

# 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 and 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 "director" as used in this Act means a director, an executive officer, a management member with unlimited liability, 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; or
- (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 following items, which tends to impede fair competition and which is designated by the Fair Trade Commission:
- (i) Unjustly treat other entrepreneurs in a discriminatory manner;
  - (ii) Dealing with unjust consideration;
  - (iii) Unjustly inducing or coercing customers of a competitor to deal with oneself;
  - (iv) Dealing with another party on such conditions as will unjustly restrict the business activities of the said party;
  - (v) Dealing with another party by unjust use of one's bargaining position;
  - (vi) Unjustly interfering with a transaction between an entrepreneur in competition with it in Japan with oneself or a corporation of which oneself is a stockholder or an officer and another transaction counterparty; or, in case such entrepreneur is a corporation, unjustly inducing, instigating, or coercing a stockholder or a director of such corporation to act against the interests of such corporation.
- (10) The term "subsidiaries" as used in this Act means other corporations in Japan of which majority of voting rights (excluding voting rights pertaining to the stocks whose voting rights cannot be exercised as to all the matters regarding which a resolution can be passed at the stockholders' meeting, but including voting rights pertaining to the stocks 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 in Chapter IV) of all stockholders (including all members; the same shall apply hereinafter) is held by another 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 Deleted.

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 case 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 for in Section 2 of Chapter VIII, order the relevant entrepreneur to cease and desist from the said acts, to transfer a part of his business, or to 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 for in Section 2 of Chapter VIII, order the relevant entrepreneur, 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 three years have passed since the date of discontinuation of the said act.

Article 7-2 (1) In case 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 for 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 for 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 for 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 case 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 case

of retail business, or two percent in case of wholesale business); provided, however, that in 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 for 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 for 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 for by a Cabinet Order", and the term "(three percent in case of retail business, or two percent in 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 for in the preceding two paragraphs 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 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 corporation whose amount of capital or total amount of contribution is not more than three hundred million yen and any corporation 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 lines of businesses listed in items 2 to 4 inclusive and the lines of businesses provided for by a Cabinet Order pursuant to item 5);

(ii) Any corporation whose amount of capital or total amount of contribution is not more than one hundred million yen and any corporation 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 the lines of businesses provided for by a Cabinet Order pursuant to item 5);

(iii) Any corporation whose amount of capital or total amount of contribution is not more than fifty million yen and any corporation 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 lines of businesses provided for by a Cabinet Order pursuant to item 5);

(iv) Any corporation whose amount of capital or total amount of contribution is not more than fifty million yen and any corporation 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 lines of businesses provided for by a Cabinet Order pursuant to the following item);

(v) Any corporation whose amount of capital or total amount of contribution is not more than the amount provided for by a Cabinet Order for a certain line of business and any corporation or individual whose number of regular employees is not more than the number provided for by a Cabinet Order for that line of business, which operates as its principal business, business belonging to any of the lines of business provided for 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 for in each of the preceding items for the individual line of business in the preceding items as provided for by a Cabinet Order.

- (5) 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, except for cases that fall under the next paragraph) by the day one month prior to the date when the measure listed in item 4 of paragraph 1 of Article 47 or the measure as provided for 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 and paragraph 7)).
- (6) In the case that an entrepreneur is ordered to pay a surcharge pursuant to the provisions of paragraph 1 (including the cases where it is applied mutatis mutandis pursuant to paragraph 2 after deemed replacement; hereinafter the same shall apply in this paragraph), 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 4 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 is a person falling under any of the following items:
- (i) A person having received an order pursuant to the provisions of paragraph 1 (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 13 or 16, 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 a person having received a notice pursuant to the provisions of

paragraph 13 or 16, 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 4 of paragraph 1 of Article 47 nor the measure provided for in paragraph 1 of Article 102 was made.

- (7) Notwithstanding the provisions of paragraph 1, the Fair Trade Commission shall not order the entrepreneur to pay a surcharge if the relevant entrepreneur that is to pay a surcharge pursuant to the provisions of paragraph 1 falls under both of the following items:
- (i) The entrepreneur is the first among the entrepreneurs that 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 4 of paragraph 1 of Article 47 nor the measure provided for in paragraph 1 of Article 102 was made; the same shall apply in the following item and the following paragraph) 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.
- (8) 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 4 to 6 inclusive in the case that the entrepreneur falls under items 1 and 3 of this paragraph, or by the amount calculated by multiplying by thirty percent the surcharge calculated pursuant to the provisions of paragraph 1 or 4 to 6 inclusive in the case that the entrepreneur falls under items 2 and 3 of this paragraph, respectively:
- (i) The entrepreneur is the second among the entrepreneurs that 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 that 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 has not committed the relevant violation since the investigation start date in relation to the said violation.
- (9) 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 4 to 6 inclusive in the case that the entrepreneur that 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 1 of paragraph 7 or item 1 or 2 of the preceding paragraph is fewer than three (limited to the cases where the sum of the number of entrepreneurs who submitted reports and materials pursuant to the provisions of item 1 of paragraph 7 or item 1 or 2 of the preceding paragraph and the number of entrepreneurs who submitted reports and materials pursuant to the provisions of item 1 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 for 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 deadline 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.
- (10) When the Fair Trade Commission receives the submission of reports and materials pursuant to the provisions of item 1 of paragraph 7, item 1 or 2 of paragraph 8, or item 1 of paragraph 9, the Fair Trade Commission shall promptly notify in writing the entrepreneur that submitted the said reports and materials of that fact.
- (11) Prior to issuing an order pursuant to the provisions of paragraph 1 or a notice pursuant to the provisions of paragraph 13 to an entrepreneur who falls under any of the provisions of paragraph 7 to 9 inclusive, the Fair Trade Commission may additionally request the said entrepreneur to submit reports or materials regarding the facts in relation to the relevant violation.
- (12) 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 that submitted reports and materials pursuant to the provisions of item 1 of paragraph 7, item 1 or 2 of paragraph 8, or item 1 of paragraph 9, these provisions shall not apply, notwithstanding the provisions of paragraphs 7 to 9 inclusive:

- (i) The report or materials submitted by the relevant entrepreneur 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 another entrepreneur to commit the violation provided for in paragraph 1 or blocked another entrepreneur from discontinuing the said violation.
- (13) If the Fair Trade Commission has decided not to order the payment of a surcharge pursuant to the provisions of paragraph 7, the Commission shall notify in writing the relevant entrepreneur of that decision at the time of issuing an surcharge payment order to entrepreneurs other than the said entrepreneur regarding the case pertaining to the violation committed by the entrepreneur that falls under the provisions of paragraph 7 (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 the provisions of paragraph 1; the same shall apply in paragraph 16).
- (14) In the case of paragraph 1 (including the cases where it is applied mutatis mutandis pursuant to paragraph 2 after deemed replacement; hereinafter the same shall apply in this paragraph and in paragraphs 17 and 18), 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 6 inclusive, 8, or 9, 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 6 inclusive, 8, or 9 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.
- (15) In the case of the proviso in the preceding paragraph, the Fair Trade Commission shall not order payment of the surcharge.
- (16) 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 replacement) to entrepreneurs other than the said entrepreneur regarding the case pertaining to the violation provided for in paragraph 1 or 2 committed by the said entrepreneur.

- (17) Any entrepreneur who has received an order pursuant to the provisions of paragraph 1 shall pay the surcharge calculated pursuant to the provisions of paragraphs 1, 4 to 6 inclusive, 8, 9, and 14.
- (18) In case the amount of surcharge calculated pursuant to the provisions of paragraphs 1, 4 to 6 inclusive, 8, 9, and 14 contains a fraction less than ten thousand yen, such fraction shall be disregarded.
- (19) In the case that the entrepreneur who has committed a violation provided for in paragraph 1 or 2 is a company and if the said company has ceased to exist by virtue of a merger with another company, a violation committed by the said company 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), a notice pursuant to the provisions of paragraphs 13 and paragraph 16, and a decision pursuant to the provisions of paragraph 2 of Article 51, received by the said company (hereinafter referred to as "order, etc." in this paragraph) shall be deemed as a violation committed by the company surviving, or established as a result of, the merger, and an order, etc. received by the company surviving, or established as a result, of the merger, respectively, for the purpose of application of the provisions of the preceding paragraphs.
- (20) In the case of the preceding paragraph, matters necessary for the application of the provisions of paragraphs 7 to 9 inclusive shall be provided for by a Cabinet Order.
- (21) After three years have passed since the date on which a violation ended, the Fair Trade Commission may not order a payment of a surcharge pertaining to the said violation.

### **Chapter III Trade Associations**

Article 8 (1) 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 for 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.
- (2) Every trade association shall, pursuant to the provisions of the Rules of the Fair Trade Commission, within thirty days from the date of its formation, notify the Commission thereof; provided, however, that the trade associations listed in the following items are not so required.
- (i) Trade associations established pursuant to the provisions of special Act and provided for by a Cabinet Order as falling under any of the following:
    - (a) Trade associations that are not at risk of committing an act falling under any of the items in the preceding paragraph in light of the purposes, business, or activities, etc. provided for in the relevant Act;
    - (b) Trade associations which were founded with the purpose of mutual support among small-scale entrepreneurs or consumers or with the purpose of the wholesome development of them.
  - (ii) Trade associations which were founded with the purpose of mutual support among small-scale entrepreneurs and provided by a Cabinet Order as those that are at little risk of committing an act falling under any of the items in the preceding paragraph (excluding those listed in the preceding item);
  - (iii) Clearinghouses designated in the provisions of the Negotiable Instrument Act (Act No. 20 of 1932) or the Check Act (Act No. 57 of 1933).
- (3) Trade association (excluding those listed in the items of the preceding paragraph; hereinafter the same in the next paragraph) shall, in case of any change in the matters notified pursuant to the provisions of the preceding paragraph, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Commission thereof, within two months from the end of the business year during which such change occurred.
- (4) Trade association shall, in case of dissolution, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Commission thereof, within thirty days from the date of its dissolution.

- Article 8-2 (1) In case there exists any act in violation of the provisions of paragraph 1 of the preceding Article, the Fair Trade Commission may, pursuant to the procedures as provided for 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 paragraph 1 of the preceding Article.
- (3) In the case of ordering a trade association to take measures provided for in paragraph 1 or paragraph 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 for 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 for in paragraph 1 or paragraph 2 of Article 7, as applied mutatis mutandis pursuant to the preceding paragraph.

Article 8-3 The provisions of paragraphs 1, 3 to 5 inclusive, 7 to 13 inclusive, 17, 18 and 21 of Article 7-2 shall apply mutatis mutandis to cases where an act is committed in violation of the provisions of item 1 of paragraph 1 of Article 8 (limited to cases of committing an act which falls under unreasonable restraint of trade) or item 2 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 4 of the said Article, the term "entrepreneur" shall be deemed to be replaced with "specified entrepreneur"; in paragraph 5 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, except for cases that fall under the next paragraph)" 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 7 of the said Article, the term "entrepreneur" shall be deemed to be replaced with "specified entrepreneur"; the term "entrepreneurs that 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 8 of the said Article, the term "entrepreneur" shall be deemed to be replaced with "specified entrepreneur"; the term "paragraph 1 or 4 to 6 inclusive" shall be deemed to be replaced with "paragraph 1, 4, or 5"; the term "entrepreneurs that 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 9 of the said Article, the term "entrepreneur" shall be deemed to be replaced with "specified entrepreneur"; the term "entrepreneur that committed the relevant violation" shall be deemed to be replaced with "specified entrepreneur of the trade association that committed the relevant violation"; and the term "paragraph 1 or 4 to 6 inclusive" shall be deemed to be replaced with "paragraph 1, 4, or 5"; and the term "has not committed" shall be deemed to be replaced with "has not effected the business activities that constituted"; in paragraphs 10 and 11 of the said Article, the term "entrepreneur" shall be deemed to be replaced with "specified entrepreneur"; in paragraph 12 of the said Article, the term "entrepreneur" shall be deemed to be replaced with "specified entrepreneur"; the term "committed by the relevant entrepreneur" shall be deemed to be replaced with "committed by the relevant trade association"; the term "commit the violation provided for 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 13 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 1 of the same paragraph"; and in paragraphs 17 and 18 of the said Article, the term "paragraphs 1, 4 to 6 inclusive, 8, 9, and 14" shall be deemed to be replaced with "paragraphs 1, 4, 5, 8, and 9".

### **Chapter III-2 Monopolistic Situations**

Article 8-4 (1) When a monopolistic situation exists, the Fair Trade Commission may order the relevant entrepreneur, pursuant to the procedures provided for 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 and sales, etc.;
- (vii) Capacity for and situations of funding and procurement;
- (viii) Situations of supply and distribution of goods or services.

#### **Chapter IV Stockholdings, Interlocking Directors, Mergers, Demergers, and Acquisitions of Business**

Article 9 (1) Any corporation, which may be to cause excessive concentration of economic power through holding of the stocks (including shares held by a member; the same shall apply hereinafter) of other corporations in Japan, shall not be established.

(2) A corporation (including a foreign corporation; the same shall apply hereinafter) shall not become a corporation which may be to cause excessive concentration of economic power in Japan through acquisition or holding of the stocks of other corporations 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 corporation and its subsidiaries and other corporations in Japan whose business activities are controlled by the said corporation through holding of their stocks, the remarkably strong power of the said corporations 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 corporations, has a large effect on the national economy and impedes the promotion of fair and free competition.

(4) Any other corporation in Japan of which majority of voting rights of all stockholders is held by a corporation and any one or more of its subsidiaries, or by any one or more subsidiaries of a corporation, shall be deemed as a subsidiary of the said corporation, for the purpose of application of the provisions of this Article.

- (5) Any corporation 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 for in the Rules of the Fair Trade Commission; hereinafter the same shall apply in this paragraph) of the corporation and its subsidiaries (limited to total assets of corporations in Japan), as aggregated pursuant to the method provided for in the Rules of the Fair Trade Commission, exceeds the amount provided for 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 corporation and its subsidiaries 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 corporation is a subsidiary of another corporation.
- (i) A corporation whose ratio of the total acquisition value (or other value if it is so listed in the latest balance sheet) of the stocks of subsidiaries to the total assets of the said corporation exceeds fifty percent (referred to as "holding company" in the next item): Six hundred billion yen
  - (ii) A corporation that is engaged in banking, insurance, or securities businesses (excluding holding companies): Eight trillion yen
  - (iii) A corporation other than those listed in the preceding two items: Two trillion yen
- (6) A newly incorporated corporation that falls under the case provided for in the preceding paragraph shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Commission thereof within thirty days from the date of its incorporation.

Article 10 (1) No corporation shall acquire or hold stocks of any other corporations where the effect of such acquisition or holding of stocks may be substantially to restrain competition in any particular field of trade, or shall acquire or hold stocks of other corporations through unfair trade practices.

(2) Every corporation whose total assets (meaning the amount of total assets appearing in the latest balance sheet; the same shall apply hereinafter) exceed the amount provided for in a Cabinet Order, which shall not be less than two billion yen, and whose total assets, coupled with total assets of subsidiaries of the said corporation, and a corporation in Japan which holds majority of voting rights of all stockholders of the said corporation (hereinafter referred to as "sum of the total assets"), exceed the amount provided for in a Cabinet Order, which shall not be less than ten billion yen (hereinafter referred to as "stockholding corporation" in this Article), in case that it acquires or holds the stocks (including the stocks held in monetary or security trust, where the stockholding corporation is a settlor or beneficiary and may exercise the voting

rights or give instructions to the trustee regarding the exercise of such voting rights) of another corporation in Japan whose total assets exceed the amount provided for in a Cabinet Order, which shall not be less than one billion yen (hereinafter referred to as "issuing corporation" in this Article), so that the ratio of voting rights pertaining to the stocks acquired or held by the stockholding corporation to voting rights of all stockholders of the issuing corporation is to exceed the percentage figure provided for in a Cabinet Order, which shall not be less than ten percent (in the case that more than one percentage figures are provided for, any of such percentage figures pursuant to the provisions of such Cabinet Order), shall submit, pursuant to the provisions of the Rules of the Fair Trade Commission, a written report on such stocks to the Fair Trade Commission within thirty days from the date of the relevant exceeding; provided, however, that this shall not apply to cases where the all the issued stocks of issuing corporation is acquired simultaneously with the incorporation, cases where a corporation engaged in banking or insurance business (excluding certain corporations engaged in insurance business as provided for in the Rules of the Fair Trade Commission; the same shall apply in paragraphs 1 and 2 of the next Article) acquires or holds stocks of other corporations in Japan (excluding those engaged in banking or insurance business and those as otherwise provided for in the Rules of the Fair Trade Commission; the same shall apply in paragraphs 1 and 2 of the next Article), or cases where a corporation engaged in securities business (excluding securities brokers) acquires or holds stocks in the course of its business.

- (3) The provisions of the preceding paragraph shall apply mutatis mutandis to cases where the stockholding corporation acquires or holds the stocks of a foreign corporation whose net sales appearing in the profit and loss statement prepared simultaneously with the latest balance sheet of its business offices (including the business offices of subsidiaries of the relevant foreign corporation) in Japan (hereinafter referred to as "domestic sales") exceed the amount provided for in a Cabinet Order, which shall not be less than one billion yen.

Article 11 (1) No corporation engaged in banking or insurance business shall acquire or hold voting rights in another corporation in Japan if it results in its holding in excess of five percent (ten percent in the case of a corporation engaged in insurance business; the same shall apply in the next paragraph) of voting rights of all stockholders; 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

stocks 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 stocks already held to voting rights of all stockholders of the said corporation increases, as a result of acquisition by another corporation in Japan of its own stocks;
  - (iii) Cases where voting rights are acquired or held by acquisition or holding of the stocks 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 stocks 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 for 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 for in paragraph 1 of Article 667 of the Civil Code (Act No. 89 of 1896) whose purpose is operation of business to make investments into corporations (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 stocks 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 for in the Cabinet Order referred to in the preceding item from the date when the said voting rights were acquired; or
  - (vi) In addition to the cases listed in the preceding items, cases provided for in the Rules of the Fair Trade Commission as cases where there is no danger of restriction on the business activities of another corporation in Japan.
- (2) Any corporation, in the cases of items 1 to 3 inclusive and 6 of the preceding paragraph (in the case of item 3 of the same paragraph, excluding cases where the settlor or the beneficiary may exercise the relevant voting rights and the settlor or beneficiary may instruct the trustee on the exercise of such voting rights), that attempts to hold the relevant voting rights of another corporation

- 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 stockholders 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 3 of the same paragraph, be granted on the condition that the corporation engaged in banking or insurance business promptly dispose 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 director nor an employee (meaning in this Article a person other than directors engaged in the business of a corporation on a regular basis) of a corporation shall hold at the same time a position as an director of another corporation where the effect of such an interlocking directorate may be substantially to restrain competition in any particular field of trade.
- (2) No corporation shall coerce another corporation in competition with it in Japan through unfair trade practices, to admit its directors concurrently to the position of director or employee of the latter corporation, or to admit its employee concurrently to the position of director of the latter corporation.

Article 14 No person other than corporations shall acquire or hold stocks of a corporation where the effect of such acquisition or holding of stocks may be substantially to restrain competition in any particular field of trade, or shall acquire or hold stocks of a corporation through unfair trade practices.

- Article 15 (1) No corporation shall effect a merger if any of the following items applies:
- (i) Where the effect of the merger 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 merger.
- (2) Every corporation in Japan which intends to become a party to a merger (hereinafter in this Article "merging corporation") shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of their plan with regard to such merger, in case that

the sum of the total assets of one corporation exceeds the amount, provided for in a Cabinet Order, which shall not be less than ten billion yen, and the sum of the total assets of another merging corporation exceeds the amount, provided for in a Cabinet Order, which shall not be less than one billion yen; provided, however, that this shall not apply to such cases falling under any of the following items:

- (i) Any one of the merging corporations holds a majority of the voting rights of all stockholders of every other merging corporation;
  - (ii) The majority of the voting rights of all stockholders of each of the merging corporations is held by one and the same corporation.
- (3) The provisions of the preceding paragraph shall apply mutatis mutandis to any foreign corporation that intends to become a party to a merger. In this case, the term "sum of the total assets" in the same paragraph shall be deemed to be replaced with "domestic sales".
- (4) No corporation which has notified pursuant to the provisions of paragraph 2 (including the cases where it is applied mutatis mutandis pursuant to the preceding paragraph after deemed replacement) shall effect a merger 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.
- (5) The Fair Trade Commission shall, where it intends to order necessary measures regarding the relevant merger pursuant to the provisions of paragraph 1 of Article 17-2, notify the merging corporations pursuant to the provisions of paragraph 5 of Article 49 before the expiration of the thirty-day waiting period provided for in the main clause of the preceding paragraph, or of any shortened period pursuant to the provisions of the proviso thereof (in case that the Fair Trade Commission requested at least one corporation among the merging corporations 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 the this shall not apply to such cases falling under any of the following items:
- (i) Matters considered important in light of the provisions of paragraph 1 are not carried out by the deadline stipulated in the plan regarding the merger notified pursuant to the provisions of paragraph 2 (including the cases where it is applied mutatis mutandis pursuant to paragraph 3 after deemed replacement; the same shall apply in the following item);
  - (ii) There has been a false statement with respect to important matters in the

- plan regarding the merger notified pursuant to the provisions of paragraph 2.
- (6) In cases falling under the provisions of item 1 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 relevant merger pursuant to the provisions of paragraph 1 of Article 17-2.

Article 15-2 (1) No corporation shall effect a joint incorporation-type demerger (meaning an incorporation-type demerger that a corporation effects jointly with another corporation; the same shall apply hereinafter) or an absorption-type demerger if any of the following items applies:

- (i) The effect of the joint incorporation-type demerger or absorption-type demerger 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 demerger or absorption-type demerger.
- (2) Every corporation in Japan which intends to become a party to a joint incorporation-type demerger shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of their plan with regard to such joint incorporation-type demerger if any of the following items applies:
- (i) The sum of the total assets of any of the corporations which intends to become a party to the joint incorporation-type demerger (limited to a corporation that intends to have the corporation incorporated through such joint incorporation-type demerger acquire all of its business (hereinafter in this paragraph "total succession corporation")) exceeds the amount stipulated by a Cabinet Order, which is not less than ten billion yen, and the sum of the total assets of another corporation which intends to become a party to the same demerger (limited to a total succession corporation) exceeds the amount stipulated by a Cabinet Order, which is not less than one billion yen;
- (ii) The sum of the total assets of any of the corporations which intends to become a party to the joint incorporation-type demerger (limited to a total succession corporation) exceeds the amount stipulated by a Cabinet Order, which is not less than ten billion yen, and the net sales recognized in the profit and loss statement which is made together with the latest balance sheet of another corporation which intends to become a party to the same demerger (limited to a corporation that intends to have the corporation incorporated through such joint incorporation-type demerger acquire a substantial part of its business (hereinafter in this paragraph "substantial part succession corporation")), in connection with the part of the business to be succeeded to, exceeds the amount stipulated by a Cabinet Order, which is

- not less than one billion yen;
- (iii) The sum of the total assets of any of the corporations which intends to become a party to the joint incorporation-type demerger (limited to a total succession corporation) exceeds the amount stipulated by a Cabinet Order, which is not less than one billion yen, and the net sales recognized in the profit and loss statement which is made together with the latest balance sheet of another corporation which intends to become a party to the same demerger (limited to a substantial part succession corporation), in connection with the part of the business to be succeeded to, exceeds the amount stipulated by a Cabinet Order, which is not less than ten billion yen (excluding cases that fall under the previous item);
  - (iv) The net sales recognized in the profit and loss statement which is made together with the latest balance sheet of any of the corporations which intends to become a party to the joint incorporation-type demerger (limited to a substantial part succession corporation), in connection with the part of the business to be succeeded to, exceeds the amount stipulated by a Cabinet Order, which is not less than ten billion yen, and the net sales recognized in the profit and loss statement which is made together with the latest balance sheet of another corporation which intends to become a party to the same demerger (limited to a substantial part succession corporation), in connection with the part of the business to be succeeded to, exceeds the amount stipulated by a Cabinet Order, which is not less than one billion yen.
- (3) Every corporation in Japan which intends to become a party to an absorption-type demerger shall, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of their plan with regard to such absorption-type demerger if any of the following items applies:
- (i) The sum of the total assets of any of the corporations which intends to become a party to the absorption-type demerger (limited to a corporation that intends to alienate all of its business through such absorption-type demerger (referred to in the following item as "total succession corporation")) exceeds the amount stipulated by a Cabinet Order, which is not less than ten billion yen, and the sum of the total assets of the corporation which intends to succeed to the business through such demerger exceeds the amount stipulated by a Cabinet Order, which is not less than one billion yen;
  - (ii) The sum of the total assets of any of the corporations which intends to become a party to the absorption-type demerger (limited to a total succession corporation) exceeds the amount stipulated by a Cabinet Order, which is not less than one billion yen, and the sum of the total assets of the corporation which intends to succeed to the business through such demerger exceeds the amount stipulated by a Cabinet Order, which is not less than ten billion yen (excluding cases that fall under the previous item);

- (iii) The net sales recognized in the profit and loss statement which is made together with the latest balance sheet of any of the corporations which intends to become a party to the absorption-type demerger (limited to a corporation that intends to alienate a substantial part of its business through such absorption-type demerger (referred to in the following item as "substantial part succession corporation")), in connection with the part of the business to be alienated, exceeds the amount stipulated by a Cabinet Order, which is not less than ten billion yen, and the sum of the total assets of the corporation which intends to succeed to the business through such demerger exceeds the amount stipulated by a Cabinet Order, which is not less than one billion yen;
- (iv) The net sales recognized in the profit and loss statement which is made together with the latest balance sheet of any of the corporations which intends to become a party to the absorption-type demerger (limited to a substantial part succession corporation), in connection with the part of the business to be alienated, exceeds the amount stipulated by a Cabinet Order, which is not less than one billion yen, and the sum of the total assets of the corporation which intends to succeed to the business through such demerger exceeds the amount stipulated by a Cabinet Order, which is not less than ten billion yen (excluding cases that fall under the previous item).
- (4) The provisions of the preceding two paragraphs shall not apply to such cases falling under any of the following items:
  - (i) Any of the corporations which intends to become a party to a joint incorporation-type demerger or an absorption-type demerger holds a majority of the voting rights of all stockholders of every other corporation that intends to become a party to the same demerger;
  - (ii) The majority of the voting rights of all stockholders of each and every corporation which intends to become a party to a joint incorporation-type demerger or an absorption-type demerger is held by one and the same corporation.
- (5) The provisions of the preceding three paragraphs shall apply mutatis mutandis to any foreign corporation which intends to become a party to a joint incorporation-type demerger or an absorption-type demerger. In this case, the terms "sum of total assets" and "net sales recognized in the profit and loss statement which is made together with the latest balance sheet" in paragraphs 2 and 3 shall be deemed to be replaced with "domestic sales".
- (6) The provisions of paragraphs 4 to 6 inclusive of the preceding Article shall apply mutatis mutandis to the restriction of joint incorporation-type demergers and absorption-type demergers pertaining to the notification under paragraphs 2 and 3 (including the cases where they are applied mutatis mutandis pursuant to the preceding paragraph after deemed replacement) 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 "merger" in paragraphs 4 and 6 of the preceding Article shall be deemed to be replaced with "joint incorporation-type demerger or absorption-type demerger"; the term "regarding the merger" appearing in paragraph 5 of the preceding Article shall be deemed to be replaced with "regarding the joint incorporation-type demerger or absorption-type demerger"; and the term "merging corporations" therein shall be deemed to be replaced with "corporations which intend to become parties to a joint incorporation-type demerger or an absorption-type demerger".

Article 16 (1) No corporation shall perform an act falling under any of the following acts, where the effect of such act may be substantially to restrain competition in any particular field of trade, or through unfair trade practices:

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

(2) Any corporation whose sum of the total assets exceeds the amount provided for by a Cabinet Order, which is not less than ten billion yen (referred to in paragraph 4 as "acquiring corporation") 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 acquisition of the business or the fixed assets used for the business (hereinafter in this Article "business, etc.") if any of the following items applies.

- (i) The corporation intends to acquire the whole business of another corporation in Japan whose total assets exceed the amount provided for by a Cabinet Order, which is not less than one billion yen;
- (ii) The corporation intends to acquire a substantial part of the business or the whole or a substantial part of the fixed assets used for the business of another corporation in Japan, and the net sales recognized in the profit and loss statement which is made together with the latest balance sheet in connection with the subject of such acquisition exceeds the amount provided for by a Cabinet Order, which is not less than one billion yen.

(3) The provisions of the preceding paragraph shall not apply if any of the following items applies:

- (i) Any of the corporations which intends to acquire the business, etc. or transfer the said business, etc. holds a majority of the voting rights of all stockholders of every other corporation involved;
  - (ii) The majority of the voting rights of all stockholders of each of the corporations which intends to acquire the business, etc. and transfer the said business, etc. is held by one and the same corporation.
- (4) The provisions of the preceding two paragraphs shall apply mutatis mutandis to the cases where an acquiring corporation intends to acquire the business, etc. of other foreign corporations. In this case, the term "total assets" in item 1 of paragraph 2 and the term "net sales recognized in the profit and loss statement which is made together with the latest balance sheet" in item 2 of paragraph 2 shall be deemed to be replaced with "domestic sales".
- (5) The provisions of paragraphs 4 to 6 inclusive of Article 15 shall apply mutatis mutandis to the restriction of acquisition of business, etc. pertaining to the notification under paragraph 2 (including the cases where it is applied mutatis mutandis pursuant to the preceding paragraph after deemed replacement) 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 "merger" in paragraphs 4 and 6 of Article 15 shall be deemed to be replaced with "acquisition of the business or the fixed assets used for the business"; the term "regarding the merger" in paragraph 5 of Article 15 shall be deemed to be replaced with "regarding the acquisition of the business or the fixed assets used for the business"; and the terms "at least one corporation among the merging corporations" and "the merging corporations" therein shall be deemed to be replaced with "the corporations that intend to acquire the business or the fixed assets used for the business".

Article 17 No acts in whatever form or manner shall be committed which evade such prohibitions or restrictions as provided for 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 16, or the preceding Article, the Fair Trade Commission may, pursuant to the procedures prescribed in Section 2 of Chapter VIII, order the entrepreneur concerned to dispose of all or some of its stocks, to transfer a part of its business, or to 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 prescribed in Section 2 of

Chapter VIII, order the person violating such provisions to dispose of all or some of his or her stocks, to resign from his or her position as an officer of the corporation, or to 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 corporations have merged in violation of the provisions of paragraph 2 of Article 15 (including the cases where it is applied mutatis mutandis pursuant to paragraph 3 of Article 15 after deemed replacement) and paragraph 4 of Article 15, 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 corporations have effected a joint incorporation-type demerger or an absorption-type demerger in violation of the provisions of paragraphs 2 and 3 of Article 15-2 (including the cases where they are applied mutatis mutandis pursuant to paragraph 5 of Article 15-2) and paragraph 4 of Article 15, which is applied mutatis mutandis pursuant to paragraph 6 of Article 15-2. In this case, the term "the said merger" in the preceding paragraph shall be deemed to be replaced with "the said joint incorporation-type demerger or the said absorption-type demerger".

## **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 prescribed in Section 2 of Chapter VIII, order the ceasing and desisting from the said act, the deleting of the relevant clauses from the contract, or any other measures 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.

## **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, the Patent Act, the Utility Model Act, the Design Act, or the 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 stipulated in each of the following items and which has been formed pursuant

to the provisions of law; provided, however, that this shall not apply to the 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; and
- (iv) If distribution of profits among partners is contemplated, the limits of the distributions are stipulated 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 commodity (this term "resale price" means the price at which the latter entrepreneur or an entrepreneur who purchases such commodity from the latter entrepreneur for sales sells it; the same shall apply hereinafter); provided, however, that this shall not apply to the cases where the said act tends to unreasonably harm the interests of general consumers, or where it is done 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; and
    - (ii) Free competition exists with respect to the commodity.
  - (3) The designation of a commodity under the provisions of paragraph 1 shall be made by a notice.
  - (4) The same as is prescribed 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 prescribed 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 mentioned in items (viii) and (viii)-2, 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 prescribed in paragraph 2 or such works as prescribed 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 Officer Act;
  - (ii) Agricultural Co-operatives Act;
  - (iii) Act on Mutual Aid Association for National Public Officers;
  - (iii)-2 Act on Mutual Aid Association for Local Public Officers, etc.;
  - (iv) Consumer Cooperatives Act;
  - (v) Fisheries Cooperatives Act;
  - (vi) Act on Labor Relations of Specified Independent Administrative Institution, etc.;
  - (vii) Labor Union Act;
  - (viii) Small and Medium-Sized Enterprise Cooperatives Act;
  - (viii)-2 Act on Organizations of Small and Medium Sized Enterprises;
  - (ix) Local Public Officer Act;
  - (x) Forestry Partnership Act;
  - (xi) Act on Labor Relations of Local Public Enterprises.
- (6) When an entrepreneur as prescribed in paragraph 1 has entered into a contract which fixes and maintains the resale price as prescribed 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 from the date of the contract; provided, however, that this shall not apply if the Rules of the Fair Trade Commission stipulates otherwise.

## **Chapter VII Injunctions and Damages**

Article 24 A person whose interests are infringed or likely to be infringed by an act in violation of the provisions of item 5 of paragraph 1 of Article 8 or Article 19 and who is thereby suffering or likely to suffer extreme damages is entitled to seek the suspension or prevention of such infringements from an entrepreneur or a trade association that infringes or is likely to infringe such interests.

Article 25 (1) Any entrepreneur that 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 paragraph 1 of Article 8 shall be liable for damages suffered by another party.

- (2) No entrepreneur or trade association may be exempted from the liability prescribed 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 prescribed in the provisions of paragraph 1 of Article 49 (in the case that no such order is issued, the payment order prescribed 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 1 or 2 of paragraph 1 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 become extinct 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, whose duty 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 which 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 the 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 the commissioners shall be appointed by the Prime Minister with the consent of both Houses of the Diet from among persons whose age is thirty-five or more 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 the commissioners shall be public officials.

Article 30 (1) The term of office of the chairman and the commissioners shall be five years: however, the term of office of the chairman and the commissioners appointed to fill a vacancy shall be the remaining term of office of his or her predecessor.

- (2) The chairman and the commissioners may be reappointed.
- (3) The chairman and the 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 prescribed 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 or her will, be dismissed from office while he or she is in office, except in cases falling under any of the following items:

- (i) Where a decision of the commencement of bankruptcy proceedings has been made against him or her;
- (ii) Where he or she has been dismissed by disciplinary action;
- (iii) Where he or she has been punished for violation of the provisions of this

Act;

- (iv) Where he or she has been punished by imprisonment or severer punishment;
- (v) Where the Fair Trade Commission has decided that he or she is incapable of executing his or her duties due to mental or physical disorder;
- (vi) Where 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 he or she 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 5 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 which 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 procedures (excluding the rendering of a decision).
- (8) The number of hearing examiners shall be stipulated 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 procedures 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 provisions of this Act.

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 territorial jurisdictions of the local offices referred to in the preceding paragraph shall be provided for 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 territorial jurisdictions of the branches referred to in the preceding paragraph shall be provided for by the Cabinet Office Ordinance.

Article 36 (1) The remuneration of the chairman and the commissioners shall be provided for separately.

- (2) The remuneration of the chairman and the commissioners may not, against his or her will, be reduced in amount while he or she is in office.

Article 37 The chairman, the commissioners and such staff members of the Fair Trade Commission as may be stipulated by a Cabinet Order may not engage in any of the following acts while he or she is in office:

- (i) Becoming a member of the Diet or of the legislative assembly of a local public entity, or actively engaging in political activities;

- (ii) Holding any other remunerative positions except as permitted by the Prime Minister; or
- (iii) Engaging in commerce or any other business for pecuniary gain.

Article 38 The chairman, the commissioners and the 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: however, this shall not apply to the cases prescribed in this Act or the cases where the results of his or her research on this Act are published.

Article 39 The chairman, the commissioners and the staff members of the Fair Trade Commission, or any person who once held such position shall not divulge to others or make surreptitious use of the secrets of entrepreneurs which came to his or her knowledge in the course of his or her 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 research and surveys.

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 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 Procedures**

Article 45 (1) Any person may, when he or she 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 report as prescribed 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 report, the Fair Trade Commission shall promptly give notice thereof to the person who made such 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, give notice thereof to the competent minister having jurisdiction over the business which 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 its opinion regarding the existence or non-existence of a monopolistic situation and other measures which it considers would be sufficient to restore competition as prescribed in the proviso to paragraph 1 of Article 8-4.

Article 47 (1) The Fair Trade Commission may, in order to conduct necessary investigations with regard to a case, make the following measures:

(i) Ordering persons concerned with a case or witnesses to appear to be interrogated, or collecting their opinions or reports;

(ii) Ordering expert witnesses to appear to give expert opinions;

(iii) Ordering persons holding books and documents and other materials to submit such materials, or keeping such submitted materials at the Fair Trade Commission; and

(iv) Entering any business office of the persons concerned with a case or other necessary sites, and inspecting 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 caused to conduct an on-site investigation pursuant to the provisions of the preceding paragraph, the Fair Trade Commission shall cause them to carry their identification cards and to produce 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, where it has conducted necessary investigations with regard to a case, keep an investigation record of the gist of the investigations, and where it has made any measures as prescribed in paragraph 1 of the preceding Article, set out the date of the making of 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 the cases where they are applied mutatis mutandis pursuant to paragraph 2 of Article 8-2 or paragraph 2 of Article 20 after deemed replacement), 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 the 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, where 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 or her opinions and to submit evidences.
- (4) The person who is to be the addressee of the cease and desist order may, when expressing his or her opinions or submitting evidences 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 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 evidences 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 deadline for expressing his or her opinions and submitting evidences:

- (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; and
  - (iii) The opportunity to express opinions and to submit evidences, with regard to the matters listed in the preceding two items, to the Fair Trade Commission, and the deadline therefor.
- (6) Any person who is 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 from the date on which the transcript of the written cease and desist order 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 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 of Article 7-2 (including the cases where it is applied mutatis mutandis pursuant to paragraph 2 of Article 7-2 or Article 8-3 after deemed replacement) (hereinafter referred to as a "payment order") shall be rendered in writing, and the written payment order for surcharge shall state the amount of the surcharge to be paid, the basis of calculation of such amount, the violation pertaining to such surcharge, and the deadline for payment, and the chairman and the 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 surcharge to the addressee thereof.
- (3) The deadline 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 surcharge is issued.
- (4) Any person who is dissatisfied with the payment order may request, pursuant to the provisions of the Rules of the Fair Trade Commission and within sixty days from 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 1 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 2 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 of Article 7-2 (including the cases where it is applied mutatis mutandis pursuant to paragraph 2 of Article 7-2 after deemed replacement), the Fair Trade Commission shall, if there is a unappealable decision regarding the same case that imposes a fine on the person that received the said payment order, modify, by a decision, the amount of the surcharge in the said payment order by reducing such 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 by a decision.
- (3) In the case of the main clause of paragraph 1, the Fair Trade Commission shall, if the hearing procedures pertaining to the said payment order are not completed, notwithstanding the provisions of the main clause of the said paragraph, modify the amount of the surcharge in the said payment order to the amount decided through the said hearing procedures reduced by an amount equivalent to one-half of the amount of the fine as prescribed in the main clause of the said paragraph by a decision regarding the request for hearings pertaining to the said payment order.
- (4) In the case of the preceding three paragraphs, the Fair Trade Commission shall without delay refund in pecuniary form any amount already paid pursuant to the pre-modification or pre-rescission payment order (excluding any arrearage charge as prescribed 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) the name and domicile or residence of the person making the hearing request or his or her agent;
  - (ii) the order pertaining to the hearing request; and
  - (iii) the gist of and reason for the hearing request.
- (2) The gist as prescribed 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 prescribed in the same item.
- (3) In the case that a hearing request has been made, the Fair Trade Commission shall commence hearing procedures regarding the order pertaining to the said hearing request without delay, except for cases that fall under 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 procedures 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 prescribed in the proviso to paragraph 1 of Article 8-4; the same shall apply in paragraph 1 of Article 67), commence hearing procedures for a case if the Fair Trade Commission finds that it would be in the public interest to commence hearing procedures for the case.

- (2) The Fair Trade Commission shall, where it intends to commence hearing procedures 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 procedures pursuant to the provisions of paragraph 3 of Article 52, send a written notice of 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 the name of the addressee of the measures as prescribed in paragraph 1 of Article 8-4, and the chairman and the commissioners in attendance at the resolution of the decision shall affix their names and seals thereto.
- (3) The hearing procedures shall be commenced by sending a written notice 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 prescribed in paragraph 2 shall submit a written answer thereto without delay to the Fair Trade Commission.

Article 56 (1) The Fair Trade Commission may, after commencing the hearing procedures, designate hearing examiners for each case and cause them to conduct all or a part of the subsequent hearing procedures (excluding the decision; the same shall apply in the following paragraph, Article 63, and Article 64) in addition to the commission of research and surveys 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 procedures 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 or her agent fails to appear on the date of the said hearings without any 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 which fall under the monopolistic situation), offer evidences, and perform other necessary acts.

(2) In the case referred to in the preceding paragraph, an investigator may, where the examiner finds necessary a modification (limited to modifications within the scope prescribed by the provisions of the Rules of the Fair Trade Commission) in respect of the facts that led to the original order and the application of laws and regulations thereto (in the case the hearings concern a case pertaining to paragraph 1 of Article 8-4, facts which 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 or 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 material proving it; may request the Fair Trade Commission to interrogate necessary witnesses, order expert witnesses to submit expert opinions, order holders of books and documents, and other materials to submit them, or enter the necessary sites and inspect the conditions of the business and property, books and documents, and other materials, or commission research and surveys; or may interrogate witnesses or expert witnesses whom the Fair Trade Commission ordered to appear; or may question those commissioned to perform research and surveys.

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

has committed an act in violation of the provisions of item 1 or 2 of paragraph 1 of Article 8; hereinafter the same shall apply in this paragraph) or his or her agent may not, in the hearing procedures pertaining to the payment order, claim the nonexistence 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 has become final and binding pursuant to the provisions of paragraph 7 of Article 49;
- (ii) the respondent or his or her agent has withdrawn the hearing request in respect of the cease and desist order regarding the violation pertaining to the payment order; or
- (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 evidences offered by the investigator, or the respondent or his or her agent, the Fair Trade Commission or hearing examiner shall state the reasons for not having adopted such evidences.

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 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 caused hearing examiners to conduct all or a part of the hearing procedures pursuant to the provisions of paragraph 1 of Article 56, the Fair Trade Commission shall, if the respondent or his or her agent so offers, give the respondent or his or her agent

an opportunity to state their views directly to the Fair Trade Commission; provided, however, that this shall not apply to cases where the hearing procedures 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 procedures 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 law as stated in the written decision of commencement of the hearing, and offers in writing to accept the decision without requiring subsequent hearing procedures and submits to the Fair Trade Commission a written plan setting forth concrete measures which the respondent proposes voluntarily to take in order to restore competition with respect to the goods or services involved in the monopolistic situation, render a decision to the effect of the concrete measures stated in such plan without conducting the subsequent hearing procedures 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 illegitimate, 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 procedures have been completed.

(3) The Fair Trade Commission shall, if the hearing request has sufficient grounds, rescind or modify the entirety or a part of the original order by a decision after the hearing procedures have been completed.

(4) In the case of rescission of the entirety 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, paragraph 1 of 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 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 procedures have been completed that a monopolistic situation exists, order the respondent by a decision to take such measures as prescribed in paragraph 1 of Article 8-4.

(2) The Fair Trade Commission shall, where it finds after the hearing procedures 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 they 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 evidences examined at the hearing procedures.

Article 69 (1) Cease and desist orders, payment orders, and decisions shall be made by meetings of the chairman and the 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 and, 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 the commissioners attending the meeting shall sign and seal it.

(2) A dissenting opinion may be stated in a written decision.

(3) A decision 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 decision becomes final and binding.

Article 70-3 The Fair Trade Commission may, if it finds it necessary, on its own authority, cause a third person interested in the results of the decision to participate in the hearing procedures 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 it necessary for the public interest, participate in the hearing procedures 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 corporate bonds, etc. prescribed in paragraph 1 of Article 129 of the Act on Book-Entry Transfer of Corporate 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 judgment under the provisions of the preceding paragraph shall be made pursuant to the Act on Procedure in Non-Contentious Matters (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 judgment 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 the entirety 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 it particularly necessary, make the measures, or cause its staff members to make the original orders, 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 deadline for payment, the Fair Trade Commission shall demand the payment by serving a written demand designating a deadline 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 the 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 an arrearage charge pursuant to the provisions of the next paragraph, the arrearage charge, by serving a written demand designating a deadline therefor, excluding the cases where the said payment order is rescinded in its entirety pursuant to the provisions of paragraph 3 of Article 66; provided, however, that this shall not apply to cases where the said surcharge and arrearage charge are paid in their entirety 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 deadline for payment, the Fair Trade Commission may collect an arrearage 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 deadline for payment and the day of payment; provided, however, that this shall not apply to cases where the arrearage charge involved is less than one thousand yen.
- (4) In the case that the amount of an arrearage 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 to be made by the designated deadline, 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 prescribed 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 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 pecuniary form any amount already paid pursuant to the pre-rescission payment order that should be refunded.
- (2) In the case of the refund of the amount set forth in the preceding paragraph, 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 (7.25%) per annum, of the said amount for the number of days in a 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.
- (3) 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 the 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 procedures have been completed. In this case, the Fair Trade Commission may commence hearing procedures 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 doing an act suspected of violating the provisions of Article 3, Article 6, paragraph 1 of 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 16, Article 17, or Article 19 to temporarily suspend the said act, the exercise of voting rights, or the operating of business as an officer in a corporation, or may rescind or modify such order.

(2) The provisions of paragraph 2 of Article 70-6 shall apply mutatis mutandis to the judgment under the provisions of the preceding paragraph.

Article 70-14 (1) The execution of a judgment 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 Any interested person may, after the hearing procedures have been commenced, request the Fair Trade Commission for inspection or copy of the records of the case in question, or for delivery of a transcript of the written cease and desist order, the written payment order for surcharge, the written decision of commencement of the hearing, or the written decision, or an extract thereof.

Article 70-16 Documents to be served shall be fixed, in addition to those as stipulated 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 enforcement 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 public notification 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 may not be applied, or it is recognized that service may not be made based on the said provisions; or
- (iii) When, after the lapse of six months from the date when a foreign

competent authority 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, documents certifying the service are not received.

- (2) Service by public notification 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 that is to receive the service.
- (3) Service by public notification 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 public notification 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 prescribed in item 7 of Article 2 of the Act on Utilization 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 and the Rules of the Fair Trade Commission, may not be made using an electronic data processing system ("electronic data processing system" as prescribed in paragraph 1 of Article 4 of the Act on Utilization 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 stipulated in the Rules of the Fair Trade Commission of receiving the service, notwithstanding the provisions of that Article.

- (2) The staff members of the Fair Trade Commission shall, when performing affairs related to the notice of measure prescribed 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 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 disposal 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 for by a Cabinet Order except for such matters as provided for 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 prescribed 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 paragraph 9 of Article 2, first hear the opinions of entrepreneurs operating in the same line 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 paragraph 9 of Article 2 shall be made by notice.

Article 73 In case that the Fair Trade Commission contemplates commencing hearing procedures 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 as prescribed in Chapter XII that a criminal offense has taken place, file an accusation 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 an accusation with the Prosecutor General.

(3) The Prosecutor General shall, where he or she has made measures not to

prosecute a case which is the subject of an accusation under the provisions of the preceding two paragraphs, report in writing on the said fact and the reasons therefor to the Prime Minister through the Minister of Justice without delay.

Article 75 Witnesses or expert witnesses who have been ordered to appear or to give expert opinions pursuant to the provisions of item 1 or 2 of paragraph 1 of Article 47, paragraph 2 of Article 47, or paragraph 1 of Article 56, may claim travel expenses and compensation pursuant to the provisions of a Cabinet Order.

Article 76 (1) The Fair Trade Commission may establish rules with respect to its internal disciplines, procedures for the disposal of cases and necessary procedures for notifications, applications for approval, and other matters.  
(2) In establishing rules with respect to the procedures for the disposal 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 procedures are duly undertaken, including ensuring that the respondent has sufficient opportunity to state and prove his or 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 prescribed 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 the Fair Trade Commission without delay, to 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 evidences in court).

Article 80 (1) Findings of fact made by the Fair Trade Commission shall, if established by substantial evidences, be binding upon the court in regard to the suit prescribed in paragraph 1 of Article 77.

(2) Whether such substantial evidences as prescribed in the preceding paragraph exists or not shall be determined by the court.

Article 81 (1) A party may plead to the court to offer new evidences relevant to the case; provided, however, that any such offer of new evidences 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 evidences without justifiable ground; or

(ii) Where it was impossible to submit the evidences 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 evidences.

(2) In regard to the offer of new evidences prescribed in the proviso of the preceding paragraph, the onus to show that the evidences falls under any of the items of the preceding paragraph shall be on the party seeking to introduce the evidences.

(3) Where the court finds there is a good reason for the offer of new evidences prescribed in the proviso of paragraph 1 and it is necessary to examine such evidences, it shall refer the case back to the Fair Trade Commission and order it to take appropriate measures after examining such evidences.

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 evidences, or

(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 gist 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, refer the case back to the Fair Trade Commission giving the reasons for the referral.

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 evidences 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 84 (1) Where a suit for damages under the provisions of Article 25 has been filed, the court shall, without delay, ask for the opinion of the Fair Trade Commission with respect to the amount of damages caused by such violations as prescribed 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 prescribed in the respective item:

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

(ii) A district court located within the jurisdiction of the Osaka High Court (excluding the Osaka District Court): The Tokyo District Court, or the Osaka District Court

- (iii) A district court located within the jurisdiction of the Nagoya High Court (excluding the Nagoya District Court): The Tokyo District Court, or the Nagoya District Court
  - (iv) A district court located within the jurisdiction of the Hiroshima High Court (excluding the Hiroshima District Court): The Tokyo District Court, or the Hiroshima District Court
  - (v) A district court located within the jurisdiction of the Fukuoka High Court (excluding the Fukuoka District Court): The Tokyo District Court, or the Fukuoka District Court
  - (vi) A district court located within the jurisdiction of the Sendai High Court (excluding the Sendai District Court): The Tokyo District Court, or the Sendai District Court
  - (vii) A district court located within the jurisdiction of the Sapporo High Court (excluding the Sapporo District Court): The Tokyo District Court, or the Sapporo District Court
  - (viii) A district court located within the jurisdiction of the Takamatsu High Court (excluding the Takamatsu District Court): The Tokyo District Court, or the 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 "from 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 "from 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 for in Articles 89 to Article 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 stipulated 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);  
and  
(ii) Suits concerning compensation for damages pursuant to the provisions of Article 25.

Article 86 Any case provided for 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 evidences 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 case 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 for 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 three 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; or
  - (ii) Any person who, in violation of the provisions of item 1 of paragraph 1 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 2 of paragraph 1 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 3 or 4 of paragraph 1 of Article 8; or
- (iii) Any person who fails to comply with a cease and desist order or a decision as provided for in Article 65 or paragraph 1 of Article 67 after it has become final and binding.

Article 91 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 two million yen:

- (i) Any person who, in violation of the provisions of the first part of paragraph 1 of Article 10, has acquired or held stocks;
- (ii) Any person who, in violation of the provisions of paragraph 1 of Article 11, has acquired or held stocks; or who, in violation of the provisions of paragraph 2 of the said Article, has held stocks;
- (iii) Any person who, in violation of the provisions of paragraph 1 of Article 13, has held concurrently positions as a director;
- (iv) Any person who, in violation of the provisions of the first part of Article 14, has acquired or held stocks; or
- (v) Any person who violated the provisions of Article 17 with regard to the prohibitions or restrictions listed in the preceding items.

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 paragraphs 2 to 4 inclusive of Article 8, has failed to notify or submitted a written report with a false description;
- (ii) Any person who, in violation of the provisions of paragraph 5 of Article 9, has failed to submit a written report or submitted a written report with a false description;
- (iii) Any person who, in violation of the provisions of paragraph 6 of Article 9, has failed to notify or submitted a written notification with a false description;
- (iv) Any person who, in violation of the provisions of paragraph 2 of Article 10 (including cases where it is applied mutatis mutandis under paragraph 3 of the same Article), has failed to submit a written report or submitted a written report with a false description;
- (v) Any person who, in violation of the provisions of paragraph 2 of Article 15 (including cases where it is applied mutatis mutandis under paragraph 3 of the same Article after deemed replacement), has failed to notify or submitted a written notification with a false description;
- (vi) Any person who, in violation of the provisions of paragraph 4 of Article 15, 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 (including cases where they are applied mutatis mutandis under paragraph 5 of the same Article after deemed replacement), has failed to notify or submitted a written notification with a false description;
- (viii) Any person who, in violation of the provisions of paragraph 4 of Article 15 which is applied mutatis mutandis under paragraph 6 of Article 15-2 after deemed replacement, has effected a register of incorporation as a result of a joint incorporation-type demerger or a register of change as a result of an absorption-type demerger;
- (ix) Any person who, in violation of the provisions of paragraph 2 of Article 16 (including cases where it is applied mutatis mutandis under paragraph 4 of the same Article after deemed replacement), has failed to notify or submitted a written notification with a false description;
- (x) Any person who, in violation of the provisions of paragraph 4 of Article 15, which is applied mutatis mutandis under paragraph 5 of Article 16 after deemed replacement, has carried out an act falling under item 1 or 2 of paragraph 1 of Article 16; or
- (xi) 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 for in Articles 89 to 91 inclusive may, according to the circumstances, be punished by 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 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 or her crime prior to the completion of the hearing procedures and before the revelation of such crime, the punishment for such crime may be commuted 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 hundred thousand 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 or her pursuant to the provisions of item 1 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 or her pursuant to the provisions of item 2 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 or her pursuant to the provisions of item 3 of paragraph 1 or paragraph 2 of Article 47 or paragraph 1 of Article 56, has failed to submit the materials; or
- (iv) Any person who has refused, obstructed, or evaded the inspection pursuant to the provisions of item 4 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; or
- (ii) Any witness or expert witness who, in violation of the order issued to him or 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 replacement, has failed to take the oath.

Article 95 (1) When a representative of a juridical person, or an agent, an employee, or any other servant 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 3 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 1 of paragraph 1 of Article 8 )): Fine of not more than three hundred million yen.
- (iii) Item 1, 2 or 3 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 1 of paragraph 1 of Article 8 )), Article 91 (excluding item 3), Article 91-2, or Article 94: Fine as provided for in the respective Articles.

(2) Where a representative, a manager, an agent, an employee, or any other servant 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 3 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 1 of paragraph 1 of Article 8 )): Fine of not more than three hundred million yen.
- (iii) Item 1, 2 or 3 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 1 of paragraph 1 of Article 8 )), item 4 or 5 of Article 91 (limited to portions related to item 4), item 1 of Article 91-2, or Article 94: Fine as provided for in the respective Articles.

- (3) In the case of the preceding paragraph, the representative or manager shall represent the said organization in respect of procedural actions and the provisions of the Code of Criminal Procedure which are applicable to procedural actions where a juridical person is the accused or the suspect shall apply *mutatis mutandis*.

Article 95-2 In case of a violation of item 1 of paragraph 1 of Article 89, item 1 or 3 of Article 90, or Article 91 (excluding item 3), the representative of the relevant juridical person (excluding those which fall under a trade association in case of violation of item 1 or 3 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 violation despite the knowledge of such 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 2 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 violation despite the knowledge of a plan for such violation or who has failed to take necessary measures to rectify such violation despite knowledge of such 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 for 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 for in item 2 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

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 Article 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 1 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 civil 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 judgment under the provisions of paragraph 1 of Article 70-13 shall be punished by a civil 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 Article 90, according to circumstances, issue the following sentences simultaneously with the rendition of punishments; provided, however, that the sentence under item 1 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; or
- (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 for in item 1 of the preceding paragraph becomes final and binding, the court shall send an authenticated copy thereof to the Commissioner of the Patent Office.
- (3) The Commissioner of the Patent Office shall, upon receipt of the authenticated copy 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, etc. of Criminal Cases**

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 at the Fair Trade Commission, may question criminal suspects, etc., may inspect objects possessed or abandoned by criminal suspects, etc., or may 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 of public agencies or public or private organizations and request them to report the necessary matters.

Article 102 (1) FTC staff members may, when necessary to investigate a criminal case, conduct visit, search, or seizure by virtue of a warrant issued in advance by a judge of the district court or the summary court having jurisdiction over the location of the Fair Trade Commission [Note: the Tokyo District Court and the Tokyo Summary Court].

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

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

(4) In the case of a request provided for in the preceding paragraph, the judge of the district court or the summary court shall issue to the FTC staff member a warrant with the judge's name and seal affixed and the following information written: the site to be visited; 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 warrant's valid period; the effect that the inspection, search, or seizure may not be initiated and the warrant must be returned after the expiration of the valid period; the date of issuance of warrant; 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 warrant to another FTC staff member and have that FTC staff member conduct the visit, search, or seizure.

Article 103 (1) FTC staff members may, when necessary to investigate a criminal case, after receipt of a warrant, seize mails, personal letters, 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 warrant, seize mails, personal letters, 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 impediments to the investigation of the criminal case.

Article 104 (1) No visit, search, or seizure may be conducted during the period from sunset to sunrise unless it is specified on the warrant that such can be conducted at night.

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

Article 105 Warrants for visit, 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, visit, 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 a visit, search, or seizure, open locks, break the seal on mail, 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, visit, search, or seizure pursuant to the provisions of this Chapter are being conducted.

Article 109 (1) FTC staff members shall, when conducting visit, 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 behalf of them), or their employee or relative who is of legal age and also living together witness it.

(2) If it is not possible, in the case of the preceding paragraph, to have a person provided for in that paragraph witness it, the FTC staff members shall have a neighbor who is of legal age or a local police official or local government official witness the visit, search, or seizure.

(3) Any body search of a girl or woman shall be conducted with the witness of another woman who is of legal age; provided, however, that this shall not apply to cases of urgency.

Article 110 FTC staff members may, when necessary in the course of a visit, search, or seizure, request the assistance of police officials.

Article 111 FTC staff members, after conducting questioning, inspection, retention, visit, 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, shall show it to the person who was questioned or has witnessed it, and shall, 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 or 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 be 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 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 Chapter 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.