

Types of and Criteria for Unfair Business Practices and Abuse of Market-Dominant Position Relating to Newspaper Business

Enacted by Fair Trade Commission Notification No. 2001-7

We hereby designate this Notification for the Types of and Criteria for Unfair Business Practices and Abuse of Market-Dominant Position Relating to Newspaper Business in accordance with Paragraph (2) of Article 23 (Prohibition on Unfair Business Practices) of the Monopoly Regulation and Fair Trade Act (hereinafter, the "Act") and Paragraph (1) and (2) of Article 36 of the Enforcement Decree of the Act; Paragraph (2) of Article 3-2 of the Act and Paragraph (6) of Article 5 of the Enforcement Decree of the Act.

June 30, 2001

Korea Fair Trade Commission

Types of and Criteria for Unfair Business Practices and Abuse of Market-Dominant Position Relating to Newspaper Business

Article 1 □ Purpose □

The purpose of this Notification is to set forth the types of and criteria for unfair business practices and market dominance abuses subject to the prohibitions under Paragraph (1) of Article 23 (Prohibition on Unfair Business Practices) or Paragraph (1) of Article 3-2 (Prohibition on Abuse of Market Dominant Positions) of the Act regarding newspaper business (business of publishing or selling newspaper; hereinafter, the same shall apply) and ultimately aims to establish fair trade rules in the newspaper industry by enhancing consistency and objectivity of law enforcement, preventing and deterring violations by newspaper companies and supporting voluntary compliance efforts of the concerned trade associations, etc.

Article 2 □ Definitions □

(1) "Newspaper" means newspaper that is published for profit purpose, including "general daily newspaper", "special daily newspaper", "general weekly newspaper" and "special weekly newspaper" under Subparagraph 2, 3, 5 and 6, Article 2 (Definitions) of the Registration, etc. of Periodicals Act.

(2) "Free Copy" means newspaper excluding paid newspaper supplied by a newspaper publisher or a newspaper seller to a newspaper seller or a subscriber and including promotional copies and back copies. However, free newspaper supplied to remote islands, military base, etc. for the public good or extra copies shall be excluded.

(3) "Paid Newspaper" means newspaper distributed by a newspaper publisher or a newspaper seller for charge, including newspaper delivered to households, delivered through mail, sold at newsstands and sold through other means. Details related to these matters shall be subject to the relevant rules issued by the Korea Audit Bureau of Circulation (KABC).

(4) "Gift" means any cash, marketable securities, goods, services and other economic benefit that a newspaper publisher or a newspaper seller directly or indirectly offer to subscribers of the newspaper.

Article 3 □ Limitation on Distribution of Free Copies and Gifts □

(1) The acts in the following subparagraphs shall fall under the acts of "unduly luring away customers to leave competitors to deal with oneself" as stipulated in the first half of Subparagraph 3, Paragraph 1, Article 23 (Prohibition on Unfair Business Practices) of the Act.

1. The total value of free copies and gifts offered by a newspaper publisher to a newspaper seller for one month exceeds 20% of the charge for paid newspaper received from the said newspaper seller during the same period.

2. The total value of free copies and gifts offered by a newspaper seller to a reader for one month exceeds 20% of the charge for paid newspaper received from the subscriber during the same period. The same shall apply when the

subscription period is shorter than one year.

3. The total value of free copies and gifts offered by a newspaper publisher directly to a subscriber for one month exceeds 20% of the charge for paid newspaper received from the said subscriber during the same period.

(2) In applying Paragraph 1, the "value of free copies" shall be computed by using the unit price of paid newspaper traded between the parties concerned, and the "gifts" offered by a newspaper publisher to a newspaper seller shall mean those that are offered based on the premise/assumption that such gifts will be delivered to subscribers.

(3) Notwithstanding Paragraph 1 and 2, the followings shall not be the offering of gifts.

1. The offering of economic benefits such as product or cash donation to the victims of natural disasters such as fire and flood and which is deemed reasonable in light of ordinary commercial practices.

2. The offering of small publications, etc., which contain the exact contents of its newspaper without revision and which is deemed reasonable in light of ordinary commercial practices.

3. The offering of considerations for special labors of readers such as readers' contributions or reader's interviews and which is deemed reasonable in light of ordinary commercial practices.

4. The offering of invitations to events, etc. that are not confined to subscribers and which is deemed reasonable in light of ordinary commercial practices.

(4) Where a newspaper publisher is directly or indirectly involved in the gift offering activities of a newspaper seller as in the following subparagraphs, the newspaper publisher shall be deemed to have performed such activities.

1. A case where a newspaper publisher devises a plan to offer gifts, covers the entire or partial cost to make a blanket purchase of the gifts and allocates the purchased gifts to newspaper sellers

2. A case where a newspaper publisher encourages, induces etc. a newspaper seller to offer gifts even though the publisher does not devise a concrete plan to offer the gifts nor directly cover the entire or partial cost of purchasing gifts.

Article 4 □ Prohibition on Act of Unduly Luring Away Customers □

The acts in the following subparagraphs shall fall under the acts of "unduly luring away customers of competitors to deal with oneself" under Subparagraph 3, Paragraph 1, Article 23 (Prohibition on Unfair Business Practices) of the Act.

1. An act by a newspaper seller of continuing the newspaper delivery for seven or more days to a person who expressed his/her intention to terminate subscription after the subscription contract expired.
2. An act by a newspaper publisher or a newspaper seller of luring away a customer of competitor to deal with oneself, either directly or through a third party, by using methods other than the offering of gifts - payment of newspaper charge, tie-in of other periodicals, excessive price discount, etc. – under the premise of offering a consideration which is deemed excessive in light of ordinary commercial practices.
3. An act by a newspaper publisher of inducing an advertiser to request the insertion of an advertisement to oneself by misleading the advertiser through the inclusion of scrapped copies, which are not actually distributed to the readers, into the circulation.
4. An act by a newspaper publisher of inducing a customer to request the insertion of an advertisement by offering to provide benefits such as the printing of an article favorable to the customer in his/her newspaper.

Article 5 □ Prohibition on Abuse of Superior Bargaining Position □

The acts in the following subparagraphs shall fall under the acts of "unduly taking position in trading with other party" under Subparagraph 4, Paragraph 1, Article 23 (Prohibition on Unfair Business Practices) of the Act.

1. An act by a newspaper publisher of coercing a newspaper seller into increasing sales target against his/her will without prior consultation.
2. An act by a newspaper publisher of unduly determining or modifying circulation volumes, unit price, sales territory without prior consultation

with a newspaper seller.

3. An act by a newspaper publisher of coercing its transacting partner such as a raw material supplier into providing equipment, etc. or coercing him/her to providing cash, product, service and other economic benefits for certain events.
4. An act by a newspaper publisher of unilaterally inserting an advertisement in its newspaper without receiving the order from a customer and coercing the customer into paying the advertisement fee.
5. An act by a newspaper publisher of unduly coercing a customer which has continued trade relationship for a certain period into paying unreasonably high advertisement fee without prior consultation.

Article 6 □ Prohibition on Discriminatory Treatment □

An act of a newspaper publisher of unduly trading under significantly favorable or unfavorable terms of trade in light of ordinary commercial practices in the distribution of newspaper to a newspaper seller depending on transaction partner or transaction territory and an act of a newspaper seller of unduly trading under the terms and conditions significantly favorable or unfavorable in light of ordinary price or terms of trade depending on requester of the delivery of advertisement leaflets in the sale of newspaper shall fall under the "undue discrimination against a certain trade partner" stipulated under the latter part of the Subparagraph 1, Paragraph 1, Article 23 (Prohibition on Unfair Business Practices) of the Act.

Article 7 □ Prohibition on Coercion in Dealing □

The acts in the following subparagraphs shall fall under the acts of "unreasonably coercing customers of competitors to deal with oneself" as stipulated in the latter half of Subparagraph 3, Paragraph 1, Article 23 (Prohibition on Unfair Business Practices) of the Act.

1. An act by a newspaper publisher of coercing or forcefully inducing its employees into buying or selling newspaper, magazine, or other publications issued by the publisher, specially related persons or subsidiaries and which is deemed unreasonable in light of ordinary

commercial practices.

2. An act by a newspaper publisher of hiring an employee on a unconventionally low or no salary basis and coercing him/her into selling the feature product of the advertisement on a condition that the said publisher pay him/her a certain portion of the fee of advertisement placement which s/he has attracted; provided, however, that this shall not apply if sales person in charge of attracting advertisement placement is paid socially acceptable performance rewards.
3. An act by a newspaper publisher, with a view to inducing ad placement order, of expressing its will to inflict disadvantages - such as a inclusion of unfavorable article in its newspaper - upon the customer or of inflicting such disadvantages on the customer.
4. An act by a newspaper publisher of unduly inducing a newspaper seller in light of ordinary commercial practices to purchase newspaper, magazine or other publications issued by the publisher itself, specially related person, or subsidiary in its distribution of newspaper copies.

Article 8 ☐ Prohibition on Exclusive Dealings with Newspaper Sellers ☐

An act by a newspaper publisher of unduly preventing a newspaper seller from selling newspaper of other publisher, not based on prior contract or agreement, shall fall under the acts of "transacting with others on terms and conditions which unreasonably restrict business activities" as stipulated in the first half of Subparagraph 5, Paragraph 1, Article 23 (Prohibition on Unfair Business Practices) of the Act.

Article 9 ☐ Prohibition on Refusal to Deal ☐

An act by a newspaper publisher of unduly discontinuing or significantly limiting the newspaper supply, not based on contract terms for supply limitation or supply termination or prior-agreement, shall fall under the acts of "unreasonably refusing to transact" as stipulated in the first half of Subparagraph 1, Paragraph (1), Article 23 (Prohibition on Unfair Business Practices) of the Act.

Article 10 □ Prohibition on Abuse of Market Dominant Position □

(1) An act by a market-dominant newspaper publisher of unreasonably fixing, maintaining, or altering sales price or advertisement fee considering cost fluctuation factor, etc. shall fall under the acts of "unreasonably fixing, maintaining, or altering the price of a good or service fees (hereinafter, "Price")" as stipulated in Subparagraph 1, Paragraph (1), Article 3-2 (Prohibition Against Abuse of Market-Dominant Positions) of the Act.

(2) An act by a market-dominant newspaper publisher of providing newspaper to its newspaper sellers at an unreasonably low price and thereby possibly eliminating other newspaper publishers shall fall under the acts of "engaging in unreasonable transaction to eliminate competitors" as stipulated in the first half of Subparagraph 5, Paragraph (1), Article 3-2 (Prohibition Against Abuse of Market-Dominant Positions) of the Act.

(3) An act by a market-dominant newspaper publisher of engaging in transaction on a condition that its transacting partners such as an advertiser, etc. do not deal with other newspaper publishers shall fall under the acts of "engaging in unreasonable transaction to eliminate competitors" as stipulated in the first half of Subparagraph 5, Paragraph (1), Article 3-2 (Prohibition Against Abuse of Market-Dominant Positions) of the Act.

(4) An act by a market-dominant newspaper publisher of printing slanderous article with false or groundless information in its newspaper and thereby hampering business activities of its transacting partner such as an advertiser, etc. shall fall under the acts of "unreasonably interfering in the business activities of other Enterprises" as stipulated in Subparagraph 3, Paragraph (1), Article 3-2 (Prohibition Against Abuse of Market-Dominant Positions) of the Act.

Article 11 □ Relationship, etc to Fair Competition Code of Trade Association □

When Trade Associations implement their own fair competition code (hereinafter, "Fair Competition Code"), which was screened by the KFTC, Fair Competition Code takes precedence over this Notification unless Fair Competition Code conflicts with it.

Article 12 □ Relationship to Other Notifications □

In governing newspaper business, this Notification takes precedence over the Notification on the Types of and Criteria for Unfair Business Practices Relating to the Offering of Gifts (Fair Trade Commission Notification No. 2000-3) and the Notification on the Types of and Criteria for Abuse of Market-Dominant Positions (Fair Trade Commission Notification No. 2000-6) respectively.

ADDENDA (2001)

1 □ Effective Date □ This Notification shall take effect on July 1, 2001.

2 □ Interim Measures Regarding Undue Support □ With respect to undue financial, asset, and manpower support activities in newspaper industry, Article 23, Paragraph (1), Subparagraph 7 of the Act and Subparagraph 10 of Appendix 1 under Paragraph (1) of Article 36 of the Enforcement Decree of the Act shall apply.