

**Korean Competition Policy
with regard to
Intellectual Property Rights**

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Competition and Intellectual Property Law and Policy
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1. Fair Trade Laws and Regulations of Korea with regard to Intellectual Property Rights('IPR')

A. In-general

- a. Article 3-2(Prohibition against Abuse of Market-Dominant Positions), the Monopoly Regulation and Fair Trade Act('Act')
- b. Article 7(Restrictions on Business Combinations), the Act
- c. Article 19(Restrictions on Improper Concerted Acts), the Act
- d. Article 23(Prohibition on Unfair Business Practices), the Act
- e. Article 29(Restrictions on Resale Price Maintenance)-(1), the Act

B. IPR-Specific

- a. Article 32(Restrictions on the Conclusion of Unreasonable International Agreements), the Act

Article 32 Restrictions on the Conclusion of Unreasonable International Agreements

(1) No Enterprise or Trade Association shall enter into an international agreement or international contract set forth in the Presidential Decree (hereinafter referred to as International Agreements) which provides for acts that constitute Improper Concerted Acts, Unfair Business Practices, or Resale Price Maintenance; provided, however, that if the Fair Trade Commission deems the effect of the said agreement upon competition in a Given Area of Trade to be negligible or deems that there are other unavoidable reasons for the said Contract, the foregoing shall not apply.

(2) The Fair Trade Commission may determine and announce the types of and criteria for Improper Concerted Acts, Unfair Business Practices, and Resale

price Maintenance as referred to in Paragraph (1).

b. **Article 33(Request for Review of International Contracts), the Act**

Article 33 Request for Review of International Contracts

An Enterprise or Trade Association may, in entering into an International Agreement, request the Fair Trade Commission to review the contract in accordance with the procedure set forth in the Presidential Decree to determine whether it violates any provisions of Article 32 (Restrictions on the Conclusion of Unreasonable International Agreements), Paragraph (1).

c. **Article 59(Exercise of Intangible Property Rights), the Act**

Article 59 Exercise of Intangible Property Rights

This Act shall not apply to any acts which are deemed as an exercise of rights under the Copyright Act, the Patent Act, the Utility Model Act, the Design Act, or the Trademark Act.

d. **Article 29-(2), the Act**

Article 29 Restrictions on Resale Price Maintenance

- (1) No Enterprise shall engage in Resale Price Maintenance; provided, however, that if such behavior is to maintain the highest price, an act of capping the prices of traded products or services to a certain level and is deemed justifiable, the forgoing shall not apply.
- (2) Paragraph (1) shall not apply to publications specified in the Presidential Decree or to commodities which meet all of the following conditions and which the Fair Trade Commission has designated in advance as being eligible for Resale Price Maintenance:

1. The uniformity of the quality of the commodity is readily apparent;
2. The commodity is for daily use by consumers; and

3. Free competition exists with respect to the sale and purchase of the commodity.

e. Article 43(Publications Eligible for Resale Price Maintenance), the Enforcement Decree of the Act

Article 43 Publications Eligible for Resale Price Maintenance

"Publications specified in the Presidential Decree" of Article 29 (Restrictions on Resale Price maintenance), Paragraph (2) of the Act means those publications defined in the Copyright Act, Article 2 (Definitions), which, after consultation with the head of relevant central administrative agency, were designated by the Fair Trade Commission (including electronic publications).

f. KFTC's 2000 Guidelines on IPR and Competition Policy

g. KFTC's 1997 Notifications on the Types of and Criteria for Determining Unfair Business Practices in International Contracts

2. KFTC's 2000 Guidelines on IPR and Competition Policy('2000 IPR Guidelines')

A. Scope of Application ; Licensing, Cross-Licensing, Pooling Arrangements, Acquisition of IPR

B. The General Principle of Evaluation for Unfair Business Practices: A rule of reason analysis will be applied, in which not only the contents of arrangements but the impact on competition in a related market, the duration of the restraint, market structure and other relevant factors will be considered.

C. Types of Unfair Business Practices

a. Tying arrangements of raw materials, parts, manufacturing

equipment, etc.

- b. Forcing licensee to use the trademarks or designs designated by the licensor
- c. Restrictions on exporting territories
- d. Horizontal restrictions on sales territories
- e. Restrictions on customers
- f. Restrictions on transaction quantities
- g. Restrictions on transaction methods and designation of sales and/or resale price
- h. Restrictions on the use of competing products, restrictions on the use of IPR after its expiration, charging royalties on non-licensed products, tying technology, restrictions on R&D, requiring excessive sales promotion expenses, and unfair refusal to license

D. Cross-Licensing and Pooling Arrangements ; Article 19(Restrictions on Improper Concerted Acts) of the Act will be applied to cross-licensing or pooling arrangements between competitors.

E. Acquisition of IPR ; A merger analysis will be applied to the acquisition of IPR when the IPR consists of major parts of businesses, or when the licensing of IPR is practically equivalent to the acquisition, for example, in the case of exclusive licensing.

F. Other Characteristics of the 2000 IPR Guidelines

- a. For each type of unfair business practice, one or two examples of business practices which KFTC does not consider unfair are provided for comparison.
- b. Types of unfair business practices are largely similar between the 2000 IPR Guidelines and the 1997 Notification. The general principle of evaluation for unfair business practices is the same as well, that is, the rule of reason analysis.

One difference between the two is that the scope of application for the 1997 Notification is far more extensive, since the Notification is applied to franchise contracts, joint R&D agreements, import distribution contracts and joint venture agreements which are not covered by the 2000 Guidelines.

3. The 1997 Notification

A. Background

- a. Before 1997, a request for the review of int'l contracts pursuant to Article 33 of the Act was mandatory. From the adoption of the Act in 1981 until 1996, 2338 requests were made for the review of int'l contracts.
- b. At the end of 1996, the request for the review of int'l contracts was changed into a voluntary one to lessen the burden on the companies and to promote technology transfer.
- c. The Notification was announced pursuant to Article 32-(2) of the Act.

B. Scope of Application : IPR Contracts, Franchise Contracts, Joint R&D Agreements, Import Distribution Contracts, Joint Venture Agreements

C. Types of and Criteria for Determining Unfair Business Practices : Refer to attached Notification

4. Cases

A. Korea Coca-Cola Case, 1997

- a. The Coca-Cola Export Corporation('X'), which is a 100% subsidiary of Coca-Cola, U.S.A., signed a Bottler's Agreement('Contract') with Bumyang Foods Company of Korea('Y') on May 27, 1974.
- b. X and Y revised the contract twice and extended the expiration date to June 1, 1996.
- c. In order to reshape the operation in Korea, X decided to set up the Serabul Company which would be in charge of manufacturing in Korea. X also decided to change existing bottlers to distributing companies. For that purpose, X proposed that Y accept such changes or else X would terminate the Contract on June 1, 1996.
- d. During the process of negotiation with Y for the change, X issued a Letter of Authorization twice, which extended Y's right to manufacture and sell Coca-Cola in Korea until April 1, 1997. Over a dispute as to the price of assets that X would buy from Y for the change, X stopped supplying raw materials for Coca-Cola to Y as of April 1, 1997.
- e. Y filed a complaint with KFTC, contesting that X practically promised to extend the contract until the end of 1997. Among other reasons, Y cited the following as the basis for its argument;
 - 1) In Dec. 1996, X asked Y three times to submit the business plan for 1977.

2) On Dec. 9, 1996, X notified 4 Coca-Cola bottlers,

including Y, to change sales reports from a monthly to weekly basis.

3) From Feb. 21 to Mar. 31, 1997, X notified the 4 bottlers to change the bottle design and asked them to share the promotion expenses.

f. On Aug. 27, 1997, KFTC made a decision that X unfairly refused to deal with Y. KFTC's decision was mainly based on its assumption that there was a tacit agreement between X and Y to extend the Contract until the end of 1997, and that it was unfair for X to unilaterally refuse to deal considering the 23 years of transactions between X and Y, Y's huge investment for the transaction and the difficulty to find substitute supplies.

g. On Oct. 14, 1998, the Appeals Court upheld KFTC's decision.

h. On Jan. 5, 2001, the Supreme Court revoked the Appeals Court's decision and upheld X's argument, based on the reasons that there was no circumstantial evidence of the plan to extend the Contract beyond April 1, 1997, that there were other ways for Y to utilize its assets, and that there was no urgent need for X to buy Y's assets.

B. Proctor & Gamble Case, 1998

a. The Proctor & Gamble ('P&G') Co. of Korea ('X'), 100% owned by P&G, U.S.A., and P&G, Germany, acquired 84.4% equity of Ssangyong Paper Manufacturing Co. ('Y') and filed a M&A report to KFTC on Dec. 5, 1997.

b. KFTC defined the relevant market of the M&A to be the women's sanitary pad market of Korea, in which total sales in Korea amounted to about 227 billion won (around 250 million US\$) in 1997. The market was shared by X(47%), Yoohan Kimberly(22%), Y(17%) and other minor companies(14%) in 1996.

*As a reference, Y's sales in 1996 consisted of sanitary pads(8.5%), paper diapers(24.8%), paper tissue(36.9%) and other paper products(29.8%).

- c. KFTC decided the M&A of X and Y harmed competition in the relevant market, based on the reasons that the market share of X and Y amounted to 64%, and the entry barrier was too high in terms of initial investment and technology.
- d. KFTC paid special attention to the volume and speed of innovation which was taking place in the pad market. The 2-3 year life cycle of new pad products tended to be too short for the newcomers to constantly keep up with. The number of patents P&G, U.S.A. had regarding pad manufacturing was over 300 and that of the Kimberly Clark parent company of Y was over 400.
- e. On May 25, 1998, KFTC approved the M&A of X and Y with the condition that X should sell Y's equipment and intellectual property rights (24 trademarks, 12 patents, 6 utility models) which are related to sanitary pad production to the third party, within one year of X finishing the transaction and before the due date set by the KFTC.

5. Appendix : The 1997 Notification

NOTIFICATION ON THE TYPES OF AND CRITERIA FOR DETERMINING UNFAIR BUSINESS PRACTICES IN INTERNATIONAL CONTRACTS

We hereby designate and notify the types of and criteria for unfair business practices in international contracts in accordance with Article 32 (Restrictions on the Conclusion of Unfair International Agreements), Paragraph 2 of the Monopoly Regulation and Fair Trade Act.

April 21, 1997
The Fair Trade Commission

Article 1 Purpose

The purpose of this Notification is to define the types of and the criteria for determining undue concerted acts, unfair business practices, and resale price maintenance activities (hereinafter referred to as "unfair business practices") in international contracts pursuant to Article 32 (2) of the Monopoly Regulation and Fair Trade Act (hereinafter, the "Act").

Article 2 Scope of Application

(1) This Notification shall apply to the following international contracts as provided for in Article 47 (Types of International Contracts) of the Enforcement Decree to the Act:

1. Industrial Property Rights Contracts

Contracts granting the license to use or exercise rights with respect to industrial property rights, such as patents, utility models, designs, and trademarks.

2. Copyright License Contracts

Contracts granting copyright licenses for books, phonograms, audio-visual products, or computer programs.

3. Know-how License Contracts

Contracts granting the license to use or exercise rights with respect to trade secrets or other similar technical know-how.

4. Franchise Contracts

Contracts granting the license to use or exercise rights with respect to a franchise for the purpose of providing products or services in the form of a franchise by using the business mark of the franchiser or for the purpose of supervising business operation.

5. Joint Research and Development Agreements

6. Import Distribution Contracts

Import Distribution contracts with the purpose of importing goods or providing services on a continuous basis (excluding the business of issuing bill of sales) and the term of which is one (1) year or longer.

7. Joint Venture Agreements

(2) Articles 19 (Restrictions on Undue Concerted Acts), 23 (Prohibition on Unfair Business Practices), and 29 (Restrictions on Resale Price Maintenance) of

the Act shall apply *mutatis-mutandis* to matters not provided for in this Notification.

Article 3 Unfair Business Practices in Industrial Property Rights Contracts, etc.

Unfair business practices, etc. with respect to industrial property contracts are defined as below. In addition to the criteria for these categories of practices, the effect on competition, the duration of the contract, relevant market conditions, and like factors shall be comprehensively taken into account in determining whether or not a particular act is unfair.

1. Restrictions on the sources from which a party may purchase raw materials, parts, manufacturing equipment, etc. (hereinafter "parts, etc.").

When a licensor of industrial property rights (hereinafter, "licensor") unfairly makes a licensee of industrial property right (hereinafter, "licensee"), that manufactures a product (hereinafter, "licensed product") using the technology provided by the licensor (hereinafter, "licensed technology"), purchase the required parts from the licensor or a party designated by the licensor.

Note: The following shall be considered a fair trade practice:

When a licensor requires a licensee to purchase parts, etc. for a licensed product from the licensor or a party designated by the licensor to ensure that the licensed product meets a certain standard of quality or performance, etc.; or

When a licensor or a party designated by the licensor supplies a licensee with parts, etc. for the licensed product at the request of the licensee.

2. Restrictions on exporting territories

When a licensor requires a licensee to obtain prior consent or approval from the licensor in order to export the licensed product, designates the countries to which the licensee may or may not export, completely prohibits the licensee from exporting, or restricts the quantity or amount of exports.

Note: The following shall be considered fair trade practices:

When a licensor restricts licensee's exporting to an area(s) in which the licensor has vested rights (an area(s) in which the licensor's industrial property rights are registered, etc.) at the time of executing a contract, in accordance with the limit on the export of the licensed product under the laws in the area(s) in which the licensor has vested rights; or requires that the licensee obtain prior consent or approval from the

licensor to export to such area(s);

When a licensor prohibits the licensee from exporting a licensed product to an area(s) to which export thereof is prohibited under the laws of the country of the licensor.

3. Restrictions on customers

When a licensor requires a licensee to sell a licensed product through the licensor or a person designated by the licensor, or designates prospective customers to whom the licensee may or may not sell (resell) the licensed product;

4. Restrictions on transaction quantities

When a licensor sets a ceiling on the volume of manufacture/sales of a licensed product and prohibits a licensee from manufacturing/selling in excess of the ceiling; or when a licensor designates a minimum manufacture/sales target or amount of a licensed product and terminates the contract unilaterally when the licensee fails to meet the target or the amount.

Note: The following shall be considered fair trade practices:

When a licensor designates a minimum manufacture/sales target or amount but does not force the licensee to meet the target or amount; or

When a licensor converts an exclusive contract to a non-exclusive contract when the licensee fails to meet the designated minimum manufacture/sales target or amount of the licensed product.

5. Restrictions on the method of transaction and designation of the sales (resale) price

When a licensor designates a particular method of transaction; or when a licensor designates the sales price or the resale price for a licensed product.

6. Restrictions on the use or handling (hereinafter "Handling") of a competing technology (products or business) (hereinafter "Competing Product")

When a licensor does not allow a licensee to handle Competing Products which are similar to or which may be substituted for the licensed technology (product or business) during the term of the contract or after the expiration of the contract; or when, during the term of the contract, a licensor requires a licensee to obtain the licensor's prior consent or approval in handling Competing Products.

Note: The following shall be considered a fair trade practice:

When a licensor requires a licensee to consult with the licensor prior to handling Competing Products during the term of the contract.

7. Interference with parallel imports

When a Korean enterprise (rightful Korean trademark user) which is the same enterprise as the foreign trademark owner or is affiliated with the foreign enterprise (trademark owner) that it entered into a trademark license contract with (majority shareholder owning 30% or more of the shares or equity) impedes an enterprise other than the said Korean enterprise in importing the licensed product from enterprises other than the said foreign enterprise; or when a Korean enterprise which has entered into a trademark license contract with the foreign enterprise (trademark owner) and which imports the licensed products for domestic sales impedes enterprises other than the said Korean enterprise from importing the licensed product from enterprises other than the said foreign enterprise.

8. Restrictions on the use of a patent right, etc., after the expiration of such right

When a licensor requires a licensee to pay a royalty or does not allow the licensee to use the patent, etc., relating to the licensed technology (product) after such patent, etc. has expired or after the trade secret has become publicly known due to reasons not attributable to the licensee.

9. Charging of royalties on non-licensed products and packaged technology.

When a licensor requires a licensee to pay royalties on products that do not use the licensed technology; or when a licensor requires a licensee to introduce technology which is not directly necessary for the performance of the licensed technology.

10. Restrictions on the improvement of technology or on the research and development of technology

When a licensor prohibits a licensee from making technical improvements to the licensed technology (product); when a licensor allows a licensee to make technical improvements to the licensed technology only with the licensor's prior consent or approval; or when a licensor prohibits a licensee from conducting research and development with respect to the licensed technology (product) independently or in cooperation with a third party.

Note: The following shall be considered a fair trade practice:

When a licensor requires a licensee to consult with the licensor prior to making technical improvements to the licensed technology (product).

11. Transfer of improved technology

When a licensor requires a licensee to provide the licensor, without compensation, with the ownership of or the exclusive (non-exclusive) right to use the technology (product) improved by the licensee; or when a licensor unilaterally requires a licensee to report or give notice to the licensor of all technology (product) improvements with respect to the licensed technology (product) made by the licensee.

Note: The following shall be considered fair trade practices:

When a licensee grants joint ownership of or the exclusive (non-exclusive) right to use the technology improved by the licensee to the licensor upon receiving compensation, including the expenses required for such development and the anticipated profits therefrom;

When either contract party reports or gives notice to the other party of an improvement in the licensed technology (product), or gives the exclusive (non-exclusive) right to use such improved technology on equal conditions;

When a licensor requires a licensee to report or give notice to the licensor prior to using the improved technology in order to ensure quality control or guarantee the performance of the licensed technology (product).

12. Imposition of expenses for advertisements and commercials

When a licensor sets excessively high sales promotion expenses, such as expenses for placing advertisements or commercials of the licensed product, and requires a licensee to pay those expenses.

13. Calculation of royalties and imposition of minimum royalties

When a licensor unilaterally establishes the method of calculating royalties without specifying such method in the contract.

Note: The following shall be considered fair trade practices:

When a licensor imposes a specified minimum amount of royalties to the licensee.

14. Contract termination or dispute resolution provisions

When provisions regarding the termination of a contract, the rules and institution of arbitration, or the governing law, etc. with respect to disputes are unfavorable to one party; or when a licensor is allowed to terminate a contract without granting an appropriate grace period for reasons other than the licensee's failure to pay royalties.

15. Imposition of no-contest obligation

When a licensor is allowed to terminate a contract in the event of a third party dispute regarding the validity or confidentiality of the licensed technology

Article 4 Unfair Business Practices, etc. in Copyright License Contracts

The provisions in Article 3 shall apply *mutatis-mutandis* to matters relating to unfair business practices, etc. in copyright license contracts.

Article 5 Unfair Business Practices in Know-how License Contracts

The provisions of Article 3 shall apply *mutatis-mutandis* to matters relating to unfair business practices in know-how contracts; provided, however, that subparagraph 8 shall be as follows:

8. Restrictions on the use of a know-how after it becomes part of public domain

When a licensor requires a licensee to pay a royalty or does not allow the licensee to use the know-how after such know-how has become part of the public domain due to reasons not attributable to the licensee.

Article 6 Unfair Business Practices, etc. in Franchise Contracts

(1) The definitions for the terms used in this article shall follow the Fair Trade Commission Notification, the "Notification on the Criteria for Unfair Business Practices Relating to Franchises"; provided, however, that franchise headquarter means franchiser or sub-franchiser.

(2) Acts falling into one of the following categories shall constitute unfair business practices, etc. under franchise contracts. In addition to the criteria for these categories of acts, the effect on competition, the duration of the contract, relevant market conditions, and like factors shall be taken into account in determining whether or not a particular act is unfair. In particular, with respect to a franchiser's interference in the sales activities of a franchisee, a sufficient examination of the need for such interference shall be made in determining whether or not a particular act is unfair.

1. Restrictions on sales quantity.

When a franchiser sets a ceiling on the sales volume of a product subject to

franchise contract and prohibits a franchisee from selling in excess of the ceiling; or when a franchiser designates a minimum sales target or amount of a product subject to franchise contract and terminates the contract unilaterally when the franchisee fails to meet the target or the amount.

Note: The following shall be considered fair trade practices:

When the franchiser designates a minimum sales target or amount of a product subject to the franchise contract, but does not force the franchisee to meet the target or amount.

2. Forcing Purchase of Facilities for the Franchise Shop

When the franchiser forces the franchisee to purchase and set up facilities for the franchise shop which is not necessary for purposes of maintaining a unified image of a franchise; or when without a justifiable reason, such as cost-savings through joint purchase, the franchiser forces the franchisee to purchase facilities required for purposes of maintaining a unified image of the franchise from the franchiser or a business designated by the franchiser.

3. Restrictions on Products and Sales Activities

When the franchiser restricts the products or services of the franchisee or its sales activities beyond the range necessary for attaining the purposes of the franchise.

Note: The following shall be considered fair trade practices:

For the purpose of maintaining the homogeneity of the franchise, the franchiser makes the franchisee spend a certain proportion of its income, within a reasonable amount, for advertisements

Out of necessity for the business of the franchise, the franchiser recommends certain sales prices for the franchise products or services to the franchisee

4. Restrictions on the Source of Product Purchase, etc. and Business Areas

When the franchiser restricts the franchisee's source of product purchase beyond what is necessary for the purpose of the franchise by forcing the franchisee to purchase products, raw materials, or services from the franchiser or a person designated by the franchiser.

Note: The following shall be considered fair trade practices:

When the franchiser restricts a subfranchiser from entering into a franchise

contract with a third party operating outside the business area of the franchise.

- o When the franchiser restricts the franchisee from changing its business area without the consent of the franchiser

5. Refusal to Accept Sales Assistance, etc.

When the franchiser suspends the supply of or refuses to supply products, raw materials or services and sales assistance during the term of contract; or restricts the volume or substance of the products, services, etc. during the term of contract without justifiable reason, such as problems attributable to the franchisee.

Note: The following shall be considered fair trade practices:

Imposing the obligation on a franchisee or its employee to participate in a training course prepared by the franchiser, within reasonable bounds.

6. Unilateral Imposition of Obligation

When the franchiser, without the consent of the franchisee, may change or modify the substance of a contract to the disadvantage of the franchisee.

Note: The following shall be considered fair trade practices:

When a third party infringes on the intellectual property rights, etc. granted to the franchisee under the contract, the franchisee takes legal procedures; or the franchiser imposes the obligation on the franchisee to support the franchiser in legal actions against the infringing party.

7. Prohibition of Competitive Business following Termination of Business Relationship

When the franchiser, without justifiable reason, restricts the franchisee from engaging in sales activities in a like business for a certain period following termination of contract or restricts the franchisee from transacting with its competitors.

Article 7 Unfair Business Practices, etc. in Joint Research and Development Agreements.

The followings shall constitute unfair business practices in joint research and development agreements. In addition to the following, the effect on competition, the duration of the contract, relevant market conditions, and like factors shall be taken into account in determining whether or not a particular act is unfair.

1. Restrictions on the execution of joint research and development.

Without justifiable reason, the franchiser restricts research and development on a subject other than that declared for joint research and development; or the franchiser restricts the use of an already acquired technology or the granting of the right of execution of that technology to a third party for research and development.

Note: The following shall be considered fair trade practices:

Imposing the obligation to present to the participants the information required, such as technology, for joint research and development.

Imposing the obligation to report to the other participants the progress of the portion of the research assigned to a certain participant in the joint research and development.

2. Restriction on the Use of Technology that is a Product of Joint Research and Development.

When the franchiser restricts research and development using technology that is a product of joint research and development; imposes the obligation to transfer to other participants technology, etc. that is an improvement on the technology that is the product of joint research and development; or imposing the obligation to let other participants use the technology exclusively.

Note: The following shall be considered fair trade practices:

Restricting the granting to a third party the right of execution of technology which is a product of joint research and development.

Imposing the obligation to maintain secrets relating to technology that is a product of joint research and development.

3. Restrictions on products using technology that is a product of joint research and development.

When the franchiser restricts the production/ sales area or production/ sales volume of products using technology that is a product of joint research and development; restricts, without justifiable reason, the customer and the sources from which a party may purchase the raw materials and parts for products using technology that is a product of joint research and development; restricts, without justifiable reason, the quality or shape and size of products using technology that is a product of joint research and development; or restricts the sales price of products using technology that is a product of joint research and development to a third party.

Note: The following shall be considered a fair trade practice:

Restricting the purchasing source of the raw materials and parts for the products using technology that is a product of joint research and development, for a reasonably period, for purposes of guaranteeing the quality standard of such products or maintaining secrets of the results of joint research and development.

Article 8 Unfair Business Practices in Import Distribution Contracts

The followings shall be considered unfair business practices in import distribution contracts. In addition to the types of activities referred to below, its effect on competition, the duration of the contract, relevant market conditions, and like factors shall be taken into account in determining whether or not a particular act is unfair.

1. Restrictions on the sources from which a party may purchase parts, etc.

When a foreign enterprise requires a domestic enterprise to purchase parts, etc. for the licensed product from the foreign enterprise or an enterprise designated by the foreign enterprise.

Note: The following shall be considered fair trade practices:

When a foreign enterprise requires a domestic enterprise to purchase parts, etc. for the licensed product from the foreign enterprise or an enterprise designated by the foreign enterprise, and such requirement is necessary to guarantee the quality, performance, etc. of the licensed product.

When a foreign enterprise or a person designated by the foreign enterprise supplies parts, etc. for the licensed product to the domestic enterprise at the latter's request.

2. Restrictions on the sales areas or customers.

When a foreign enterprise restricts sales to a particular area(s) within the country of the domestic enterprise for the purpose of dividing the market; or when a foreign enterprise requires a domestic enterprise to sell the licensed product through an enterprise designated by the foreign enterprise, or when the foreign enterprise designates prospective customers to whom the domestic enterprise may or may not sell (resell) the product in question;

3. Restrictions on the sales quantity.

When a foreign enterprise sets a ceiling on the sales volume of the licensed product and prohibits the domestic enterprise from selling more than the ceiling; or when the foreign enterprise designates the minimum sales target or the amount of the licensed product and terminates the contract unilaterally when the domestic enterprise fails to meet the target or the amount.

Note: The following shall be considered fair trade practices:

When a foreign enterprise designates the minimum sales target or amount but does not force the domestic enterprise to meet that sales target or amount.

When the foreign enterprise converts an exclusive contract to a non-exclusive contract in the event the domestic enterprise fails to meet the designated minimum sales target or the amount of the product.

4. Restrictions on the methods of transaction and designation of the sales (resale) price.

When a foreign enterprise designates a particular method of transaction; or when a foreign enterprise designates the sales or resale price of the licensed product.

5. Restrictions on the handling of competing products

When a foreign enterprise under a non-exclusive contract does not allow a domestic enterprise to handle competing products during the term of the contract (including when the foreign enterprise permits the domestic enterprise to handle competing products only with the prior consent or approval of the foreign enterprise), or does not allow a domestic enterprise to handle competing products after the contract expires.

Note: The following shall be considered a fair trade practice:

When a foreign enterprise requires a domestic enterprise to handle competing products only after prior consultation with the foreign enterprise during the term of the contract

6. Interference with parallel imports.

Impeding an enterprise other than the distributor in importing the licensed product from any enterprise other than the concerned foreign enterprise.

7. Imposition of expenses for advertisements and commercials

When a foreign enterprise sets excessively high sales promotion expenses, such as expenses for advertisements or commercials of the licensed product and then requires the domestic enterprise to pay those expenses.

8. Termination of contract or dispute resolution provisions.

When the provisions regarding the termination of a contract, rules and institution of arbitration, or the governing law, etc. related to dispute settlements are unfavorable to one party.

Article 9 Unfair Business Practices in Joint Venture Agreements

The followings shall be considered unfair business practices in joint venture agreements. In addition to the criteria for these categories of practices, the effect on competition, the duration of the contract, the relevant market conditions, and like factors shall be taken into account in determining whether or not a particular act is unfair.

1. Restrictions on the sources from which a party may purchase parts, etc.

When a foreign investor requires the joint venture company to purchase parts, etc. from the foreign investor or an enterprise designated by the foreign investor.

Note: The following shall be considered fair trade practices:

When a foreign investor requires the joint venture company to purchase parts, etc. from the foreign investor or an enterprise designated by the foreign investor and such requirement is necessary to guarantee the quality, performance, etc. of the product in question.

When a foreign investor or an enterprise designated by the foreign investor supplies parts to the joint venture company at the request of the joint venture company.

2. Restrictions on sales areas

When a foreign investor prohibits the joint venture company from exporting the manufactured products to an area(s) other than those in which the foreign investor has vested interests at the time of the conclusion of the contract; or requires the joint venture company to obtain the prior consent or approval of the foreign investor in exporting to such areas.

3. Restrictions on customers.

When a foreign investor requires the joint venture company to sell products through the foreign investor or an enterprise designated by the foreign investor.

Note: The following shall be considered fair trade practices:

When a foreign investor or an enterprise designated by the foreign investor purchases products manufactured by the joint venture company in due time at a price and under conditions which comply with reasonable international practices.

4. Termination of contract or dispute resolution provisions

When the provisions regarding termination of contract, rules and institution

of arbitration, or the governing law, etc. related to dispute settlement are unfavorable to one party.

ADDENDUM

Article 1 Effective Date

This Notification shall take effect on the day of notification.

Article 2 Interim Measures

Any acts performed before the Effective Date shall be governed by the prior Notification on the Types of and Criteria for Determining Unfair Business Practices in International Contracts (Fair Trade Commission Notification 1995-10).

1. 60 FR 40267, Rules and Regulations, FEDERAL TRADE COMMISSION (FTC), 16 CFR Part 248, Guides for the Beauty and Barber Equipment and Supplies Industry, Tuesday, August 8, 1995, ACTION: Elimination of guides., FEDERAL REGISTER Vol. 60, No. 152

2. 60 FR 17032, Proposed Rules, FEDERAL TRADE COMMISSION (FTC), 16 CFR PART 248, Request for Comments Concerning Guides for the Beauty and Barber Equipment and Supplies Industry, Tuesday, April 4, 1995, ACTION: Request for public comments., FEDERAL REGISTER Vol. 60, No. 64