

QUESTIONNAIRE
ON ABUSE OF SUPERIOR BARGAINING POSITION
(SPECIAL PROJECT)

This questionnaire seeks information on the analysis and treatment of “abuse of superior bargaining position” in business to business relations in ICN member jurisdictions. In jurisdictions that regulate “abuse of superior bargaining position,” the concept typically includes, but is not limited to, a situation in which a party makes use of its superior bargaining position relative to another party with whom it maintains a continuous business relationship to take any act such as to unjustly, in light of normal business practices, cause the other party to provide money, service or other economic benefits. (For example, acts such as request for provision of supplier’s labor without compensation and coercive collection of contributions, exercising buying power, are considered abusive in Japan.) A party in the superior bargaining position does not necessarily have to be a dominant firm or firm with significant market power.

A. How, if at all, is “abuse of superior bargaining position” defined in business to business relations in your jurisdiction? Does the definition apply to (a) both supplier and buyer sides of the market or (b) to one of these sides only? If option (b) is chosen, to what side of the market does it apply in your jurisdiction and what are the reasons for applying the concept solely to it?

Although The Taiwan Fair Trade Act (hereinafter referred to the FTA) doesn’t define “the abuse of superior bargaining position”, the Taiwan Fair Trade Commission (referred to the TFTC) developed an operational concept on the basis of its’ empirical experience. Namely, an enterprise makes use of its superior bargaining position relative to its’ trading counterpart and then results in lessening competition or impeding fair competition, or the abuse constitutes an obviously unfair conduct that is able to affect trading order.

The definition above would be applied to both supplier and buyer sides of the market.

B.

1.

(1) Does your jurisdiction have:

a. Competition laws and/or guidelines that apply to the prohibition of “abuse of superior bargaining position” in business to business relations? **yes/no**

b. Other laws and regulations that apply to the prohibition of “abuse of superior bargaining position”? **yes/no**

We aren’t aware of any other laws or regulations on regulating such conduct.

If “no” for both a. and b., please proceed to question C.

(For those jurisdictions where such acts mentioned above are regulated, please respond to the following questions.)

(2) How are such acts regulated, including whether these rules are handled by the competition agency and/or handled under the rubric of competition policy?

The TFTC divides principally “the abuse of superior bargaining position” into 2 types of infringements on the basis of its’ effect on the relevant markets, which are anti-competitive and unfair competitive practices. The violation would be governed by general competition provision of FTA and be enforced by TFTC.

Under the Subparagraph 6, Article 19, it prohibits any abuse by an enterprise, which is not a dominant firm or monopolist, but has a certain market position in the relevant market. In some specific circumstances, even if the enterprise in question doesn’t have any certain market power, its’ abuse also violates probably the Subparagraph 6 of Article 19; meanwhile the TFTC mainly take the following into consideration: whether the abuse likely has anti-competitive effect.

Nevertheless, based on those cases the TFTC dealt with, most abusive conduct of superior market position only undermines fair trading order, rather than market competition mechanism. In order to regulate this type of unfair business practices, the TFTC has authority to prohibit any abuse of an advantageous market position to engage in unfair trade, even without any anti-competitive effect, under Article 24 of the FTA.

In addition, the TFTC detected that most unfair business conduct has been emerging in distribution industries in the past, especially in hypermarkets and convenient stores, the TTFCT had issued “Principles for Cases Concerning Additional Fees Charged By Distribution Businesses By the Fair Trade Commission” since 2000 in view of maintaining overall trading order in the relevant market.

Briefly, there is no particular provision that stipulates “abuse of superior bargaining position” in the FTA and no matter what effect occurs by the abuse, the prerequisite that TTFCT takes into consideration is whether an indispensable dependent relationship exists between the enterprise in question and its’ trading counterpart.

(3) Why are such acts regulated?

Basically, the TTFCT respects and recognizes the objective of an enterprise, which always pursues maximized profit. However, an abusive conduct of advantageous market position is requisite to be regulated by competition

authority if it will harm effective competition or undermine fair trading order in the relevant market, notwithstanding the abuse resulted from private-negotiated contract between the enterprise in question and its' trading counterpart. Such enforcement is correspondent with the legislative purposes above prescribed in the FTA, namely maintenance of fair competition and trading order.

(4) Please provide the text (in English if available) of your jurisdiction's rules (including rules other than competition laws) on "abuse of superior bargaining position."

- FTA

Subparagraph 6 of Article 19:

No enterprise shall have any of the following acts which is likely to lessen competition or to impede fair competition: (6) limiting its trading counterparts' business activity improperly by means of the requirements of business engagement.

Article 24:

In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.

- Enforcement Rules

Article 27:

Restrictions" as used in Subparagraph 6, Article 19, of the Law refers to the circumstances under which an enterprise engages in restrictive activity in regards to tie-ins, exclusive dealing, territory, customers, use, or otherwise.

In determining whether the restrictions mentioned in the preceding paragraph are reasonable, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods, and the impact that carrying out such restrictions would have on market competition shall be considered.

- Guideline (please refer to the appendix)

The TFTC issued some guidelines on abusing superior market position: for instance "Principles for Cases Concerning Additional Fees Charged By Distribution Businesses By the Fair Trade Commission" and "Fair Trade Commission Guidelines on the Application of Article 24 of the Fair Trade Law" are the most important representative among them.

(5) If there are different regimes to address this situation (competition law and other laws) how are competences defined/interventions coordinated? **NA**

2.

(1) Which of the following criteria do you use to assess superior bargaining position? Please mention for each criteria whether it is relevant under the competition law and/or different laws governing “abuse of superior bargaining position.”

- | | |
|---|---------------|
| a. Degree of trade dependence on the firm by the other
(<i>e.g.</i> , percentage of the firm’s total sales attributable to the allegedly abusive party) | yes/no |
| b. Probability of finding an alternative trade partner | yes/no |
| c. Supply and demand forces of the product or service | yes/no |
| d. Difference in scale of business between the parties | yes/no |
| e. Harm to consumer welfare | yes/no |
| f. Other – please explain | |

In principal, this abusive conduct occurs between both enterprises are in the upstream and downstream markets respectively.

(2) Please specify examples of conduct that constitutes “abuse of superior bargaining position” (i.e., request for provision of supplier’s labor without compensation, coercive collection of contributions, etc.).

According to our empirical experience, the following conduct could be regarded as “abuse of superior bargaining position”:

- 1) Improper restraint on trading counterparts' business activity by means of the requirements of business engagement. For instance, tie-ins, exclusive dealing, territory, customers, use, or otherwise.**
- 2) Improper charging additional fees by distribution business**
- 3) Other obviously unfair conduct**
 - i) Where an enterprise provides imperfect substitutes for basic necessities or services or does business in a manner contrary to business ethics or public order and good morals during a time when market mechanisms failed and market supply and demand are not in equilibrium;**
 - ii) Non-transparency of information.**

(3) Must effects on competition, including harm to consumer welfare, be

demonstrated in order to prove “abuse of superior bargaining position”?

yes/no

According to the FTA, abuse of superior bargaining position not only probably constitutes a conduct of unfair trade but also anti-competition. If it is classified as the former one, the TFTC needn't to prove the likelihood of lessening competition, but on the contrary, the TFTC has to prove the possibility.

However, all cases, which were deemed by the TFTC as infringement of the FTA, are classified as unfair competition acts. In another word, till now the TFTC hasn't had any case on abuse of superior bargaining position due to the violation of the FTA as an anti-competitive conduct.

If yes, how are competitive effects demonstrated?

(4) What sanctions are imposed on firms if they commit “abuse of superior bargaining position” in your jurisdiction? Please describe the type and nature of the sanction imposed.

- Administrative penalty

With respect to sanctions, the TFTC could order the enterprise that violates Article 19 or 24 cease or rectify its conduct, or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative fine of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars (around 775 thousand USD).

- Criminal punishment

If any enterprise violating the provisions of Article 19 is ordered by the central competent authority pursuant to Article 41 to cease, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease, rectify such conduct, or take necessary corrective action, or after its' ceasing, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars (around 1.55 million USD), or by both.

3. When assessing cases of abusive conduct, does your agency also take into account positive aspects of (countervailing) buyer (or seller) power which may lead to the conclusion that a superior bargaining position does not exist?

yes/no

If yes, please explain how.

In the context, although there is not any case resulted in a decision that the conduct violates the FTA because of impeding competition, the TFTC should take into account countervailing power as long as the abusive conduct of superior bargaining position in question might bring about anti-competitive effect.

4.

- (1) To the extent possible, please provide the number of “abuse of superior bargaining position” cases your agency decided or reviewed (beyond a preliminary investigation) during the past 10 years.

Since 1998 to now, the number of “abuse of superior bargaining position” cases governed by the TFTC has been amounted 29. It includes that 8 cases concerning infringement on abuse of relative market position; 9 cases concerning infringement on abuse of advantageous market information, and 12 cases resulting in non-violated decision, moreover, most cases detected by the TFTC are concentrated in distribution industrial (20 cases) and franchise business (9 cases).

- (2) Please provide a short English summary of the leading “abuse of superior bargaining position” decisions/cases in your jurisdiction and, if possible, a link to the English translation/press release.

Case: RT-Mart International Ltd. abuses its relative superior position to improperly charge its suppliers additional fees, an obviously unfair conduct that is sufficient to adversely affect trading order, in violation of the FTA

Summary:

- 1) The TFTC received a complaint against RT-Mart International Ltd. (hereinafter referred to as RT-Mart) from one of its supplier, alleging that RT-Mart took advantage of its superior position and has unilaterally established a standard contract, improperly collected high additional fees from its suppliers, a suspicion of violating the FTA. Upon the investigation, the TFTC found that RT-Mart has determined various additional fees calculating at a fixed percentage of purchased amount in the contract, in addition to this, the contract also include a clause of “lowest sponsor fee”, that is, the supplier has to pay RT-Mart a minimum amount of additional fees regardless of whether RT-Mart’s actual purchase for the current year has attained the estimated purchase amount.
- 2) Grounds of disposition:
 - a. After a comprehensive view of the comparative business scale and market

share of RT-Mart and its suppliers; also the suppliers' degree of dependence on RT-Mart in trading, the TFTC determines that it shows that RT-Mart possesses relative superior position in the market.

- b. RT-Mart, without taking into consideration that its suppliers may encounter irresistible causes that lead to sales changes during the year, has collected "lowest sponsor fee" from its suppliers. The suppliers, under the pressure of wishing to continue trading with RT-Mart, have accepted the trading clauses involuntarily. Therefore, regardless of whether the actual amount purchased by RT-Mart has reached the estimated amount; the suppliers have to pay the aforementioned additional fees, seemingly a clause that guarantees the lowest profit for RT-Mart, thus, the aforementioned "lowest sponsor fee" is obviously unreasonable. Also, for some suppliers, the actual sales are not as estimated due to possible over-estimation of market condition and the products are new to the market, or because of supply-cut and shortage that further lead to the estimated sales figures are unattainable. But, RT-Mart will still deduct the lowest sponsor fee from the payments to suppliers at the year-end settlement of accounts. It is more evidence that RT-Mart, in accordance with the estimated purchased amount, has actually collected "lowest sponsor fee" from its suppliers. It is difficult to conclude that the additional fees are charged complying with the principle of "proportionality".
- c. RT-Mart in this case, relying on its relative advantageous position in market, has not considered the actual sales difficulties of its suppliers and charged "lowest sponsor fees" on the basis of the estimated purchased amounts, collecting from its supplier an additional fee that exceeds the direct profit earned from the sales. Such conduct has imposed extra burden on suppliers, increased suppliers' operating costs and therefore eroded their normal operating profits. Furthermore, RT-Mart takes advantage of its suppliers' that they are under the pressure of looking forward to maintain the existing business relations, coerces them to bear the aforementioned additional fees and thus impairs the nature of market competition. Such conduct is rebuked by the ethnic of business competition and sufficient to affect the market trading order, in violation of the provision of Article 24 of the FTA.

5. Does your jurisdiction allow private cases challenging "abuse of superior bargaining position"? yes/no

If so:

a. Please explain whether elements of the private action differ from those required for a similar claim brought by a competition or other regulatory agency.

Article 30 of the FTA provides that if any enterprise violates any of the provisions of this Act and thereby infringes upon the rights and interests of another, the injured may demand the removal of such infringement; if there is a likelihood of infringement, prevention may also be claimed.

Article 31 provides that any enterprise that violates any of the provisions of this Act and thereby infringes upon the rights and interests of another shall be liable the damages arising therefrom.

b. Please provide a description of representative examples of private claims, as available.

6. What is the relationship between “abuse of superior bargaining position” and “abuse of dominance/monopolization” in your jurisdiction?

Basically, the aforementioned abusive conduct has some differences in the following aspects:

- 1) In the former conduct, the enterprise in question has a certain, rather than significant or dominant market position in the relevant market; but the later contrary is opposite.**
- 2) The TFTC determines in principle whether the abusive of superior bargaining position is legal on the basis of individual transaction, not the relevant market competition situation. Because the abuse of dominance/monopolization is inherently regarded as one type of anti-competition, it’s essential to examine whether it causes probably anti-competitive effect in the relevant market.**

C. If your answer to question B.1.a. and b. is “no” (meaning that your jurisdiction does not prohibit acts that would fall within the “abuse of superior bargaining position” concept in your jurisdiction), please explain why.

D. Please add any comments you may have on the subject.

The concept concerning abuse of superior bargaining power is not definite, and therefore the TFTC answered this questionnaire on the premise that the “abuse of superior bargaining position” encompasses abuse of relative market position and abuse of advantageous market information.

Appendix

Fair Trade Commission Guidelines on Additional Fees Charged by Distribution Enterprises

1. Purpose of the Guidelines

The Guidelines have been specially adopted to prevent distribution enterprises from abusing advantageous positions in the market by improperly charging suppliers additional fees, and thereby to maintain the market trading order and ensure fair competition.

2. Definition of distribution enterprise

The term "distribution enterprises" as used in these Guidelines refer hypermarkets, to convenience stores, supermarkets, department stores, consumer cooperatives , and all other enterprises engaged in general merchandise delivery and selling business..

3. Definition of additional fees

The term "additional fees" as used in the Guidelines, with the exception of amounts payable for goods by the distribution enterprises, refers to fees charged to suppliers by distribution enterprises, or to deductions made from amounts payable for goods, or to all kinds of fees demanded of suppliers by distribution enterprises by other means.

4. Factors to be considered in determination of advantageous market position

In determining whether a distribution enterprise holds an advantageous position in the market, the following factors must be considered: the comparative scales and market shares of the distribution enterprise and supplier; the supplier's degree of dependence on the distribution enterprise; the supplier's ability to change its sales channel; and supply of and demand for the goods.

5. Entering into written agreements

When a distribution enterprise asks a supplier to bear additional fees, it should first negotiate with the supplier with respect to the type of additional fee, its use, and the amount of the fee (or the method of its calculation), and enter into a written agreement with the supplier.

6. Provision of information for direct debiting of additional fees

When a distribution enterprise charges its supplier additional fees by directly debiting its account payable for goods purchased, it must provide information regarding the deduction prior to deducting the additional fees.

7. Practices constituting improper charging of additional fees

Under anyone of the following circumstances, a distribution enterprise shall be deemed to be improperly charging additional fees:

- (1) the fees charged are not directly related to promoting the sale of the goods;
- (2) the fees charged are contributions to equipment, research and development, or promotional activities, and while of benefit to the supplier in promoting sale of goods or reducing operating costs, the amount of the fees exceeds in value the tangible benefit that the supplier may reasonably expect to derive from paying such contributions;
- (3) the fees charged are for the sole purpose of achieving target figures or other accounting measures at the end of a fiscal year;
- (4) when, despite the supplier being under no obligation, a reduction in the purchase price is demanded by the distributor for already-delivered goods; or
- (5) fees are charged in a manner contrary to normal trading principles or commercial ethics.

8. Violation of the Guidelines

If a distribution enterprise having an advantageous market position charges suppliers additional fees in a manner not in accordance with Points 5 and 6 of the Guidelines or is found to be in violation of Point 7 such that the distribution enterprise market order is impacted, the distribution enterprise shall possibly deemed to be in violation of Article 19(1)(vi) or Article 24 of the Fair Trade Law.

Principles Governing the Application of Article 24 of the Fair Trade Act

1. (Purpose)

Article 24 of the Fair Trade Act (hereinafter, “Article 24”) is a general provision. These Principles are specially promulgated to facilitate its concrete and clear-cut application.

2. (Basic spirit of the application of Article 24)

To clarify the distinction between Article 24 and related provisions of other laws and regulations such as the Civil Code and the Consumer Protection Law, the requirement of “sufficient to affect trading order” should be the first criterion applied when screening for the applicability of the Fair Trade Act or Article 24. In other words, the Commission will review a case under Article 24 only if the act at issue is sufficient to affect trading order in the market. If the requirement of “sufficient to affect trading order” is not met, remedy should be sought under the Civil Code, Consumer Protection Law, or other laws or regulations.

On condition that the requirement of “sufficient to affect the trading order” is met, then, to ascertain the scope governed by Article 24, it is necessary to examine whether the alleged illegal practice could not be not fully corrected by, first, provisions concerning restrictive competition (e.g. monopoly, cartel, and vertical restraints on competition) and, second, provisions concerning unfair competition (e.g. commercial imitation, false advertising, business defamation). Thus, the distinction in the application of Article 24 and other articles of the Fair Trade Act is that Article 24 is applicable only as a supplementary provision, i.e. applicable only to acts that are out of the reach of other articles of the Fair Trade Act.

If a certain unlawful act is caught by other provisions in the Fair Trade Act, meaning either that the application of those specific provisions could fully establishes the illegality of the act, or the illegal contents of the alleged act could be exhaustively regulated by those provisions, there are no grounds for the supplementary application of Article 24. Conversely, only if those specific provisions fail to evaluate the alleged unlawful act in its entirety will there be room for the supplementary application of Article 24.

With respect to the issue of “protecting consumers interest,” the applicability of Article 24 will be determined by examining whether the enterprise concerned is abusing its advantageous position to use “deceptive” or “obviously unfair” sales tactics to harm consumers’ interest, and the requirement of “sufficient to affect trading order” has accordingly been met.

3. (Clarification of overlapping laws)

The application of Article 24 frequently gives rise to the question of overlapping with other laws, and should be resolved according to the following factors:

(1) Contracts between enterprises or enterprises and consumers are trade terms agreed upon by both parties out of their own free will. Regardless of whether their contents are obviously unfair or whether they are subsequently performed, contractual behavior should in principle be regulated by contract law. Article 24 is applicable only in exceptional circumstances where the behavior threatens the competitive order or market trading order. If obviously unfair content of a contract fails to meet the requirement of “sufficient to affect trading order,” it should be resolved through civil remedies proceedings. Only if this requirement is met and public interests are at stake should Article 24 be invoked.

(2) Although protecting consumers’ interest is among the legislative purposes expressly set forth in Article 1 of the Fair Trade Law, it is necessary to distinguish between the core legal interests protected by the Fair Trade Act and those protected by the [Consumer Protection Law]. Article 24 should be invoked only in cases where the requirement of “sufficient to affect trading order” is met and where, moreover, the conduct by nature has a bearing on the public interest. Examples would be where an enterprise’s relatively advantageous market position vis-a-vis its consumers is so endemic to the industry that consumers’ interest is harmed due to over-reliance or the lack of alternatives. .

(3) Owners of intellectual property rights are entitled under relevant intellectual property laws to inform whoever might have infringed their rights to terminate the infringements. However, if prior to any confirmation and notification proceedings being undertaken, the owner makes outright oral or written representation directed at its competitor’s distributors or consumers (trading counterparts or potential trading counterparts) alleging that a competitor has infringed its rights or interests, and provide no basis for the recipient to form a reasonable judgment, constitute an abuse of intellectual property rights to create unfair competition, and are governed by Article 24. The prerequisite for invoking Article 24 with respect to oral or written warnings regarding intellectual property rights is the improper exercise of such warnings that could lead to unfair competition. Whether the Fair Trade Act has been violated should be determined merely by whether in formality the proper procedures have been followed for exercising such rights, and will not include the consideration of whether any infringement has actually occurred.

4. (Distinctions of the applicability of Article 24 vis-a-vis other articles of the Fair Trade Act) Application of Article 24 should be guided by the principle of “supplementariness ,” meaning that Article 24 is applicable only to unlawful acts that could not be completely covered by the other articles of the Fair Trade Act. If a certain unlawful act could be completely covered by the other individual articles of the Fair Trade Act—that is, if the illegality of alleged acts could be comprehensively evaluated or exhaustively regulated by those articles—then those articles will take precedence and there are no grounds for supplementary application of Article 24. Conversely, if those articles fail to regulate the illegality of the act, Article 24 may then come into play.

5. (Factors to be considered in determining “sufficient to affect trading order”)

“Trading order” as used in Article 24 refers to trading behavior that comports with good moral ethics of society and business competition ethics centered on efficient competition. Its concrete content is the type of trading order that is in conformity with social ethics, and upon which the spirit of free and fair competition rely. When determining “sufficient to affect trading order,” consideration should be given to whether it is sufficient to affect the overall trading order (e.g. the number of victims, the quantity and degree of harm caused, the deterrent effect on other enterprises, and whether specific organizations or groups have been targeted by the alleged deceptive or patently unfair acts) or whether the case would affect a majority of future potential victims before invoking Article 24; however, the trading order has in fact been affected is not required. For single, individual, non-recurring trade disputes, on the other hand, civil remedies should be pursued rather than the application of Article 24.

6. (Factors to be considered in determining “deceptive”)

“Deceptive” as used in Article 24 refers to acts of engaging in trade with trading counterparts by misleading them through active deception or through passive concealment of material trading information.

“Material trading information” as used in the preceding paragraph refers to the important trading information sufficient to affect trading decisions. Whether an act is “misleading” should be determined by whether objectively there is a reasonable likelihood (and not merely some possibility) that it would mislead the general public or deceive trading counterparts, together with the evaluation of trading counterparts’ ability of judgment based on the “reasonable judgment” standard (An extremely low level of care should not be taken as the standard.) Common types of such acts include:

- (1) Impersonating or free riding on the credibility of another entity.
- (2) Disingenuous sales tactics.
- (3) Concealing material trading information.

7. (Factors to be considered in determining “obviously unfair”)

“Obviously unfair” as used in Article 24 refers to engaging in competition or commercial transactions by obviously unfair means. Its most common and concrete types fall into three general categories:

(1) Unfair competitive conduct contrary to business competition ethics

(i) Exploiting the fruits of others’ work

The determination of illegality should in principle consider the following factors: (1) the work that have been free ridden upon or imitated to a substantial degree must be those that the enterprises have already exerted a substantial degree of efforts in those work and thereby created a certain economic interest in them that had already been exploited by the alleged free-riding or imitating acts; and (2) the free-riding or imitating acts could mislead trading counterparts into believing that the goods or services come from the same source or product

line or an affiliated enterprise. However, even where the above two criteria are not met, a violation may still be found in cases where the means employed are highly reprehensible (e.g. complete imitation), and determination should be made based on the various facts in each individual case. Common types of such conduct are as follows:

a. Free riding on the business reputation of another:

Determination of whether business reputation is protected by Article 24 should take into account of whether it is a substantially well-known brand in the market and whether it would create quality connection among related enterprises or consumers in the market.

b. Imitation to a substantial degree:

Determination of imitation to a substantial degree should examine in totality (1) whether the imitation reaches the level of “exactly alike” or “highly similar”; (2) the relevance and proportionality between the efforts exerted and cost incurred by the imitator and its resulting competitive advantage or benefit; and (3) the uniqueness and state of possession of the imitated work in terms of market competition.

c. Acts of taking advantage of the work of another person to promote one’s own goods or services.

(ii) Impeding fair competition with the purpose of harming competitors

Common types of such conduct are as follows:

a. Improper comparative advertising:

Comparative advertising that, rather than making false representations about one’s own or another’s goods or services, employs different means or standards of measurement to compare identical goods, or that highlights only those main categories of comparison in which one’s own product fares more favorably, while deliberately disregarding those categories in which the competitor compares favorably, with the intent of creating an unfair overall impression of the comparison results, and where the legal requirements of Article 22 of the Fair Trade Act are not met.

b. Making representations to trading counterparts of a competitor alleging that the competitor’s infringement of intellectual property rights:

It is a legitimate exercise of legal rights for an intellectual property rights holder who discovers goods in the market with a potential to infringe his intellectual property rights to give notification of the infringement, with a request for its removal, to the directly infringing manufacturer or, in the case of imported goods, to the importer or agent having equivalent status. Regardless of whether the allegations are true or false, it is a dispute over intellectual property rights, to which Article 24 does not apply. If, on the other hand, the holder makes representations (regardless of whether written or oral) to dealers or consumers (i.e. trading counterparts or potential trading counterparts of a competitor) who might indirectly infringe his rights, alleging, without undertaking the prerequisite confirmation and notification procedures, that the

competitor has infringed his rights, such conduct—if sufficient to raise concerns in the minds of the competitor’s trading counterparts or to cause them to refuse to trade with the competitor—would constitute obviously unfair acts under Article 24.

(2) Engaging in trade by means contrary to social ethics

Common types of such conduct include carrying out trading by means of coercing or harassing a trading counterpart to suppress the trading counterpart’s free will regarding whether to trade.

(3) Abusing an advantageous market position to engage in unfair trade

An enterprise holding market power or advantageous market information takes advantage of the information asymmetry or other relative trading disadvantage on the side of its trading counterpart (an enterprise or consumer) to engage in unfair trade. Commonly seen types of such conduct are as follows:

- (i) where an enterprise provides imperfect substitutes for basic necessities or services or does business in a manner contrary to business ethics or public order and good morals during a time when market mechanisms failed and market supply and demand are not in equilibrium;
- (ii) Obviously unfair conduct resulting from non-transparency of information.