

Press Release

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KCC Announced Improvement Measures for Handset Subsidy Sanctions - Penalty surcharge cap doubled -

The Korea Communications Commission (KCC, Chairman Lee, Kyeong-Jae) convened a KCC meeting on Monday, December 9, 2013 and decided on improvement measures for handset subsidy sanctions. The move came as an effort to mitigate excessive competition over subsidies and to set up reasonable criteria that can induce improvements in telecommunications services through quality and fee-based competition, ultimately increasing user benefits.

《Penalty surcharge standards upwardly adjusted》

First, penalty surcharge standards regarding the handset subsidy have been upwardly adjusted. Under the current system, a penalty surcharge is determined as the base amount (related sales amount × base rate) added to mandatory addition and extra addition or reduction. To be specific, the penalty surcharge cap will increase from 1 percent of the sales amount to 2 percent of the same, and the base rate for the penalty surcharge imposition will also rise 1 percentage point from the current 0~3 percent to 1~4 percent. The mandatory addition rate will increase to 20 percent per measure from the fourth violation (up to 100 percent), while 10 percent has been added per measure (up to 50 percent) from the third corrective measure so far.

《Operational rules on the prohibition of the recruitment of new subscribers》

Under the Telecommunications Business Act, the recruitment of new subscribers is prohibited in the ‘cases where a violation is repeated at least three times although other measures have been taken on such violation or where it is clearly recognized that such measures are not sufficient to prevent damage to users.’ Still, since there was a need raised to clarify the criteria to determine whether ‘a violation is repeated’ and ‘at least three times,’ the meaning of the phrase was clarified at the level of regulatory reform. Specifically, whether ‘a violation is repeated’ was decided to be determined after considering whether a certain violation falls under the same category of a prohibited act as the other previous violations under the Enforcement Decree of the Telecommunications Business Act and whether the specific content of the violation is same. As for the phrase ‘repeated at least three times,’ the number of violations were decided to be counted limited to those within the recent three years from the date when a violation terminated. Detailed rules to determine the term for which the recruitment of new subscribers is prohibited were decided, while the term is currently stipulated as up to three months simply. In case of the violations that are categorized as general prohibited acts, the recruitment is prohibited for minimum five days up to 60 days depending on the seriousness of a violation. A violation involving handset subsidy is subject to the prohibition for five to 60 days depending on the average subsidy amount involved in the violation and the violation rate.

《Rules to single out the operator initiating overheated competition》

The KCC also came up with the rules to distinguish who initiates an overheated competition. Based on the ‘violation rate’, ‘average subsidy amount involved in a violation’ and the ‘degree of policy reflection,’ the operator scoring the highest penalty points will be determined to be the one causing an excessive competition.

Especially, the Commission also decided to incentivize market stabilization by mobile carriers by reflecting in the calculation of penalty points the efforts made on the part of operators to stabilize the market in a prompt manner after a KCC warning.

< Rules to single out the operator initiating overcompetition >

	Violation Rate	Avg. subsidy amount	Degree of policy reflection			Subtotal	Total
			Number of days of a high violation rate	Number of days of a high avg. subsidy amount	Time taken until the warning is complied with		
Penalty points	35 pts	35 pts	10 pts	10 pts	10 pts	30 pts	100 pts

The KCC expects the improvement measures taken this time will raise the effectiveness of handset subsidy regulation.

Attachment: Improvement measures for handset subsidy sanctions

< Attachment >

Improvement measures for handset subsidy sanctions

1. Background

- o A need for an effective regulation on excessive subsidy competition to incentivize improved telecommunications services through quality and fee-based competition

2. Measures to improve sanctions

- ① Reform of penalty surcharge imposition rules regarding handset subsidy (by amending the Enforcement Decree of the Telecommunications Act and the KCC notification)

- A penalty surcharge is calculated within the range not exceeding the penalty surcharge imposition cap of 1 percent of sales amount
- Imposed penalty surcharge = base amount (related sales amount × base imposition rate) + mandatory addition + extra addition or reduction

- o **(Increased cap on the imposed penalty surcharge amount)** The cap doubled from 1 percent of the sales amount to 2 percent of the same.
- o **(Upward adjustment of base imposition rate)** The three-tiered base imposition rates depending on the seriousness of a violation were increased by 1 percentage point from the current level of 0~3 percent to 1~4 percent.

Considerations		Current	To be
Base imposition rate (seriousness of a violation)	highly grave violation	2 ~ 3%	3% ~ 4%
	grave violation	1 ~ 2%	2% ~ less than 3%
	minor violation	up to 1%	1% ~ less than 2%

- o **(Upward adjustment of mandatory addition rate)** The mandatory addition rate will increase to 20 percent per measure received (up to 100 percent) from the fourth corrective measure from the current 10 percent per measure (up to 50 percent) from the third such violation.

number of violations	1	2	3	4	5	6	7	8	9	10 or more
current	-	-	-	20%	30%	40%	50%	50%	50%	50%
to be	-	-	-	20%	40%	60%	80%	100%	100%	100%

2 Operational rules on the prohibition of the recruitment of new subscribers

• While the prohibition of the recruitment of new subscribers is stipulated in Article 52 of the Telecommunications Business Act, lack of specific operational rules has impeded regulatory predictability.

※ Article 52.1.10 of the Act prohibits the recruitment of new subscribers for up to three months limited to the cases where a violation is repeated at least three times even though other measures have been taken on such violation or where it is clearly recognized that such measures are not sufficient to prevent damage to users.

o **(Clarification of the legal condition)** The criteria were specified to decide whether ‘a violation is repeated at least three times,’ which is the condition on which the new subscribers are prohibited from being recruited.

- **(Clarification of the meaning of ‘a violation’)** Whether a certain violation falls under the same category of a prohibited act as the other previous violations under the Enforcement Decree of the Telecommunications Business Act, and whether the specific content of a violation is the same as that of the previous ones will be considered before a decision.

- **(Criteria to decide whether a violation is repeated at least three times)** Whether a violation is repeated at least three times will be decided by counting the number of such violations that have occurred within the recent period of three years from the date when a violation terminated.

※ The Telecommunications Business Act, the Broadcasting Act, the Act on Broadcast Advertising Sales Agencies, Etc. and the Monopoly Regulation and Fair Trade Act stipulate “within the recent three years” as the condition of imposing an added penalty surcharge.

o **(Specific rules to determine the term of prohibition)** The term of prohibition will be decided depending on the seriousness of a violations in case of general prohibited acts, while the term applying to a handset subsidy related violation will be determined according to the average subsidy amount

involved in the violation and the violation rate.

Seriousness of a Violation	Number of days
<ul style="list-style-type: none"> highly grave violation in case when the mobile handset subsidy is offered in a unfairly discriminating manner, specifically when the average amount of subsidy exceeds 2.5 times the base amount (270,000 won) or the violation rate is higher than 70 percent. 	20 ~ 60 days
<ul style="list-style-type: none"> grave violation in case when the mobile handset subsidy is offered in a unfairly discriminating manner, specifically when the average amount of subsidy is 1.5 ~ 2.5 times the base amount or the violation rate is 40 ~ 70 percent. 	10 ~ 30 days
<ul style="list-style-type: none"> minor violation in case when the mobile handset subsidy is offered in a unfairly discriminating manner, specifically when the average amount of subsidy does not exceed 1.5 times the base amount and the violation rate is less than 40 percent. 	5 ~ 15 days

3 Rules to single out the operator initiating overheated competition

o **(Objective indicators reflected)** The violation rate and average subsidy amount involved in a violation showing whether a violation led to overheated competition and the degree of policy reflection indicating the efforts made to stabilize the market after a KCC warning are considered as indicators.

- The operator scoring the highest number of points will be singled out as an operator causing overcompetition.

	Violation Rate	Avg. subsidy amount	Degree of policy reflection			Subtotal	Total
			Number of days of a high violation rate	Number of days of a high avg. subsidy amount	Time taken until the warning is complied with		
Penalty points	35 pts	35 pts	10 pts	10 pts	10 pts	30 pts	100 pts