

July 09, 2013

Amendments to the KFTC's Notification on Detailed Criteria for the Imposition of Administrative Surcharges (Effective as of June 17, 2013)

On June 11, 2013, the Korea Fair Trade Commission (the "KFTC") announced amendments to the Notification on Detailed Criteria for the Imposition of Administrative Surcharges (the "Administrative Surcharge Notification"), which took effect on June 17, 2013.

The amended Administrative Surcharge Notification (the "Amended Notification") introduces "detailed assessment criteria charts" to evaluate and assign points to a violation of the Monopoly Regulation and Fair Trade Act of Korea (the "MRFTA") depending on the severity of such violation while raising the overall administrative surcharges amounts applicable to unreasonable concerted acts (i.e., cartels). The key amendments include the following.

1. Under the Amended Notification, base surcharge rates will be determined by points assigned to different types of violations of the MRFTA in accordance with the detailed assessment criteria charts.

Under the MRFTA, an administrative surcharge amount is determined after making first and second-round adjustments to a base surcharge amount equal to an amount calculated by multiplying the relevant turnover of an offender by a prescribed base surcharge rate.

Prior to the amendments, there were no specific criteria used to assess the severity of a violation, which would serve as a basis for determining an applicable base surcharge rate. With the recent amendments, the Amended Notification now presents comprehensive criteria for the KFTC's assessment of the severity of a violation of the MRFTA to determine an applicable base surcharge rate.

More specifically, the detailed assessment criteria charts set out in the Annex to the Amended Notification essentially entails a point system under which points are assigned to a violation based on its severity. The six different types of violations under the MRFTA (e.g., abuse of market dominant position, unfair trade practices, etc.) are systematically categorized by the substance and scope so as to enable the KFTC to differentiate different types of violations in evaluating the severity of such violations.

By way of example, in the case of a violation involving unfair trade practices, in evaluating and assigning points to the violation, the KFTC would comprehensively take into account, (i) in terms of the substance of the violation, the purpose and background of a violation, trade practices of an offender, and deterioration of conditions of trading counter-parties, and (ii) in terms of the extent of the violation, the size of illicit gains and harm, average revenues, relevant revenues and geographic scope.

Then, according to the severity of a violation as determined by relevant points assigned in accordance with the detailed assessment criteria charts, the KFTC would determine an applicable base surcharge rate.

[Unfair Trade Practices: Base Surcharge Rates by Degree of Severity]

<u>Prior to Amendments</u>			<u>Post-Amendments</u>		
Degree of Severity	Base Surcharge Rate		Degree of Severity	Points Assigned According to Detailed Assessment Criteria Chart	Base Surcharge Rate
Very Serious	More than 1.6% and less than 2.0%	➔	Very Serious	More than 2.2	More than 1.6% and less than 2.0%
Serious	More than 0.8% and less than 1.6%		Serious	More than 1.4 and less than 2.2	More than 0.8% and less than 1.6%
Minor	More than 0.1% and less than 0.8%		Minor	Less than 1.4	More than 0.1% and less than 0.8%

Through the recent amendments, the KFTC is expected to calculate base surcharge rates more stringently according to the detailed assessment criteria charts. As a result, the overall level of administrative surcharge amounts imposed on offenders who committed violations of the MRFTA is expected to increase.

2. With five different levels of severity determined by points assigned in accordance with the detailed assessment criteria charts, the lower limits of the base surcharge rates applicable to unreasonable concerted acts (i.e., cartels) are adjusted upward.

The range of base surcharge rates applicable unreasonable concerted acts is between 0.5% and 10% under the MRFTA and the Administrative Surcharge Notification.

Prior to the amendments to the Administrative Surcharge Notification, different ranges of base surcharge rates determined by three levels of severity (i.e., very serious, serious, and minor) were applied to unreasonable concerted acts. Under the Amended Notification, the ranges of base surcharge rates applicable to unreasonable concerted acts are now determined by five levels of severity based on points assigned to violations in accordance with the detailed assessment criteria charts, thereby raising the lower limits of the base surcharge rates applicable to certain very serious and serious violations as shown in the table below.

[Unreasonable Concerted Acts: Base Surcharge Rates by Degree of Severity]

<u>Prior to Amendments</u>			<u>Post-Amendments</u>		
Degree of Severity	Base Surcharge Rate		Degree of Severity	Points Assigned According to Detailed Assessment Criteria Chart	Base Surcharge Rate
Very Serious	More than 7% and less than 10%	▶	Very Serious	More than 2.6	More than 8% and less than 10%
				More than 2.2 and less than 2.6	More than 7% and less than 8%
Serious	More than 3% and less than 7%		Serious	More than 1.8 and less than 2.2	More than 5% and less than 7%
				More than 1.4 and less than 1.8	More than 3% and less than 5%
Minor	More than 0.5% and less than 3%		Minor	Less than 1.4	More than 0.5% and less than 3%

As a result, administrative surcharge amounts imposed on offenders who engaged in unreasonable concerted acts are expected to increase.

Should you have any questions regarding any of the foregoing, please contact us at any time.

-
- | | | |
|--------------------|----------------------|--|
| ● Young Chul Yim | TEL : +82 2 316 4629 | E-Mail: ycyim@shinkim.com |
| ● Joo Young Park | TEL : +82 2 316 4692 | E-Mail: jyoungpark@shinkim.com |
| ● John H. Choi | TEL : +82 2 316 4232 | E-Mail: jhchoi@shinkim.com |
| ● Jeannie Y. Jeong | TEL : +82 2 316 1606 | E-Mail: yjeong@shinkim.com |
-