regulations thereto, and the chairman and commissioners who attended the meeting pursuant to the provisions of paragraph (1) of Article 69 shall affix their names and seals thereto.
- (2) A cease and desist order shall take effect by serving a transcript of the written cease and desist order to the addressee thereof.
- (3) The Fair Trade Commission shall, when it intends to issue a cease and desist order, give in advance to a person who is to be the addressee of the said cease and desist order an opportunity to express his/her opinions and to submit evidence.

- (4) The person who is to be the addressee of the cease and desist order may, when expressing his/her opinions or submitting evidence pursuant to the provisions of the preceding paragraph, appoint an agent (limited to attorneys at law, legal professional corporations or appropriate persons approved by the Fair Trade Commission; the same shall apply in paragraph (1) of Article 52, Article 57, Article 59, Article 60 and Article 63).
- (5) The Fair Trade Commission shall, when giving an opportunity to express opinions and to submit evidence pursuant to the provisions of paragraph (3), notify the person who is to be the addressee of the cease and desist order of the following matters in writing a sufficient period of time prior to the time limit for expressing his/her opinions and submitting evidence:
- (i) The expected content of the cease and desist order
 - (ii) The facts found by the Fair Trade Commission, and the application of laws and regulations thereto
 - (iii) The opportunity to express opinions and to submit evidence with regard to the matters listed in the preceding two items, to the Fair Trade Commission, and the time limit thereof
- (6) Any person dissatisfied with the cease and desist order may request, pursuant to the provisions of the Rules of the Fair Trade Commission and within sixty days of the date on which the transcript of the written cease and desist order was served (in the event of a natural disaster or other inevitable cause that results in the request for hearings not being made within such a period, within one week of the day following the date when such reason ceased to be valid), the Fair Trade Commission to initiate a hearing regarding the said cease and desist order.
- (7) If no request is made pursuant to the provisions of the preceding paragraph within the period prescribed in the said paragraph, the cease and desist order shall become final and binding.

Article 50

- (1) An order issued pursuant to the provisions of paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (2) of Article 7-2 or Article 8-3 after deemed replacement) or (4) of Article 7-2 or Articles 20-2 to 20-6 inclusive (hereinafter referred to as a “payment order”) shall be rendered in writing, and the written payment order for a surcharge shall state the amount of the surcharge to be paid, the basis of its calculation, the violation pertaining to it, and the time limit for payment, and the chairman and commissioners who attended the meeting

pursuant to the provisions of paragraph (1) of Article 69 shall affix their names and seals thereto.

- (2) A payment order shall take effect by serving a transcript of the written payment order for a surcharge to the addressee thereof.
- (3) The time limit for payment of the surcharge set forth in paragraph (1) shall fall on the day on which three months have elapsed from the day on which the transcript of the written payment order for a surcharge is issued.
- (4) Any person dissatisfied with the payment order may request, pursuant to the provisions of the Rules of the Fair Trade Commission and within sixty days of the date on which the transcript of the written payment order for surcharge was served (in the event of natural disaster or other inevitable reason that results in the request for hearings not being made within such period, within one week from the day following the date when such reason ceased to be valid), the Fair Trade Commission to initiate a hearing regarding the said payment order.
- (5) If no request is made pursuant to the provisions of the preceding paragraph within the period prescribed in the said paragraph, the payment order shall become final and binding.
- (6) The provisions of paragraphs (3) to (5) inclusive of the preceding article shall apply mutatis mutandis to the payment order. In this case, the term “The expected content of the cease and desist order” in item (i) of paragraph (5) of Article 49 shall be deemed to be replaced with “Amount of the surcharge intended to be ordered to be paid” and the term “The facts found by the Fair Trade Commission, and the application of laws and regulations thereto” in item (ii) of paragraph (5) of Article 49 shall be deemed to be replaced with “The basis of calculation of the surcharge and the violation pertaining to such surcharge”.

Article 51

- (1) After the Fair Trade Commission has issued a payment order pursuant to the provisions of paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (2) of Article 7-2 after deemed replacement; the same shall apply in the following paragraph and paragraph (3) or (4) of Article 7-2, the Fair Trade Commission shall, if there is a final and binding decision regarding the same case that imposes a fine on the person who received the said payment order, modify, by a decision, the amount of the surcharge in the said payment order by reducing such an amount by an amount equivalent to one-half of the amount of the fine imposed in the said decision; provided, however, that this shall not apply if the amount of the

surcharge in the said payment order does not exceed the amount equivalent to one-half of the amount of the said fine or the amount after the said modification is less than one million yen.

(2) In the case of the proviso to the preceding paragraph, the Fair Trade Commission shall rescind the said payment order pursuant to the provisions of paragraph (1) or (4) of Article 7-2 by a decision.

(3) In the case of the main clause of paragraph (1), the Fair Trade Commission shall, if the hearing proceedings pertaining to the said payment order pursuant to the provisions of paragraph (1) or (4) of Article 7-2 are not completed, notwithstanding the provisions of the main clause of paragraph (1), modify the amount of the surcharge in the said payment order pursuant to paragraph (1) or (4) of Article 7-2 to the amount decided through the said hearing proceedings reduced by an amount equivalent to one-half of the amount of the fine as provided in the main clause of paragraph (1) by a decision regarding the request for hearings pertaining to the said payment order pursuant to paragraph (1) or (4) of Article 7-2.

(4) In the case of the preceding three paragraphs, the Fair Trade Commission shall without delay refund in monetary form any amount already paid pursuant to the pre-modification or pre-rescission payment order (excluding any arrearage→ delinquent charge as provided in paragraph (3) of Article 70-9), if there is some portion that should be refunded.

Article 52

(1) Any person who makes a request for hearings pursuant to the provisions of paragraph (6) of Article 49 or paragraph (4) of Article 50 (hereinafter referred to as “hearing request”) shall submit to the Fair Trade Commission a written request that states the matters listed in the following items:

- (i) name and domicile or residence of the person making the hearing request his/her agent
- (ii) order pertaining to the hearing request
- (iii) substance of and reason for the hearing request

(2) The substance, as provided in item (iii) of the preceding paragraph, shall clearly state the scope of the request for rescission or modification of the order, and the claim (in the case of a cease and desist order, the claim against the facts that led to the order; in the case of a payment order, the claim against the basis of calculation of the surcharge) against the cease and desist order or payment order (referred to as “original order” in paragraph (5), Article 58, paragraph (1) of Article 59, paragraphs

(3) and (4) of Article 66, and Article 70-8) shall be clarified in the reason provided in the same item.

(3) In the case that a hearing request has been made, the Fair Trade Commission shall promptly commence hearing proceedings regarding the order pertaining to the said hearing request, except for cases that fall under the provisions of paragraph (1) of Article 66.

(4) The hearing request may be withdrawn in writing at any point up to the date of the final hearing regarding the order pertaining to the said hearing request.

(5) After hearing proceedings have been commenced pursuant to the provisions of paragraph (3) of Article 55, the original order shall become final and binding if the hearing request is withdrawn pursuant to the preceding paragraph.

Article 53

(1) The Fair Trade Commission may, in cases where it deems that a monopolistic situation exists (excluding cases as provided in the proviso to paragraph (1) of Article 8-4; the same shall apply in paragraph (1) of Article 67), commence hearing proceedings for a case if the Fair Trade Commission finds that it would be in the public interest to commence hearing proceedings for the case.

(2) The Fair Trade Commission shall, where it intends to commence hearing proceedings for a case pursuant to the provisions of the preceding paragraph, consult with the competent ministers pertaining to the business operated by the entrepreneur concerned.

Article 54

(1) The Fair Trade Commission may suspend the execution of all or part of a cease and desist order when it finds that such action is necessary in the case where a hearing request pertaining to the said cease and desist order is made.

(2) In the case of suspension of execution pursuant to the provisions of the preceding paragraph, the Fair Trade Commission shall, if it deems that the suspension of the said execution would be likely to make it difficult to ensure competition in the market or otherwise deems it necessary, rescind the suspension of the said execution.

Article 55

(1) The Fair Trade Commission shall, where it commences hearing proceedings pursuant to the provisions of paragraph (3) of Article 52, send a written notice of commencement of the hearing to such effect to the person who made the hearing

request.

- (2) The decision of commencement of the hearing pursuant to the provisions of paragraph (1) of Article 53 shall be made in writing, and the written decision of commencement of the hearing shall state the gist of the case and name of the addressee of the measures as provided in paragraph (1) of Article 8-4, and the chairman and commissioners in attendance at the resolution of the decision shall affix their names and seals thereto.
- (3) The hearing proceedings shall be commenced by sending a written notice of commencement of the hearing to the person who made the hearing request set forth in paragraph (1) or serving a transcript of the written decision of commencement of the hearing to the addressee set forth in the preceding paragraph.
- (4) The person who made the hearing request as set forth in paragraph (1) or the addressee as set forth in paragraph (2) (hereinafter referred to as “respondent”) shall be ordered to appear on the date of the hearing.
- (5) The date of the hearing shall be fixed on the day thirty days from the date of issue of the written notice of commencement of the hearing or the date of issue of the transcript of the written decision of commencement of the hearing; provided, however, that this shall not apply where the consent of the respondent is obtained.
- (6) The person who received the service of the transcript of the written decision of commencement of the hearing as provided in paragraph (2) shall promptly submit a written answer thereto to the Fair Trade Commission.

Article 56

- (1) The Fair Trade Commission may, after commencing the hearing proceedings, designate hearing examiners for each case and cause them to conduct all or a part of the subsequent hearing proceedings (excluding the decision; the same shall apply in the following paragraph, Article 63 and Article 64) in addition to the commission of investigations pursuant to the provisions of Article 41 and the measures listed in each item of paragraph (1) of Article 47 pursuant to the provisions of the Rules of the Fair Trade Commission; provided, however, that no person who has performed duties of an investigator of the said case or who has otherwise been involved in the examination of the said case may be designated as a hearing examiner.
- (2) The hearing examiners designated pursuant to the provisions of the preceding paragraph (in the case that more than one hearing examiner have been designated, the person nominated from among them) shall, pursuant to the provisions of the Rules of the Fair Trade Commission, direct the affairs pertaining to the hearing proceedings

that the Fair Trade Commission causes them to conduct pursuant to the provisions of that paragraph.

Article 57

The Fair Trade Commission or the hearing examiners may conduct the hearings even if the respondent or his/her agent fails to appear on the date of the said hearings with no justifiable ground.

Article 58

(1) An investigator designated pursuant to the provisions of paragraph (2) of Article 47 may attend hearings, make a claim about the facts that led to the original order, the application of laws and regulations thereto, and the appropriateness of the original order (in the case the hearings concern a case pertaining to paragraph (1) of Article 8-4, facts that fall under the monopolistic situation), offer evidence, and perform other necessary acts.

(2) In the case referred to in the preceding paragraph, an investigator may, where the investigator finds a modification (limited to modifications within the scope prescribed by the provisions of the Rules of the Fair Trade Commission) necessary with respect to the facts that led to the original order and the application of laws and regulations thereto (in the case that the hearings concern a case pertaining to paragraph (1) of Article 8-4, facts that fall under the monopolistic situation), claim such a modification; provided, however, that this shall not apply to the case that the interests of the respondent are harmed.

Article 59

(1) A respondent or his/her agent may, at the hearings, state the reason why the original order made or the measures to be ordered pursuant to the provisions of paragraph (1) of Article 8-4 by the Fair Trade Commission in regard to a case concerned are not just; may submit materials proving it; may request that the Fair Trade Commission interrogate necessary witnesses, order expert witnesses to submit expert opinions, order holders of books and documents and other materials to submit them, enter the necessary sites and inspect the conditions of the business and property, books and documents and other materials, or commission investigations; or may interrogate witnesses or expert witnesses whom the Fair Trade Commission ordered to appear; or may question those commissioned to perform investigation.

(2) A respondent (except for a constituent entrepreneur of a trade association that has

committed an act in violation of the provisions of item (i(or (ii) of Article 8; hereinafter the same shall apply in this paragraph) or his/her agent may not, in the hearing proceedings pertaining to the payment order, claim the non-existence of the violation pertaining to the said payment order (in the case of item (iii), limited to the portion pertaining to the finding concerned) in the case that any of the following items applies:

- (i) the cease and desist order regarding the violation pertaining to the payment order (limited to an order to the same person as the one who received the said payment order) has become final and binding pursuant to the provisions of paragraph (7) of Article 49;
- (ii) the respondent or his/her agent has withdrawn the hearing request in respect of the cease and desist order regarding the violation pertaining to the payment order
- (iii) all or a part of the violation is found in the decision pertaining to the cease and desist order regarding the violation pertaining to the payment order

Article 60

If the Fair Trade Commission or hearing examiner does not adopt the evidence offered by the investigator, or the respondent or his/her agent, the Fair Trade Commission or hearing examiner shall state the reasons for not having adopted such evidence.

Article 61

- (1) All hearings shall be open to the public; provided, however, that hearings may not be open to the public, where found necessary to protect trade secrets of an entrepreneur, or necessary for the public interest.
- (2) Written statements of the hearings shall be compiled pursuant to the provisions of the Rules of the Fair Trade Commission.

Article 62

- (1) The provisions of Articles 143 to 147 inclusive, Article 149, Articles 154 to 156 inclusive, Article 165 and Article 166 of the Code of Criminal Procedure (Act No. 131 of 1948) shall apply mutatis mutandis to the procedures by which the Fair Trade Commission or hearing examiners, in the course of hearings, shall interrogate witnesses, or order expert witnesses to express their expert opinion.
- (2) In the case referred to in the preceding paragraph, the terms “court,” “examination” and “the accused” shall be deemed to be replaced with “the Fair Trade Commission or

hearing examiners,” “interrogation” and “respondent,” respectively.

Article 63

In cases where the Fair Trade Commission has instructed hearing examiners to conduct all or a part of the hearing proceedings pursuant to the provisions of paragraph (1) of Article 56, the Fair Trade Commission shall, if the respondent or his/her agent so offers, give the respondent or his/her agent an opportunity to state his/her views directly to the Fair Trade Commission; provided, however, that this shall not apply to cases where the hearing proceedings pertaining to a payment order have been commenced pursuant to the provisions of paragraph (3) of Article 52 and the violation has been found in a decision pertaining to the cease and desist order regarding the said violation pertaining to the said payment order.

Article 64

The Fair Trade Commission or the hearing examiners may, where it or they determine it appropriate, merge or separate the hearing proceedings on its or their own authority.

Article 65

After the Fair Trade Commission has decided to commence a hearing pursuant to the provisions of paragraph (1) of Article 53 regarding a case pertaining to paragraph (1) of Article 8-4, the Fair Trade Commission may, where the respondent admits the facts and the application of the act as stated in the written decision of commencement of the hearing, and offers in writing to accept the decision without requiring subsequent hearing proceedings and submits to the Fair Trade Commission a written plan setting forth concrete measures that the respondent proposes voluntarily to take in order to restore competition with respect to the goods or services pertaining to the monopolistic situation, render a decision to the effect of the concrete measures stated in such a plan without conducting the subsequent hearing proceedings if the Fair Trade Commission finds it appropriate.

Article 66

- (1) The Fair Trade Commission shall, if the hearing request is made after the statutory period had elapsed or it is otherwise unlawful, dismiss the said hearing request by a decision.
- (2) The Fair Trade Commission shall, if the hearing request is groundless, dismiss the

- said hearing request by a decision after the hearing proceedings have been completed.
- (3) The Fair Trade Commission shall, if the hearing request has grounds, rescind or modify all or a part of the original order by a decision after the hearing proceedings have been completed.
- (4) In the case of rescission of all or a part of the original order pursuant to the provisions of the preceding paragraph, the Fair Trade Commission shall, where it finds that an act in violation of the provisions of Article 3, Article 6, Article 8, paragraph (1) or (2) of Article 9, paragraph (1) of Article 10, paragraph (1) of Article 11, Article 13, Article 14, paragraph (1) of Article 15, paragraph (1) of Article 15-2, paragraph (1) of Article 15-3, paragraph (1) of Article 16, Article 17 or Article 19 existed prior to the making of the original order but that the violation had already ceased to exist at the time of making of the said original order, make these facts clear by a decision.

Article 67

- (1) The Fair Trade Commission shall, where it finds after the hearing proceedings have been completed that a monopolistic situation exists, order the respondent by a decision to take such measures as provided in paragraph (1) of Article 8-4.
- (2) The Fair Trade Commission shall, where it finds after the hearing proceedings have been completed that facts falling under a monopolistic situation did not exist prior to the decision of commencement of the hearing, or that facts falling under a monopolistic situation existed prior to the decision of commencement of the hearing, but the said facts have already ceased to exist prior thereto, or that facts falling under a monopolistic situation exist and fall under the proviso to paragraph (1) of Article 8-4, make clear these facts by a decision.

Article 68

In rendering a decision pursuant to the provisions of paragraphs (2) to (4) inclusive of Article 66 and the preceding article, the Fair Trade Commission shall, except in the case of facts not contested by the respondent or known publicly, find the facts in question based on the evidence examined at the hearing proceedings.

Article 69

- (1) Cease and desist orders, payment order, and decisions shall be made by meetings of the chairman and commissioners.
- (2) The provisions of paragraphs (1), (2) and (4) of Article 34 shall apply mutatis

mutandis to such meetings as set forth in the preceding paragraph.

(3) For a decision ordering the measures set forth in paragraph (1) of Article 8-4, three or more people shall concur, notwithstanding the provisions of paragraph (2) of Article 34, as applied mutatis mutandis pursuant to the preceding paragraph.

Article 70

Meetings of the Fair Trade Commission shall not be open to the public.

Article 70-2

(1) Decisions shall be rendered in writing, and the written decisions shall show the facts found by the Fair Trade Commission and the application of laws and regulations thereto. In the case of decisions set forth in paragraph (3) of Article 66 pertaining to payment orders, the basis of calculating the surcharge, and the chairman and commissioners attending the meeting shall sign and seal it.

(2) Dissenting opinions may be stated in a written decision.

(3) Decisions shall take effect by serving the transcript of the written decision upon the respondent or other addressee thereof.

(4) No decision ordering the measures set forth in paragraph (1) of Article 8-4 may be executed unless and until such a decision becomes final and binding.

Article 70-3

The Fair Trade Commission may, if it finds it necessary, on its own authority, order a third party interested in the results of the decision to participate in the hearing proceedings as a party; provided, however, that it shall in advance interrogate the respondent and the said third party.

Article 70-4

Any public office or public organization concerned may, if it finds necessary for the public interest, participate in the hearing proceedings as a party with the approval of the Fair Trade Commission.

Article 70-5

Any public office or public organization concerned may, in order to protect the public interest, provide its opinions to the Fair Trade Commission.

Article 70-6

- (1) Where the Fair Trade Commission has issued a cease and desist order, the respondent may stay the execution of the said cease and desist order until it becomes final and binding by depositing such security deposits or securities (including book-entry transfer company bonds, etc. provided in paragraph (1) of Article 129 of the Act on Book-Entry Transfer of Company Bonds, etc. (Act No. 75 of 2001); the same shall apply in paragraph (1) of the following article and Article 70-14) as the court may fix.
- (2) The judicial decision under the provisions of the preceding paragraph shall be made pursuant to the Non-Contentious Cases Procedures Act (Act No. 14 of 1898).

Article 70-7

- (1) In the case where the respondent has made a deposit pursuant to the provisions of paragraph (1) of the preceding article and the cease and desist order has become final and binding, the court may, upon the petition of the Fair Trade Commission, sequester the whole or a part of the security deposits or securities deposited.
- (2) The provisions of paragraph (2) of the preceding article shall apply mutatis mutandis to the judicial decision under the provisions of the preceding paragraph.

Article 70-8

After issuing a cease and desist order (limited to those orders that have become final and binding under the provisions of paragraph (7) of Article 49 or paragraph (5) of Article 52), or a decision (excluding those decisions that rescind all of the original order) set forth in paragraphs (1) to (3) inclusive of Article 66, or a decision rendered pursuant to the provisions of Article 65 or paragraph (1) of Article 67, the Fair Trade Commission may, if it considers particularly necessary, make the measures, or order its staff members to make the measures, necessary to ascertain whether the measures ordered or maintained in that order or decision are being taken pursuant to the provisions of Article 47.

Article 70-9

- (1) If any person fails to pay a surcharge by the time limit for payment, the Fair Trade Commission shall demand the payment by serving a written demand designating a time limit for the payment.
- (2) Notwithstanding the provisions of the preceding paragraph, the Fair Trade Commission shall, if a hearing request regarding the payment order has been made (excluding cases where the said hearing request is dismissed pursuant to the

provisions of paragraph (1) of Article 66; the same shall apply in the following paragraph), promptly demand, after a decision on the said hearing request has been made, payment of the surcharge pertaining to the said payment order and if there is a delinquent charge pursuant to the provisions of the next paragraph, the delinquent charge, by serving a written demand designating a time limit thereof, excluding cases where all of the said payment order is rescinded pursuant to the provisions of paragraph (3) of Article 66; provided, however, that this shall not apply to cases where the said surcharge and delinquent charge are paid in full by the date when a transcript of the written decision in regard to the hearing request regarding the said payment order was served.

(3) In cases where any person fails to pay a surcharge by the time limit for payment, the Fair Trade Commission may collect a delinquent charge calculated at a rate of fourteen point five percent (14.5%) per annum (if a hearing request regarding the payment order pertaining to the said surcharge has been made, the rate specified by a Cabinet Order, but not exceeding seven point two five percent (7.25%) per annum up to and including the date when a transcript of the written decision regarding the hearing request is served) of the amount of such surcharge for the number of days intervening between the day after the time limit for payment and the day of payment; provided, however, that this shall not apply to cases where the delinquent charge involved is less than one thousand yen.

(4) In the case that the amount of a delinquent charge, calculated pursuant to the provisions of the preceding paragraph, contains a fraction of less than one hundred yen, such fraction shall be disregarded.

(5) In the case that a person upon whom a demand has been served under the provisions of paragraph (1) or (2) fails to make the payment by the designated time limit, the Fair Trade Commission may collect such payment pursuant to the national tax delinquency procedures.

(6) A statutory lien for the payment to be collected as provided in the preceding paragraph shall be next to those for national and local taxes, and the prescription on such payment shall be treated as if it were national tax.

Article 70-10

(1) In the case that the Fair Trade Commission has ordered a payment of surcharge pursuant to the provisions of paragraph (1) of Article 7-2 (including cases where the provisions therein are applied mutatis mutandis to paragraph (2) of the same article after deemed as a replacement), of paragraph (4) of the same article, or of Article 20-2

to 20-6 inclusive, in accordance with the provisions of paragraph (25) of Article 7-2 (including cases where the provisions therein are applied mutatis mutandis to Article 20-7 after deemed as a replacement), and if there is some portion that should be refunded (except cases provided in paragraph (4) of Article 51 or in the following paragraph), the Fair Trade Commission shall promptly refund in monetary form any amount already paid pursuant to these provisions.

(2) In the case that all or a part of a payment order is rescinded pursuant to the provisions of paragraph (3) of Article 66, the Fair Trade Commission shall without delay refund in monetary form any amount already paid pursuant to the pre-rescission payment order that should be refunded.

(3) In the case of the refund of the amount set forth in paragraph (1), the Fair Trade Commission shall add to the said amount the amount calculated at a rate specified by a Cabinet Order, but not exceeding seven point two five percent per annum, of the said amount for the number of days in a period between the day after the day after the lapse of one month from the day after the day when the said amount was paid and the day when the decision was made to pay the refund, or, in the case of the refund of the amount set forth in the preceding paragraph, for the number of days in the period between the day after the day when the said amount was paid and the day when the decision was made to pay the refund.

(4) The provisions of the proviso to paragraph (3) and paragraph (4) of the preceding article shall apply mutatis mutandis to amounts added pursuant to the provisions of the preceding paragraph.

Article 70-11

(1) The Fair Trade Commission shall, where an application for approval set forth in paragraph (1) or (2) of Article 11 has been filed, dismiss it by a decision if the Fair Trade Commission finds the said application to be groundless.

(2) The provisions of paragraph (2) of Article 45 shall apply mutatis mutandis to cases where an application for approval set forth in the preceding paragraph has been filed.

Article 70-12

(1) In cases where approval set forth in paragraph (1) or (2) of Article 11 has been granted, the Fair Trade Commission may, where it finds that the facts required for the said approval have ceased to exist or have changed, rescind or modify such approval by a decision after hearing proceedings have been completed. In this case, the Fair Trade Commission may commence hearing proceedings on its own authority.

(2) The Fair Trade Commission may, where it finds that maintenance of a cease and desist order or a decision pursuant to the provisions of Article 65 or paragraph (1) of Article 67 is inappropriate due to changes in economic conditions or other reasons, rescind or modify it by a decision; provided, however, that this shall not apply if such action may result in harm to the interests of the respondent.

Article 70-13

- (1) The court may, upon petition by the Fair Trade Commission, where it finds the matter to be one of urgent necessity, order the person conducting an act suspected of violating the provisions of Article 3, Article 6, Article 8, paragraph (1) or (2) of Article 9, paragraph (1) of Article 10, paragraph (1) of Article 11, Article 13, Article 14, paragraph (1) of Article 15, paragraph (1) of Article 15-2, paragraph (1) of Article 15-3, paragraph (1) of Article 16, Article 17 or Article 19 to temporarily suspend the said act, the exercise of voting rights, or the execution of business as an officer in a company, or may rescind or modify such order.
- (2) The provisions of paragraph (2) of Article 70-6 shall apply mutatis mutandis to the judicial decision under the provisions of the preceding paragraph.

Article 70-14

- (1) The execution of a judicial decision under the provisions of paragraph (1) of the preceding article may be stayed by depositing such security deposits or securities as the court may fix.
- (2) The provisions of Article 70-7 shall apply mutatis mutandis to sequestration of the security deposits or securities deposited under the provisions of the preceding paragraph.

Article 70-15

- (1) Any interested person may, after the hearing proceedings have commenced, request of the Fair Trade Commission inspection or copy of the records of the case in question, or delivery of a transcript of the written cease and desist order, written payment order for surcharge, written decision of commencement of the hearing, or written decision, or an extract thereof. In such a case, the Fair Trade Commission may not refuse inspection or copy of the records of the case in question unless the inspection or copy is deemed likely to infringe on the interests of a third party or unless there is any other justifiable ground.
- (2) In the case of permitting a copy pursuant to the provisions of the preceding

paragraph, the Fair Trade Commission may restrict the purposes of use of the copied records of the case in question and impose any other conditions that are deemed appropriate.

Article 70-16

Documents to be served shall be fixed, in addition to those as provided by this Act, by the Rules of the Fair Trade Commission.

Article 70-17

With regard to the service of documents, the provisions of Article 99, Article 101, Article 103, Article 105, Article 106, Article 108 and Article 109 of the Code of Civil Procedure (Act No. 109 of 1996) shall apply mutatis mutandis. In this case, the term “court execution officer” in paragraph (1) of Article 99 of the said Code shall be deemed to be replaced with “staff members of the Fair Trade Commission”, and the term “presiding judge” in Article 108 of the said Code and the term “court” in Article 109 of the said Code shall be deemed to be replaced with “the Fair Trade Commission”.

Article 70-18

(1) The Fair Trade Commission may conduct service by publication in the following cases:

- (i) When the domicile, residence or other place where service is made of the person that is to receive the service is unknown
- (ii) When, with regard to service to be made in foreign countries, the provisions of Article 108 of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding article after deemed as a replacement may not be applied, or it is recognized that service may not be made based on the said provisions
- (iii) When, after the lapse of six months from the date when a competent foreign government agency was commissioned to conduct service pursuant to the provisions of Article 108 of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding article after being deemed as a replacement, documents certifying the service are not received.

(2) Service by publication shall be made through posting on the notice board of the Fair Trade Commission to the effect that the documents to be served shall be delivered at any time to the person who is to receive the service.

(3) Service by publication shall take effect after the lapse of two weeks from the date when the posting was commenced under the provisions of the preceding paragraph.

(4) Regarding service by publication pertaining to service to be made in foreign countries, the time period set forth in the preceding paragraph shall be six weeks.

Article 70-19

(1) Notices of measures as provided in item (vii) of Article 2 of the Act on Use of Information and Communications Technology in Administrative Procedure (Act No. 151 of 2002), which are to be made by service of documents pursuant to the provisions of this Act or the Rules of the Fair Trade Commission, may not be made using an electronic data processing system (“electronic data processing system” as provided in paragraph (1) of Article 4 of the Act on Use of Information and Communications Technology in Administrative Procedure; hereinafter the same shall apply in this article) if the recipient of the said notice of measure has given no indication via the method specified in the Rules of the Fair Trade Commission of receiving the service, notwithstanding the provisions of the said paragraph.

(2) The staff members of the Fair Trade Commission shall, when performing affairs related to the notice of measure provided in the preceding paragraph using an electronic data processing system, record matters related to the service under the provisions of Article 109 of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to Article 70-17 after deemed as a replacement in a file stored in a computer (including input and output devices) used by the Fair Trade Commission via an electronic data processing system instead of preparing and submitting a document that states those matters.

Article 70-20

Necessary matters with respect to procedures for investigations and hearings of the Fair Trade Commission, and any other matters relating to the processing of cases, as well as those with respect to deposits set forth in paragraph (1) of Article 70-6 and paragraph (1) of Article 70-14 shall be provided by a Cabinet Order except for such matters provided in this Act.

Article 70-21

The provisions of Chapters II and III of the Administrative Procedure Act (Act No. 88 of 1993) shall not apply to cease and desist orders, payment orders and measures pertaining to applications for approval provided in paragraph (1) of Article 70-11, and decisions or any other measures under the provisions of this Section (including the measures effected by investigators under the provisions of paragraph (2) of Article 47

and by hearing examiners under the provisions of paragraph (1) of Article 56) that have been rendered by the Fair Trade Commission.

Article 70-22

Cease and desist orders and payment orders as well as decisions and any other measures under the provisions of this section (including the measures effected by investigators under the provisions of paragraph (2) of Article 47 and by hearing examiners under the provisions of paragraph (1) of Article 56) that have been rendered by the Fair Trade Commission shall not be appealed under the Administrative Appeal Act (Act No. 160 of 1962).

Section 3 Miscellaneous Provisions

Article 71

The Fair Trade Commission shall, where it designates specific trade practices in a specific field of business pursuant to the provisions of item (vi) of paragraph (9) of Article 2, first hear the opinions of entrepreneurs operating in the same type of business as that of the entrepreneurs who employ the said specific trade practices, and hold a public hearing to obtain the opinions of the public and thereupon shall make the designation after due consideration of the opinions presented.

Article 72

Designation under the provisions of item (vi) of paragraph (9) of Article 2 shall be made by public notice.

Article 73

In the case that the Fair Trade Commission contemplates commencing hearing proceedings pursuant to the provisions of paragraph (1) of Article 53, the Fair Trade Commission shall hold a public hearing to obtain the opinions of the public.

Article 74

- (1) The Fair Trade Commission shall, where it is convinced after an investigation conducted pursuant to the procedures provided in Chapter XII that a criminal offense has taken place, file a claim with the Prosecutor General.
- (2) In addition to the provisions of the preceding paragraph, the Fair Trade Commission shall, where it considers that a crime violating the provisions of this Act

exists, file a claim with the Prosecutor General.

(3) The Prosecutor General shall, where (s)he has made measures not to prosecute a case that is the subject of a claim under the provisions of the preceding two paragraphs, promptly report in writing on the said fact and the reasons thereof to the Prime Minister through the Minister of Justice.

Article 75

Witnesses or expert witnesses who have been ordered to appear or to give expert opinions pursuant to the provisions of item (i) or (ii) of paragraph (1) of Article 47, paragraph (2) of Article 47, or paragraph (1) of Article 56, may claim travel expenses and allowances pursuant to the provisions of a Cabinet Order.

Article 76

(1) The Fair Trade Commission may establish rules with respect to its internal disciplines, proceedings of cases and necessary procedures for notifications, applications for approval, and other matters.

(2) In establishing rules with respect to the proceedings of cases pursuant to the provisions of the preceding paragraph, the Fair Trade Commission shall keep in mind the need to ensure that the said proceedings are duly undertaken, including ensuring that the respondent has sufficient opportunity to state and prove his/her claims, etc.

Chapter IX Lawsuits

Article 77

(1) A suit to rescind a decision of the Fair Trade Commission shall be filed within thirty days (three months in the case of a decision ordering the measures set forth in paragraph (1) of Article 8-4) from the date on which the decision became effective.

(2) The period set forth in the preceding paragraph shall be an unextendable period.

(3) No suits may be filed regarding matters about which a hearing request may be made unless the suit concerns a decision.

Article 78

The Fair Trade Commission shall be the defendant in appeal suits provided in paragraph (1) of Article 3 of the Administrative Case Litigation Act (Act No. 139 of 1962) pertaining to a decision made by the Fair Trade Commission.

Article 79

The court shall, upon the filing of a suit, request that the Fair Trade Commission promptly send the records of the relevant case (including interrogation records of persons concerned with a case, witnesses and expert witnesses, records of the hearings and any other matters that may be used as evidence in court).

Article 80

- (1) Findings of fact made by the Fair Trade Commission shall, if established by substantial evidence, be binding upon the court in regard to the suit provided in paragraph (1) of Article 77.
- (2) Whether such substantial evidence as provided in the preceding paragraph exists or not shall be determined by the court.

Article 81

- (1) A party may offer the court new evidence relevant to the case; provided, however, that any such offer of new evidence relating to the facts found by the Fair Trade Commission must have any of the following items as its reason for being offered:
 - (i) Where the Fair Trade Commission failed to adopt the evidence without justifiable ground
 - (ii) Where it was impossible to submit the evidence at the hearings of the Fair Trade Commission, and there was no gross negligence on the part of the party in failing to submit such evidence
- (2) In regard to the offer of new evidence provided in the proviso of the preceding paragraph, the onus to show that the evidence falls under any of the items of the preceding paragraph shall be on the party seeking to introduce the evidence.
- (3) Where the court finds there is a good reason for the offer of new evidence provided in the proviso of paragraph (1) and it is necessary to examine such evidence, it shall remand the case to the Fair Trade Commission and order it to take appropriate measures after examining such evidence.

Article 82

- (1) The court may rescind a decision of the Fair Trade Commission if the decision falls under any of the following items:
 - (i) If the facts on which the decision is based are not established by substantial evidence
 - (ii) If the decision violates the Constitution or other laws or regulations.

(2) The Fair Trade Commission shall, where the judgment which rescinds the decision (limited to decisions pursuant to the provisions of Article 66) becomes final and binding, render another decision regarding the hearing request pursuant to the substance of the judgment.

Article 83

The court may, where it finds it necessary for further hearings to be conducted in the case a decision of the Fair Trade Commission (limited to decisions pursuant to the provisions of Article 67 and paragraph (1) of Article 70-12) shall be rescinded, remand the case to the Fair Trade Commission giving the reasons for the remand.

Article 83-2

(1) Where a suit for suspension or prevention of infringements pursuant to the provisions of Article 24 has been filed, the court may order the plaintiff to provide adequate security by ruling at the petition of the defendant.

(2) In order to lodge the petition set forth in the preceding paragraph, the fact that the suit set forth in the said paragraph has been filed for an unfair purpose (meaning purposes of acquiring a wrongful benefits, intending to do harm to another person, or other unfair purposes) shall be established by evidence showing a prima facie.

Article 83-3

(1) Where a suit for suspension or prevention of infringements under the provisions of Article 24 has been filed, the court shall notify the Fair Trade Commission to that effect.

(2) Where a suit set forth in the preceding paragraph has been filed, the court may ask for the opinion of the Fair Trade Commission with respect to the application of this Act for the case concerned or other necessary matters.

(3) Where a suit set forth in paragraph (1) has been filed, the Fair Trade Commission may, with the permission of the court, state an opinion to the court on the application of this Act for the case concerned or other necessary matters.

Article 83-4

(1) In a suit for suspension or prevention of infringements under the provisions of Article 24, the court may, upon petition of a party, order a party to produce any documents necessary for proving the alleged infringements, however, this does not apply when the holder of the documents has justifiable grounds for refusing to

produce them.

(2) Where the court finds it necessary for determining the presence of a justifiable reason prescribed in the proviso to the preceding paragraph, it may require the holder of the documents, to produce said documents. In such a case, no person may request disclosure of the produced documents.

(3) In the case of the preceding paragraph, where the court finds it necessary to disclose the documents prescribed in the second sentence of the preceding paragraph, and to hear the opinions of a party, etc. (which means a party (in the case of a juridical person, its representative), an agent (excluding a counsel or an assistant), an employee, or other workers of a party; the same shall apply in paragraph (1) of the following article), it may disclose said documents to the party, etc.

(4) The provisions of the preceding three paragraphs shall apply mutatis mutandis to the production of the objects of inspection necessary for proving the alleged acts of infringement in a suit for suspension or prevention of infringements under the provisions of Article 24.

Article 83-5

(1) In a suit for suspension or prevention of infringements under the provisions of Article 24, where there is a prima facie evidence showing that trade secret held by a party of the suit falls under both of the following grounds(meaning the trade secret provided in paragraph (6) of Article 2 of Unfair Competition Prevention Act (Act No. 47 of 1993); the same shall apply hereinafter), order the party, etc., a counsel, or an assistant not to use the trade secret for any purpose other than pursuing the suit or to disclose it to a person other than those who have received an order prescribed in this paragraph, with regard to said trade secret; however, this does not apply when the party, etc., the counsel, or the assistant had already acquired or held the trade secret by means other than the reading of the brief prescribed in item (i) or the examination or disclosure of evidence prescribed in the same item:

(i) The trade secret held by the party, is written in an already-produced or to-be-produced brief, or included in the contents of already-examined or to-be-examined evidence (including documents disclosed pursuant to the provisions of the preceding three paragraphs)

(ii)The party's business activities based on the trade secret under the preceding item are likely to become hindered by the use of said trade secret for purpose other than pursuing the suit or its disclosure, and it is necessary to restrict the use or

disclosure of the trade secret in order to prevent this.

- (2) A petition for the order prescribed in the preceding paragraph (hereinafter referred to as the “protective order”) shall be made in writing by include the following matters:
 - (i) A person to whom the protective order to be issued.
 - (ii) Facts that are sufficient for identifying the trade secret to be the subject to the protective order
 - (iii) Facts that fall under the grounds listed in the respective items of the preceding paragraph
- (3) When issuing a protective order, the court shall serve a decision letter on to the person to whom the protective order was issued.
- (4) A protective order takes effect when a decision letter is served on the person to whom the protective order was issued.
- (5) When the court dismisses a petition for a protective order, the party may lodge an immediate appeal against the decision.

Article 83-6

- (1) A movant for a protective order or a person to whom a protective order was issued may file a petition for rescission of the protective order with the court where the case record kept (when no such court exist, the court that issued the protective order) on the ground that the requirement prescribed in the preceding Article is not met or is no longer met.
- (2) When the court makes a decision on a petition for rescission of a protective order, it shall serve a decision letter on the movant and the adverse party.
- (3) An immediate appeal may be lodged against a decision on the petition for rescission of a protective order.
- (4) A decision to rescind a protective order shall not take effect until the decision becomes final and binding.
- (5) Where a court has made a decision to dismiss a protective order, if the court had, during the same suit in which the protective order was issued, issued a protective order for the protection of the trade secret against any person other than the movant for rescission of the protective order or the adverse party, it shall immediately notify the person of the decision to rescind the protective order.

Article 83-7

- (1) Where a court has made a ruling under Article 92(1) of the Code of Civil Procedure

with regard to the case record pertaining to the suit in which a protective order has been issued (excluding a suit in which all the protective orders have been rescinded), if there was a request for inspection, etc. of the portion of the record that represents the secret provided in the same paragraph by a party and the person who performed the procedure for such request has not been issued a protective order in the said suit, the court clerk shall, immediately after the request, notify the party who filed the petition under the same paragraph (excluding the request; the same shall apply in paragraph (3)) of the fact that such a request was made.

(2) In the case of the preceding paragraph, the court must not allow the party who performed the procedure for the request under the same paragraph to conduct inspection, etc. of the portion of the record that represents the secret until two weeks have passed since the date of the request (if a petition for a protective order against the person who performed the procedure for the request was filed on or before such date, until the date when the decision on the petition becomes final and binding).

(3) The provisions of the preceding two paragraphs shall not apply when there is consent among all parties who filed a petition under Article 92(1) of the Code of Civil Procedure to allow the party who made the request under paragraph (1) to conduct, etc. of the portion of the record that represents the secret.

Article 84

(1) When a suit for damages under the provisions of Article 25 has been filed, the court may ask for the opinion of the Fair Trade Commission with respect to the amount of damages caused by such violations as provided in the said article.

(2) If a claim for damages under the provisions of Article 25 is made in court proceedings for the purpose of reducing the other claim by set-off, the provisions of the preceding paragraph shall apply *mutatis mutandis*.

Article 84-2

(1) In cases where the courts listed in the following items have jurisdiction over a suit for suspension or prevention of infringements under the provisions of Article 24 pursuant to the provisions of Articles 4 and 5 of the Code of Civil Procedure, the said suit may also be filed with the courts as provided in the respective item:

(i) A district court located within the jurisdiction of the Tokyo High Court (excluding Tokyo District Court), Osaka District Court, Nagoya District Court, Hiroshima District Court, Fukuoka District Court, Sendai District Court, Sapporo District

- Court or Takamatsu District Court: Tokyo District Court
- (ii) A district court located within the jurisdiction of the Osaka High Court (excluding Osaka District Court): Tokyo District Court or Osaka District Court
 - (iii) A district court located within the jurisdiction of the Nagoya High Court (excluding Nagoya District Court): Tokyo District Court or Nagoya District Court
 - (iv) A district court located within the jurisdiction of the Hiroshima High Court (excluding Hiroshima District Court): Tokyo District Court or Hiroshima District Court
 - (v) A district court located within the jurisdiction of the Fukuoka High Court (excluding Fukuoka District Court): Tokyo District Court or Fukuoka District Court
 - (vi) A district court located within the jurisdiction of the Sendai High Court (excluding Sendai District Court): Tokyo District Court or Sendai District Court
 - (vii) A district court located within the jurisdiction of the Sapporo High Court (excluding Sapporo District Court): Tokyo District Court or Sapporo District Court
 - (viii) A district court located within the jurisdiction of the Takamatsu High Court (excluding the Takamatsu District Court): Tokyo District Court or Takamatsu District Court
- (2) With respect to the application of the provisions of Article 7 of the Code of Civil Procedure to cases where several claims are made in one suit, including a claim under the provisions of Article 24 of this Act, the term “Article 4 to the preceding article inclusive (excluding paragraph (3) of Article 6)” in Article 7 of the Code of Civil Procedure shall be deemed to be replaced with “Article 4 to the preceding article inclusive (excluding paragraph (3) of Article 6), and paragraph (1) of Article 84-2 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.”

Article 84-3

The jurisdiction of the first instance over any suit pertaining to crimes as provided in Article 89 to 91 inclusive shall lie in the district courts.

Article 84-4

In cases when the courts listed in the items of paragraph (1) of Article 84-2 have jurisdiction over a case pertaining to crimes provided in the preceding article pursuant to the provisions of Article 2 of the Code of Criminal Procedure, the courts as prescribed in the respective items also have jurisdiction over such cases.

Article 85

The jurisdiction of the first instance over any suit falling under any of the following items shall lie in the Tokyo High Court:

- (i) Appeal suits defined in paragraph (1) of Article 3 of the Administrative Case Litigation Act pertaining to decisions of the Fair Trade Commission (excluding suits defined in paragraphs (5) to (7) inclusive of the same article)
- (ii) Suits concerning compensation of damages pursuant to the provisions of Article 25.

Article 86

Any case provided in paragraph (1) of Article 70-6, paragraph (1) of Article 70-7 (including cases where it is applied *mutatis mutandis* under paragraph (2) of Article 70-14), paragraph (1) of Article 70-13, Article 97 and Article 98 shall be subject to the exclusive jurisdiction of the Tokyo High Court.

Article 87

- (1) A panel of judges invested with the authority to hear exclusively the cases listed in Article 85 and cases listed in the preceding article shall be established within the Tokyo High Court.
- (2) The number of judges on the panel set forth in the preceding paragraph shall be five.

Article 87-2

The court may, in cases where a suit for suspension or prevention of infringements pursuant to the provisions of Article 24 has been filed, and a suit pursuant to the same article pertaining to the same or similar acts is pending in another court, when the court finds it proper in consideration of the addresses or locations of the parties, addresses of witnesses to be examined, the commonality of issues or evidence and any other circumstances, transfer, by petition or *ex officio*, the case in whole or in part to the said other court or other courts having jurisdiction on the said suit pursuant to the provisions of paragraph (1) of Article 84-2.

Article 88

With respect to appeal suits defined in paragraph (1) of Article 3 of the Administrative Case Litigation Act pertaining to decisions of the Fair Trade Commission, the provisions of Article 6 of the Act on the Authority of the Minister of

Justice over Suits Affecting the Interests of State (Act No. 194 of 1947) shall not apply.

Chapter X Miscellaneous Provisions

Article 88-2

In the case that a Cabinet Order or the Rules of the Fair Trade Commission is established, revised or abolished pursuant to the provisions of this Act, transitional measures (including transitional measures relating to penal provisions) may be provided by virtue of such Cabinet Order or the Rules of the Fair Trade Commission to the extent they are considered reasonably necessary along with such establishment, revision or abolition.

Chapter XI Penal Provisions

Article 89

- (1) Any person who falls under any of the following items shall be punished by imprisonment with work for not more than five years or by a fine of not more than five million yen:
 - (i) Any person who, in violation of the provisions of Article 3, has effected private monopolization or unreasonable restraint of trade
 - (ii) Any person who, in violation of the provisions of item (i) of Article 8, has effected substantial restraint of competition in any particular field of trade
- (2) Any attempt to commit a crime falling under the preceding paragraph shall be punished.

Article 90

Any person who falls under any of the following items shall be punished by imprisonment with work for not more than two years or by a fine of not more than three million yen:

- (i) Any person who, in violation of the provisions of Article 6 or item (ii) of Article 8, has entered into an international agreement or an international contract which contains such matters as fall under unreasonable restraint of trade
- (ii) Any person who violated the provisions of item (iii) or (iv) of Article 8
- (iii) Any person who fails to comply with a cease and desist order or a decision as provided in Article 65 or paragraph (1) of Article 67 after it has become final and

binding

Article 91

Any person who has acquired or held shares in violation of the provisions of paragraph (1) of Article 11, who has held shares in violation of provisions of paragraph (2) of the same article, or who has violated, regarding the prohibition or restriction pursuant to these provisions, the provisions of Article 17, shall be punished by imprisonment with work for not more than one year or by a fine of not more than two million yen.

Article 91-2

Any person who falls under any of the following items shall be punished by a fine of not more than two million yen:

- (i) Any person who, in violation of the provisions of paragraph (4) of Article 9, has failed to submit a written report or submitted a written report with a false description
- (ii) Any person who, in violation of the provisions of paragraph (7) of Article 9, has failed to notify or submitted a written notification with a false description
- (iii) Any person who, in violation of the provisions of paragraph (2) of Article 10, has failed to notify or submitted a written notification with a false description
- (iv) Any person who has acquired shares in violation of the provisions of paragraph (8) of Article 1
- (v) Any person who, in violation of the provisions of paragraph (2) of Article 15 has failed to notify or submitted a written notification with a false description
- (vi) Any person who, in violation of the provisions of paragraph (8) of Article 10 which is applied mutatis mutandis under paragraph (3) of Article 15 after deemed as a replacement, has effected a register of an incorporation or a change as a result of a merger
- (vii) Any person who, in violation of the provisions of paragraphs (2) and (3) of Article 15-2 has failed to notify or submitted a written notification with a false description
- (viii) Any person who, in violation of the provisions of paragraph (8) of Article 10 which is applied mutatis mutandis under paragraph (4) of Article 15-2 after being deemed as a replacement, has effected a register of incorporation as a result of a joint incorporation-type company split or a register of change as a result of an absorption-type split

- (ix) Any person who, in violation of the provisions of paragraph (2) of Article 15-3, has failed to give notification or submitted a written notification with a false description
- (x) Any person who has effected a register of incorporation as a result of a joint share transfer in violation of the provisions of paragraph (8) of Article 10 which is applied mutatis mutandis to paragraph (3) of Article 15-3 after being deemed as a replacement
- (xi) Any person who, in violation of the provisions of paragraph (2) of Article 16 has failed to give notification or submitted a written notification with a false description
- (xii) Any person who, in violation of the provisions of paragraph (8) of Article 10 which is applied mutatis mutandis under paragraph (3) of Article 16 after deemed as a replacement, has carried out an act falling under item (i) or (ii) of paragraph (1) of Article 16
- (xiii) Any person who, in violation of the provisions of paragraph (6) of Article 23, has failed to notify or submitted a written notification with a false description

Article 92

Any person who has committed any of the crimes provided in Articles 89 to 91 inclusive may, according to the circumstances, be punished by cumulative imposition of both imprisonment with work and a fine.

Article 92-2

- (1) Any witness or expert witness under oath pursuant to the provisions of Article 154 or 166 of the Code of Criminal Procedure which are applied mutatis mutandis under Article 62 of this Act after deemed as a replacement, who has made a false statement or expert opinion, shall be punished by imprisonment with work for not less than three months but not more than ten years.
- (2) Where a person having committed a crime set forth in the preceding paragraph confesses his/her crime prior to the completion of the hearing proceedings and before the revelation of such crime, the punishment for such crime may be reduced or waived.

Article 93

Any person who violated the provisions of Article 39 shall be punished by imprisonment with work for not more than one year or by a fine of not more than one

million yen.

Article 94

Any person who falls under any of the following items shall be punished by imprisonment with work for not more than one year or by a fine of not more than three million yen:

- (i) Any person concerned with a case or any witness who, in violation of the measures made against him/her pursuant to the provisions of item (i) of paragraph (1) or paragraph (2) of Article 47, or paragraph (1) of Article 56, has failed to appear or to make a statement, or made a false statement, or failed to submit a report, or submitted a false report
- (ii) Any expert witness who, in violation of the measures made against him/her pursuant to the provisions of item (ii) of paragraph (1) or paragraph (2) of Article 47, or paragraph (1) of Article 56, has failed to appear or to give an expert opinion, or submitted a false expert opinion
- (iii) Any holder of the materials who, in violation of the measures made against him/her pursuant to the provisions of item (iii) of paragraph (1) or paragraph (2) of Article 47 or paragraph (1) of Article 56, has failed to submit the materials
- (iv) Any person who has refused, obstructed or evaded the inspection pursuant to the provisions of item (iv) of paragraph (1) or paragraph (2) of Article 47 or paragraph (1) of Article 56

Article 94-2

Any person who falls under any of the following items shall be punished by a fine of not more than two hundred thousand yen:

- (i) Any person who, in violation of the measures pursuant to the provisions of Article 40, has failed to appear or to submit a report, information or materials, or submitted a false report, information or materials
- (ii) Any witness or expert witness who, in violation of the order issued to him/her pursuant to the provisions of Article 154 or 166 of the Code of Criminal Procedure which are applied mutatis mutandis under Article 62 of this Act after deemed as a replacement, has failed to take the oath.

Article 94-3

- (1) Any person who violates a protective order shall be punished by imprisonment with work for not more than five years or by a fine of not more than five million yen,

or both.

(2) The offence prescribed in the preceding paragraph may not be persecuted without a complaint.

(3) The offence prescribed in paragraph (1) shall also apply to a person who committed it outside Japan.

Article 95

(1) When a representative of a juridical person, or an agent, an employee or any other worker of a juridical person or of an individual has, with regard to the business or property of the said juridical person or individual, committed a violation of the provisions in any of the following items, not only the offender shall be punished but also the said juridical person or individual shall be punished by the fine as prescribed in the respective items.

(i) Article 89: Fine of not more than five hundred million yen.

(ii) Item (iii) of Article 90 (excluding cases of violations of orders pursuant to the provisions of paragraph (1) of Article 7 or paragraph (1) or (3) of Article 8-2 (limited to portions ordering the party to cease and desist from the act in violation of the provisions of Article 3 or item (i) of Article 8)): Fine of not more than three hundred million yen.

(iii) Item (i), (ii) or (iii) of Article 90 (limited to cases of violations of orders pursuant to the provisions of paragraph (1) of Article 7 or paragraph (1) or (3) of Article 8-2 (limited to portions ordering the party to cease and desist from the act in violation of the provisions of Article 3 or item (i) of Article 8)), Article 91, Article 91-2 or Article 94: Fine as provided in the respective articles.

(2) Where a representative, manager, an agent, employee or any other worker of an organization without juridical personality has, with regard to the business or property of the said organization, committed a violation of the provisions in any of the following items, not only the offender shall be punished but also the said organization shall be punished by the fine as prescribed in the respective items.

(i) Article 89: Fine of not more than five hundred million yen

(ii) Item (iii) of Article 90 (excluding cases of violations of orders pursuant to the provisions of paragraph (1) of Article 7 or paragraph (1) or (3) of Article 8-2 (limited to portions ordering the party to cease and desist from the act in violation of the provisions of Article 3 or item (i) of Article 8)): Fine of not more than three hundred million yen

(iii) Item (i), (ii) or (iii) of Article 90 (limited to cases of violations of orders pursuant

to the provisions of paragraph (1) of Article 7 or paragraph (1) or (3) of Article 8-2 (limited to portions ordering the party to cease and desist from the act in violation of the provisions of Article 3 or item (i) of Article 8)), or Article 94: Fine as provided in the respective articles

- (3) When a representative of a juridical person, or an agent, employee or any other of a juridical person or an individual has committed a violation prescribed in paragraph (1) of the preceding article, not only the offender but also said juridical person shall be punished by a fine of not more than three hundred million yen, or said individual shall be punished by the fine prescribed in the same paragraph.
- (4) The period of prescription of a penalty of fine to be imposed a juridical person, an individual or organization pursuant to the provisions of paragraph (1) or (2) in regard to a violation of Article 89 shall be the same as that for the offenses prescribed in the same article.
- (5) In the case of paragraph (2), the representative or manager shall represent the said organization in respect of procedural acts and the provisions of the Code of Criminal Procedure which are applicable to procedural acts where a juridical person is the accused or the suspect shall apply *mutatis mutandis*.
- (6) The period of prescription of a penalty of fine to be imposed a juridical person or an individual pursuant to the provisions of paragraph (3), in regard to a violation of paragraph(1) of the preceding article shall be the same as that for the offences prescribed in the same paragraph.

Article 95-2

In the case of a violation of item (i) of paragraph (1) of Article 89, item (i) or (iii) of Article 90, or Article 91, the representative of the relevant juridical person (excluding those which fall under a trade association in case of violation of item (i) or (iii) of Article 90) who has failed to take necessary measures to prevent such violation despite the knowledge of a plan for such violation or who has failed to take necessary measures to rectify such a violation despite the knowledge of such a violation, shall also be punished by the fine as prescribed in the respective articles.

Article 95-3

- (1) In case of a violation of item (ii) of paragraph (1) of Article 89 or Article 90, a director or any other officer or a manager of the relevant trade association or its constituent entrepreneurs (including, in the case where the officer, employee, agent or other person who has done the act for the benefit of an entrepreneur was a

constituent entrepreneur, the said entrepreneur) who has failed to take necessary measures to prevent such a violation despite the knowledge of a plan for such a violation or who has failed to take necessary measures to rectify such a violation despite knowledge of such a violation, shall also be punished by the fine as prescribed in the respective articles.

(2) The provisions of the preceding paragraph shall, where a director or any other officer or a manager of the relevant trade association or its constituent entrepreneurs as provided in the said paragraph is a juridical person or any other organization, apply to a director or any other officer or a manager of the said organization.

Article 95-4

(1) The court may, when it finds that sufficient grounds exist, sentence a trade association to dissolution, simultaneously with the rendition of penalties as provided in item (ii) of paragraph (1) of Article 89 or Article 90.

(2) When dissolution has been sentenced pursuant to the provisions of the preceding paragraph, the trade association shall be dissolved by virtue of such a sentence, notwithstanding the provisions of any other laws or regulations, articles of incorporation or any other stipulations.

Article 96

(1) Any crime under Articles 89 to 91 inclusive shall be considered only after an accusation is filed by the Fair Trade Commission.

(2) The accusation set forth in the preceding paragraph shall be made in writing.

(3) The Fair Trade Commission may, in filing the accusation under paragraph (1), when it finds it appropriate that the sentence under paragraph (1) of the preceding article or item (i) of paragraph (1) of Article 100 should be rendered with respect to a crime pertaining to the accusation, state the said effect in the written accusation set forth under the preceding paragraph.

(4) The accusation under paragraph (1) shall not be revoked after public prosecution.

Article 97

Any person who has violated a cease and desist order shall be punished by a non-penal fine of not more than five hundred thousand yen; provided, however, that the foregoing shall not apply when the relevant act shall be punished.

Article 98

Any person who has violated a judicial decision under the provisions of paragraph (1) of Article 70-13 shall be punished by a non-penal fine of not more than three hundred thousand yen.

Article 99

Deleted.

Article 100

(1) The court may, in the case of Article 89 or 90, according to circumstances, issue the following sentences simultaneously with the rendition of punishments; provided, however, that the sentence under item (i) shall be limited to the case when the relevant patent right, or exclusive or non-exclusive license for a patented invention belongs to the criminal:

(i) That the patent under patent right or the exclusive or non-exclusive license for the patented invention which was used for the violation relates shall be revoked

(ii) That the criminal may not enter into a contract with the government for a period of not less than six months and not more than three years after the judgment becoming final and binding

(2) When a judgment with a sentence as provided in item (i) of the preceding paragraph becomes final and binding, the court shall send a transcript thereof to the Commissioner of the Patent Office.

(3) The Commissioner of the Patent Office shall, upon receipt of the transcript of the judgment under the provisions of the preceding paragraph, revoke the patent under the patent right, or the exclusive or non-exclusive license for the patented invention.

Chapter XII Investigation of Criminal Cases, Etc.

Article 101

(1) When necessary to investigate a criminal case (cases pertaining to crimes in Articles 89 to 91 inclusive; hereinafter the same shall apply in this Chapter), the staff members of the Fair Trade Commission (limited to the staff members designated by the Fair Trade Commission; hereinafter referred to in this Chapter as "FTC staff member(s)") may request criminal suspects or witnesses (hereinafter referred to in this paragraph as "criminal suspects, etc.") to attend the Fair Trade

Commission, may question criminal suspects, etc., inspect objects possessed or abandoned by criminal suspects, etc., or retain objects voluntarily submitted or abandoned by criminal suspects, etc.

(2) FTC staff members may, in the course of their investigation of a criminal case, inquire with public agencies or public or private organizations and request that they report the necessary matters.

Article 102

(1) FTC staff members may, when necessary to investigate a criminal case, conduct on-site inspection, search or seizure by virtue of a permit issued in advance by a judge of the district court or summary court having jurisdiction over the location of the Fair Trade Commission (Note: Tokyo District Court and Tokyo Summary Court).

(2) FTC staff members may, in urgent cases in the case of the preceding paragraph, take the measures in the preceding paragraph by virtue of a permit issued in advance by a judge of the district court or the summary court having jurisdiction over the location of the site to be inspected, the site, person or objects to be searched, or the objects to be seized.

(3) An FTC staff member shall, when requesting a permit provided in paragraph (1) or the preceding paragraph (hereinafter referred to in this chapter as “permit”), submit materials that confirm the existence of a criminal case.

(4) In the case of a request provided in the preceding paragraph, the judge of the district court or the summary court shall issue to the FTC staff member a permit with the judge’s name and seal affixed and the following information in writing: the site to be inspected; the site, person or objects to be searched; or the objects to be seized; the government position and name of the person making the request; the permit’s valid period; the effect that the inspection, search or seizure may not be initiated and the permit must be returned after the expiration of the valid period; the date of issuance of permit; and the name of the court to which the judge belongs. In this case, the name of the criminal suspect and the suspicion shall, if known, also be written.

(5) The FTC staff member may deliver the permit to another FTC staff member and have that FTC staff member conduct the on-site inspection, search or seizure.

Article 103

(1) FTC staff members may, when necessary to investigate a criminal case, after

receipt of a permit, seize postal items, correspondence mails or documents related to telegrams that are sent by or to criminal suspects and stored or possessed by persons handling communications affairs pursuant to the provisions of laws and regulations.

(2) FTC staff members may, after receipt of a permit, seize postal items, correspondence mails or documents related to telegrams that are stored or possessed by persons handling communications affairs pursuant to the provisions of laws and regulations and do not fall under the provisions of the preceding paragraph, to the extent that there are sufficient grounds to suspect each of the items is related to a criminal case.

(3) In the case that measures in the preceding two paragraphs have been made, FTC staff members shall notify the sender or recipient of the items to that effect; provided, however, that this shall not apply to cases where such notification risks impeding the investigation of the criminal case.

Article 104

(1) No on-site inspection, search or seizure may be conducted during the period from sunset to sunrise unless it is specified on the permit that such can be conducted at night.

(2) On-site inspection, search or seizure that was initiated before sunset may, when found necessary, be continued beyond sunset.

Article 105

Permits for on-site inspection, search or seizure shall be produced to those against whom such measures are to be made.

Article 106

FTC staff members shall, when conducting questioning, inspection, retention, on-site inspection, search or seizure pursuant to the provisions of this chapter, carry identification cards that indicate their identity and produce them upon request by a person concerned.

Article 107

(1) FTC staff members may, when necessary to conduct an on-site inspection, search, or seizure, open locks, open seals and take other necessary measures.

(2) The measures set forth in the preceding paragraph may be taken in relation to

objects retained or seized.

Article 108

FTC staff members may prohibit any person from entering or leaving the site without permission while the questioning, inspection, retention, on-site inspection, search or seizure pursuant to the provisions of this chapter are being conducted.

Article 109

- (1) FTC staff members shall, when conducting on-site inspection, search or seizure of a person's residence or a residence, building or other site guarded by a person, have the owner or superintendent (including their representative or agent or other person who can act on their behalf), or their employee or relative who is of the age of majority and also living together witness it.
- (2) If it is not possible, in the case of the preceding paragraph, to have a person provided in that paragraph witness it, the FTC staff members shall have a neighbor who is of the age of majority or a local police official or local government official witness the on-site inspection, search or seizure.
- (3) Any body-search of a female shall be conducted with the witness of another woman who is of the age of majority; provided, however, that this shall not apply to urgent cases.

Article 110

FTC staff members may, when necessary in the course of an on-site inspection, search or seizure, request the assistance of police officials.

Article 111

FTC staff members, after conducting questioning, inspection, retention, on-site inspection, search or seizure pursuant to the provisions of this chapter, shall prepare a written report that states the date the measures were made and the findings, show it to the person who was questioned or has witnessed it and, along with the person who was questioned or has witnessed it, affix their names and seals thereto; provided, however, that if the person who was questioned or has witnessed it does not affix his/her name and seal thereto or is unable to do so, it is sufficient to make supplementary note to that effect.

Article 112

FTC staff members shall, after conducting retention or seizure, prepare an inventory of the objects retained or seized and deliver a transcript of the inventory to the owner or holder of the objects retained or seized or a person who can act in lieu of the owners or holders.

Article 113

Regarding objects retained or seized that are hard to transport or store, FTC staff members may, with the consent of the owner or holder of the objects or other person that the FTC staff member deems appropriate, have such a person store the objects after receiving a safekeeping receipt.

Article 114

- (1) The Fair Trade Commission shall, after the objects retained or seized no longer need to be held in custody, return the objects to the persons to whom they should be returned.
- (2) The Fair Trade Commission shall, in the case that it cannot return the objects retained or seized set forth in the preceding paragraph because it does not know the domicile or residence of the person to whom the objects should be returned or because of another reason, make a public notice to that effect.
- (3) The objects retained or seized for which public notice is made pursuant to the preceding paragraph shall, if there is no request for return of the objects six months after the date of the public notice, belong to the national treasury.

Article 115

FTC staff members shall, after completing the investigation of the criminal case, report to the Fair Trade Commission the results of the investigation.

Article 116

- (1) The Fair Trade Commission shall, if there are objects retained or seized, deliver the objects together with the inventory of such objects in the case that an accusation is filed pursuant to the provisions of paragraph (1) of Article 74 as a result of the investigation of the criminal case.
- (2) In the case that the objects retained or seized set forth in the preceding paragraph are stored pursuant to the provisions of Article 113, the Fair Trade Commission shall deliver the safekeeping receipt set forth in that article and notify the person storing the objects pursuant to that article of such delivery.

(3) When objects retained or seized are delivered pursuant to the provisions of the preceding two paragraphs, the said objects shall be deemed as seized pursuant to the provisions of the Code of Criminal Procedure.

Article 117

The provisions of Chapter II to IV inclusive of the Administrative Procedure Act do not apply to measures made or administrative guidance implemented by the Fair Trade Commission or FTC staff members in accordance with the provisions of this chapter.

Article 118

Measures made by the Fair Trade Commission or FTC staff members pursuant to the provisions of this chapter may not be appealed under the Administrative Appeal Act.