

# *Regulation for Fair Trade Practices in Newspaper Business Case*

(14-2 KCCR 84, 2001Hun-Ma605, July 18, 2002)

In this case, the Constitutional Court upheld the provision of the public notification limiting the total value of free papers and gifts distributed by a newspaper corporation to a maximum of 20% of the total amount of circulations.

## A. Background of the Case

In January, 1997, the Fair Trade Commission (hereinafter referred to as the "FTC") enacted and enforced a new public notification classifying and regulating some of the existing practices of the newspaper business as unfair trade practices. Then, the newspaper business association made a resolution to voluntarily clean up their business practices contrary to the provisions of the above public notification, and the public notification lost effect in January of 1999. The FTC found the self-cleansing efforts of the newspaper businesses far from satisfactory, and enacted a new public notification which entered into force on July 1, 2001. One of the provisions (hereinafter referred to as the "instant provision") in the public notification prohibited the papers from providing free papers and gifts exceeding 20 percent of the total amount of paid circulations.

The complainant, who is in the newspaper sales business, filed the instant constitutional complaint, arguing that the instant provision was in violation of the rule against blanket delegation and excessively restricts property rights.

## B. Summary of the Decision

The Constitutional Court unanimously upheld the instant provision, and rejected the complaint as follows:

### (1) Rule against Blanket Delegation

The Monopoly Regulation and Fair Trade Act provides specific examples of unfair trade practices, and delegates to a presidential decree the duty to decide "categories of and standards for identifying unfair trade acts." The Enforcement Decree of the Act based on the Act, then, provides more specific "categories of and standards for identifying unfair trade acts," and further delegates to the FTC the duty to enact a public notification providing more detailed regulations to be applied to a specific area or business practice when necessary. The instant provision is a part of the public notification enacted thus.

Unfair trade practices occur in complicated and diverse forms during business competition, and they constantly evolve. Then, regulations concerning types and standards of unfair trade practices should make appropriate adaptation to such changes in a timely manner. The National Assembly would not be able to predict nor investigate every unfair business practice distorting conditions for normal competition in all areas, and it would be very difficult to make revisions to existing statutes to adapt to the changes in the environment. Therefore, it is inevitable that detailed rule-making about the types of and standards for identifying unfair trade practices is delegated to a presidential decree.

It is possible to predict what would be the contents of "the types of and standards for identifying unfair trade practices" to be specified by presidential decree in light of examples of unfair trade practices provided by the statute itself. Therefore, the enabling clause did not go beyond the limit for delegation of legislation.

In the instant case, the presidential decree first provides more specific "categories of and standards for identifying unfair trade acts," and then further delegates to the public notification of the FTC to provide more detailed regulations to be applied to a specific area or business practice. Then, it is apparent that the instant provision of the public notification has observed the constitutional limits to the re-delegation of rule-making.

## (2) Rule against Excessive Restriction

(A) The legislative purpose of the instant provision is to reduce overzealous competition in the newspaper business by preventing unfair practices of allowing free papers and distributing gifts by newspaper distributors who have the backing of newspaper publishers who have deeper pockets in order to take away consumers who subscribe to other newspapers. It thus aims to normalize the competition in the newspaper sales and subscription market, thereby, maintaining the public functions of the newspaper in a democratic society, namely, to provide speedy and accurate information and to lead the formation of public opinion in a proper manner. The provision also aims to deter infringement on the basic rights of the newspaper subscribers, general citizens, to make his own choice of newspapers since it is likely that allowing free paper and distributing gifts would lead to coercion to subscribe to a particular newspaper. In light of these factors, the legitimacy of the legislative purpose is recognized.

(B) Certain restriction on allowing free paper and distribution of gifts would be an appropriate means to achieve such legislative objectives. The public notification of the FTC regulating practices

of other business sectors classifies the act of providing gifts exceeding 10% of total value of transaction of goods or services as unfair inducement of consumers. The instant provision applies a relatively more relaxed standard to the newspaper business. In light of such facts, the degree of restriction on the basic rights of citizens in the instant case is minimal level necessary to achieve the legislative objectives.

(C) The private interests being infringed by the instant provision are freedom of occupation and property rights of individuals in the newspaper sales business. The public interest to be protected by the instant provision, on the other hand, is restoration of normal price and competition in the newspaper business by reducing overzealous competition. Since the public interest being protected by the instant provision is larger than the private interest it infringes, the instant provision does not violate the rule against excessive restriction.