

## Questions and Answers

### Japan

#### PRINCIPAL LAWS

**1. Firstly, what are the principal laws which are aimed at the protection of competition in your country?**

Ans:

Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (AMA)

(A complementary law to the AMA: Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors.)

#### PRINCIPAL AGENCIES

**2. Now, we are interested in the principal agencies involved in the enforcement and administration of your competition laws. What are the respective roles of the principal agencies involved in enforcement of the law?**

##### **2A. Head of State**

Ans: Reservation

##### **2B. Government/relevant ministers**

Ans:

The Japan Fair Trade Commission (JFTC) shall be administratively attached to the office of the Prime Minister, but the JFTC perform its duties independently.

##### **2C. Courts**

Ans:

The jurisdiction of the first instance over any suit falling under any of the following items shall lie in the Tokyo High Court:

- (i) Appeal suits pertaining to hearing decisions by the JFTC
- (ii) Suits concerning compensation of damages pursuant to the provisions of Article 25 of the AMA.
- (iii) Urgent Injunction against an act suspected of violating the AMA, etc

The jurisdiction of the first instance over any suit pertaining to crimes as provided in Article 89 to 91 of the AMA inclusive shall lie in the district courts.

## **2D. Competition agencies**

**Please specify their names and role.**

Ans:

Japan Fair Trade Commission (JFTC)

The JFTC's duties shall be to achieve the purposes set forth in Article 1 of the AMA. In order to perform the duties, the JFTC shall take charge of the following affairs:

- (i) Matters relating to regulation on private monopolization
- (ii) Matters relating to regulation on unreasonable restraint of trade
- (iii) Matters relating to regulation on unfair trade practices
- (iv) Matters relating to regulation pertaining to monopolistic situations
- (v) Matters relating to international cooperation pertaining to affairs under the jurisdiction of the JFTC
- (vi) Affairs that are assigned to the JFTC pursuant to an act (including an order pursuant to an act), in addition to what is listed above

**2E. Do the competition agencies have any other administrative, decision making or negotiating roles?**

Ans: No.

**THE SUBSTANTIVE PROHIBITIONS IN YOUR COMPETITION LAWS**

## **General prohibitions**

**3. Most competition statutes have general prohibitions against anti-competitive behaviour(eg "Combinations in restraint of trade", "agreements to substantially lessen competition"). Are there any general prohibitions in your competition law? And what are they?**

Ans: Yes.

Prohibition of

Private Monopolization

(Refer to Article 3 and Article 2 (5) of the AMA) ,

Unreasonable Restraint of Trade

(Refer to Article 3 and Article 2 (6) of the AMA),

Unfair Trade Practices

(Refer to Article 19, Article 2 (9) of the AMA and Designation of Unfair Trade Practices),

Anti-competitive Business Combination

(Refer to Article 10, Article 13, Article 14, Article 15, Article 15-2, Article 15-3 and Article 16 of the AMA).

## **Horizontal Agreements**

**4. Horizontal agreements are agreements between firms directly in competition with one another.**

**Price fixing [agreements between competitors to raise or fix prices]**

**4A. Does your law have special provisions relating to price fixing?**

**Please specify the law and the provision of that law.**

Ans: No.

**If covered by a general prohibition how does that prohibition treat the practice?**

Ans:

Price Fixing is prohibited as “Unreasonable Restraint of Trade” under Article 3 of the AMA. The term “Unreasonable Restraint of Trade” is defined in Article 2 (6) of the AMA.

**4B. Bid rigging [agreements on which firm will make the low bid for contracts, and what that bid will be] Does your law have special provisions relating to bid rigging? Please specify the law and the provision of that law.**

Ans: No.

**If covered by a general prohibition how does that prohibition treat the practice?**

Ans: The same as 4A.

**4C. Market sharing [agreements to allocate specific customers or sales territories to particular firms and not to compete over the territory or customers of other firms] Does your law have special provisions relating to market sharing? Please specify the law and the provision of that law.**

Ans: No.

**If covered by a general prohibition how does that prohibition treat the practice?**

Ans: The same as 4A.

**4D. Output limitation [agreements not to supply more than a specified quantity of goods or services] Does your law have special provisions relating to output limitation? Please specify the law and the provision of that law.**

Ans: No.

**If covered by a general prohibition how does that prohibition treat the practice?**

Ans: The same as 4A.

**4E. Collective boycotts [agreements between competitors not to deal with firms that supply other firms in their market] Does your law have special provisions relating to collective boycotts? Please specify the law and the provision of that law.**

Ans: Yes.

Refer to Article 19, Article 2 (9) (i), Article 2 (9) (vi) (a) of the AMA and Paragraph 1 of the Designation of Unfair Trade Practices.

Concerted Refusal to Trade is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Concerted Refusal to Trade is defined in Article 2 (9) (i), Article 2 (9) (vi) (a) of the AMA and Paragraph 1 of the Designation of Unfair Trade Practices.

**If covered by a general prohibition how does that prohibition treat the practice?**

Ans:

Concerted Refusal to Trade can be prohibited as “Unreasonable Restraint of Trade” under Article 3 of the AMA when it causes a substantial restraint of competition in any particular field of trade.

**4F. Trade association activities [agreements between members of a trade association] Does your law have special provisions relating to trade association activities? Please specify the law and the provision of that law.**

Ans: Yes.

Refer to Article 8 of the AMA.

**What is the nature of the provision?**

Ans:

Refer to Article 8 of the AMA.

#### **4G. Other horizontal agreements**

**Does your law have special provisions relating to other horizontal agreements which we have not mentioned above? Please specify the law and the provision of that law.**

Ans: Yes.

An international agreement or an international contract which contains such matters as fall under Unreasonable Restraint of Trade or Unfair Trade Practices is prohibited under Article 6 of the AMA.

#### **Monopolization and Dominant Firm Behavior**

**5. Monopolization and dominant firm provisions are aimed at individual firms with market power. Such firms may be able to use their market power to restrict the competitive process or to charge excessive prices.**

##### **5A. General provisions**

**Does your law have general provisions prohibiting monopolization or dominant firm behaviour? Please specify the law and the provision of that law.**

Ans: Yes.

Refer to Article 3, Article 2 (5) of the AMA.

**What type of behaviour is this provision aimed at and what is the nature of the provision?**

Ans:

Private Monopolization is prohibited under Article 3 of the AMA. The term "Private Monopolization" is defined in Article 2 (5) of the AMA.

##### **5B. Excessive prices**

**Are there any provisions prohibiting dominant firms from charging excessive prices?**

Ans: No.

#### **5C. Presumptions of dominant position**

**Are there any provisions defining a dominant position, or creating a presumption that firms with a particular market share or size are in a dominant position?**

Ans: No.

**5D. Predatory pricing [selling at below cost for the purpose of driving out competitors] Are there any specific provisions relating to predatory pricing?**

Ans:

Irrespective of existence of dominant position, Unjust Low Price Sale is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Unjust Low Price Sale is defined in Article 2 (9) (iii), Article 2 (9) (vi) (b) of the AMA and Paragraph 6 of the Designation of Unfair Trade Practices.

#### **5E. Refusals to deal**

**Are there any specific provisions relating to "refusals to deal" by dominant firms?**

Ans:

Irrespective of existence of dominant position, Refusal to Trade is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Refusal to Trade is defined in Article 2 (9) (vi) (a) of the AMA and Paragraph 2 of the Designation of Unfair Trade Practices.

**5F. Discriminatory behaviour [selling to some customers, particularly associated companies, on different terms to others] Are there any specific provisions relating to discriminatory behaviour by dominant firms?**

Ans:

Irrespective of existence of dominant position, Discriminatory Consideration is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Discriminatory Consideration is defined in Article 2 (9) (ii) and Article 2 (9) (vi) (a) of the AMA and Paragraph 3 of the Designation of Unfair Trade Practices.

In addition to the above, irrespective of existence of dominant position, Discriminatory Treatment on Trade Terms etc. is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Discriminatory Treatment on Trade Terms etc. is defined in Article 2 (9) (vi) (a) of the AMA and Paragraph 4 of the Designation of Unfair Trade Practices.

**5G. Exclusive dealing [requiring a retailer or distributor not to sell products competing with the supplier's products] Are there any specific provisions relating to exclusive dealing by dominant firms?**

Ans:

Irrespective of existence of dominant position, Trading on Exclusive Terms is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Trading on Exclusive Terms is defined in Article 2 (9) (vi) (d) of the AMA and Paragraph 11 of the Designation of Unfair Trade Practices.

**5H. Tie-ins [requiring purchasers of one product to purchase other products from the same supplier] Are there any specific provisions relating to tie-ins by dominant firms?**

Ans:

Irrespective of existence of dominant position, Tie-in Sale is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Tie-in Sale is defined in Article 2 (9) (vi) (c) of the AMA and Paragraph 10 of the Designation of Unfair Trade Practices.

**5I. Third line forcing [requiring purchasers of one product to purchase other products from named suppliers] Are there any specific provisions relating to third line forcing by dominant firms?**

Ans:

Irrespective of existence of dominant position, even if the other products are purchased from named suppliers, Tie-in Sale is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Tie-in Sale is defined in Article 2 (9) (vi) (c) of the AMA and Paragraph 10 of the Designation of Unfair Trade Practices.

**5J. Territorial restrictions [specifying that the retailer or distributor may not resell outside of a defined territory] Are there any specific provisions relating to territorial restrictions by dominant firms?**

Ans:

Irrespective of existence of dominant position, Trading on Restrictive Terms is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Trading on Restrictive Terms is defined in Article 2 (9) (vi) (d) of the AMA and Paragraph 12 of the Designation of Unfair Trade Practices.

**5K. Customer restrictions [specifying that the retailer or distributor may only deal with specified customers] Are there any specific provisions relating to customer restrictions by dominant firms?**

Ans:

Irrespective of existence of dominant position, Trading on Restrictive Terms is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Trading on Restrictive Terms is defined in Article 2 (9) (vi) (d) of the AMA and Paragraph 12 of the Designation of Unfair Trade Practices.

**5L. Other specific provisions**

**Are there any other specific provisions relating to monopolization or dominant firm behaviour in your law.**

Ans: No.

## **Vertical Restraints**

**6. Vertical restraints are restrictions imposed by supplying firms upon distributors or retailers on matters such as the price at which the good may be sold, what other products the distributor must or must not sell, or the territory in which the good may be sold.**

**6A. Resale price maintenance [specification of minimum price at which the product may be resold to customers] Does your law have special provisions relating to resale price maintenance? Please specify the law and the provision of that law.**

Ans: Yes.

Resale Price Maintenance is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Resale Price Maintenance is defined in Article 2 (9) (iv) of the AMA.

**And what is the nature of the provision of that law?**

Ans:

Refer to Article 2 (9) (iv) of the AMA.

**6B. Maximum resale price maintenance [specification of a maximum price at which the product may be resold to customers] Does your law have special provisions relating to maximum resale price maintenance?**

Ans: No.

## **6C. Exclusive dealing**

**Does your law have special provisions relating to exclusive dealing? Please specify the law and the provision of that law.**

Ans: Yes.

Trading on Exclusive Terms is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Trading on Exclusive Terms is defined in Article 2 (9) (vi) (d) of the AMA and Paragraph 11 of the Designation of Unfair Trade Practices.

**And what is the nature of the provision?**

Ans:

Refer to Article 2 (9) (vi) (d) of the AMA and Paragraph 11 of the Designation of Unfair Trade Practices.

#### **6D. Tie-ins**

**Does your law have special provisions relating to tie-ins? Please specify the law and the provision of that law.**

Ans: Yes.

Tie-in Sale is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Tie-in Sale is defined in Article 2 (9) (vi) (c) of the AMA and Paragraph 10 of the Designation of Unfair Trade Practices.

**And what is the nature of the provisions?**

Ans:

Refer to Article 2 (9) (vi) (c) of the AMA and Paragraph 10 of the Designation of Unfair Trade Practices.

#### **6E. Third line forcing**

**Does your law have special provisions relating to third-line forcing? Please specify the law and the provision of that law.**

Ans: Yes.

Even if the other products are purchased from named suppliers, Tie-in Sale is prohibited as one of the “Unfair Trade Practices” under Article 19 of the

AMA. Tie-in Sale is defined in Article 2 (9) (vi) (c) of the AMA and Paragraph 10 of the Designation of Unfair Trade Practices.

**And what is the nature of the provisions?**

Ans:

Refer to Article 2 (9) (vi) (c) of the AMA and Paragraph 10 of the Designation of Unfair Trade Practices.

**6F. Territorial restrictions**

**Does your law have special provisions relating to territorial restrictions?  
Please specify the law and the provision of that law.**

Ans:

Trading on Restrictive Terms is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Trading on Restrictive Terms is defined in Article 2 (9) (vi) (d) of the AMA and Paragraph 12 of the Designation of Unfair Trade Practices.

**If covered by a general prohibition how does that prohibition treat the practice?**

Ans:

If the practice tends to impede fair competition, it violates Article 19 of the AMA.

**6G. Customer restrictions**

**Does your law have special provisions relating to customer restrictions?  
Please specify the law and the provision of that law.**

Ans:

Trading on Restrictive Terms is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Trading on Restrictive Terms is

defined in Article 2 (9) (vi) (d) of the AMA and Paragraph 12 of the Designation of Unfair Trade Practices.

**If covered by a general prohibition how does that prohibition treat the practice?**

Ans:

If the practice tends to impede fair competition, it violates Article 19 of the AMA.

#### **6H. Other non-price vertical restraints**

**Does your law have special provisions relating to other non-price vertical restraints which we have not mentioned above? Please specify the law and the provision of that law.**

Ans: No.

#### **Price Discrimination**

**7. Price discrimination is a practice whereby a firm charges different customers or classes of customers different prices for the same good for reasons unrelated to costs. Does your law have any specific provisions relating to price discrimination? Please specify the law and the provision of that law.**

Ans: Yes.

Discriminatory Consideration is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Discriminatory Consideration is defined in Article 2 (9) (ii), Article 2 (9) (vi) (a) of the AMA and Paragraph 3 of the Designation of Unfair Trade Practices.

**What type of behaviour is this provision aimed at and what is the nature of the provision?**

Ans:

Refer to Article 2 (9) (ii), Article 2 (9) (vi) (a) of the AMA and Paragraph 3 of the Designation of Unfair Trade Practices.

### **Mergers and acquisitions**

**8. Mergers are the joining together of two or more firms into an existing firm or to create a new firm. Similar effect can often be achieved by the acquisition of business units or business assets from another firm or the creation of a joint venture. Competition laws often treat all three activities under the same provision.**

**8A. Does your law include a prohibition for anti-competitive mergers and acquisitions? Please specify the law and the provision of that law.**

Ans: Yes.

Article 10 (Acquisition of Stock)

Article 13 (Interlocking Directorates)

Article 14 (Acquisition of Stock by other than a company)

Article 15 (Mergers)

Article 15-2 (Divisions)

Article 15-3 (Joint Stock Transfer)

Article 16 (Acquisition of Businesses)

**And what is the prohibition?**

Ans:

Refer to Article 10, Article 13, Article 14, Article 15, Article 15-2, Article 15-3 and Article 16 of the AMA.

**8B. Does your law contain any provisions presuming certain mergers to be anti-competitive(for example if they exceed a given market share)?**

Ans: No.

**8C. Does your law require firms involved in mergers or acquisitions to notify competition agencies? Please specify the law and the provision of that law. And when is the notification required?**

Ans: Yes.

Refer to Article 10 (Acquisition of Stock), Article 15 (Mergers), Article 15-2 (Divisions), Article 15-3 (Joint Stock Transfer) and Article 16 (Acquisition of Businesses)

\* As for “Interlocking Directorates” and “Acquisition of Stock by other than a company”, notification is not required.

**And when is the notification required?**

Ans:

Notification is required before the transaction takes place.

**8D. And what are the time limits for notification?**

Ans:

The parties must not implement the transaction until the expiration of the 30 day waiting period from the date of acceptance of the notification.

**8E. If the law requires firms to notify the competition agency or agencies, what criteria are used to identify which mergers must be notified?**

Ans:

Refer to the JFTC’s website.

“Notification System concerning M&As under the Amended Antimonopoly Act”

[http://www.jftc.go.jp/e-page/mergers/notification\\_system.pdf](http://www.jftc.go.jp/e-page/mergers/notification_system.pdf)

**8F. If the law does not require firms to notify the competition agency of mergers, does it allow for voluntary notification? Please specify the law and the provision of that law.**

Ans:

The JFTC provides the Prior Consultation System which is the administrative service to make the parties possible to know our view on the impact of the proposed Mergers and Acquisitions transaction on the competition in the market, prior to the statutory filing.

The JFTC will not take any action against the parties when the formal notification is made, if it brings up no question on the proposed Mergers and Acquisitions transaction after the examination.

Prior Consultation is not a statutory requirement and whether to use it is completely up to the parties' voluntaries.

**8G. For the competition agency to stop or prevent anti-competitive mergers and acquisitions, which applies?**

Ans: The JFTC can take administrative actions.

**Deceptive or misleading advertising or representations**

**9. Does your competition law contain any provisions prohibiting advertising which is deceptive or misleading, or other misleading representations?**

**Please specify the law and the provision of that law.**

Ans: Yes.

Deceptive Customer Inducement is prohibited as one of the "Unfair Trade Practices" under Article 19 of the AMA. Deceptive Customer Inducement is defined in Article 2 (9) (vi) (c) of the AMA and Paragraph 8 of the Designation of Unfair Trade Practices.

**And What is the provision?**

Ans:

Refer to Article 2 (9) (vi) (c) of the AMA Paragraph 8 of the Designation of Unfair Trade Practices.

**Unfair use of bargaining position(Unconscionable conduct)**

**10. Does your competition law contain any provisions prohibiting firms from making unfair use of their bargaining position? Please specify the law and the provision of that law.**

Ans: Yes.

Abuse of Dominant Bargaining Position is prohibited as one of the “Unfair Trade Practices” under Article 19 of the AMA. Abuse of Dominant Bargaining Position is defined in Article 2 (9) (v), Article 2 (9) (vi) (e) of the AMA and Paragraph 13 of the Designation of Unfair Trade Practices.

**How do you define "unfair use of their bargaining position"?**

Ans:

Refer to from (a) to (c) under the Article 2 (9) (v), Article 2 (9) (vi) (e) of the AMA and Paragraph 13 of the Designation of Unfair Trade Practices.

**What firms does the provision apply to?**

Ans:

All firms which have dominant bargaining position over the other party.

**And Which customer does the provision apply to?**

Ans:

All customers whose bargaining position is inferior to the other party.

**Coercive behaviour**

**11. Does your competition law contain any provisions aimed at preventing firms from taking action to intimidate competitors or the customers of competitors? Please specify the law and the provision of that law.**

Ans: Yes.

Interference with a Competitor's Transactions and Interference with Internal Operation of a Competing Company are prohibited as the “Unfair Trade Practices” under Article 19 of the AMA. Interference with a

Competitor's Transactions is defined in Article 2 (9) (vi) (f) of the AMA and Paragraph 14 of the Designation of Unfair Trade Practices, and Interference with Internal Operation of a Competing Company is defined in Article 2 (9) (vi) (f) of the AMA and Paragraph 15 of the Designation of Unfair Trade Practices.

### **Other substantive prohibitions**

**12. Does your competition law have provisions for the protection of competition other than those outlined above? Please specify the law and the provision of that law.**

Ans: Yes.

Article 8-4 (Monopolistic Situation),

Article 9 (Excessive Concentration of Economic Power),

Article 11 (Acquisition and Holding of Voting Rights by Banking and Insurance Companies),

Other provisions of the Designation of Unfair Trade Practices (other type of Unfair Trade Practices),

Designation of Specific Unfair Trade Practices

**And what are the provisions?**

Ans:

Refer to each provision of the AMA and the Designation of Unfair Trade Practices described in previous Ans.

### **EXEMPTIONS FROM THE PROVISIONS OF YOUR COMPETITION LAW**

**Actions authorized under other types of law**

**13. If there is a potential conflict between your competition law and other laws, how do you determine which law takes precedence? Please specify the law and the provision of that law.**

Ans:

There is no specific law or provision which stipulates the precedence between competition law and other laws.

#### **Import Cartels or Agreements Between Importers**

**14. Does your competition law exempt or partially exempt agreements aimed at controlling the flow of imports into your country? Please specify the law and provision of that law.**

Ans: No.

#### **Export Cartels or Agreements Between Exports**

**15. Does your competition law exempt or partially exempt agreements between exporters from your country? Please specify the law and the provision of that law.**

Ans: Yes.

Article 33 of Export and Import Transaction Law.

**What type of behavior is this provision aimed at and what is the nature of the provision?**

Ans:

Refer to Article 5 (1) and Article 11 (2) of Export and Import Transaction Law.

#### **Specific products or industries**

**16. Are there any specific products or industries (e.g. agriculture, international shipping) which are exempted or partially exempted from your competition law? Please list the sectors exempt or partially exempt and the nature of the exemption.**

Ans: Yes.

Refer to the Appendix: Exemption from application of the AMA.

## **Small business**

**17. Are there any exemptions or partial exemptions from your competition law for small and medium size businesses? Please specify the law and the provision of that law.**

Ans: Yes.

Refer to Appendix: Exemption from application of the AMA

**What is the nature of the exemptions?**

Ans:

Refer to Appendix: Exemption from application of the AMA

**And how is small business defined?**

Ans: Some laws other than the AMA have definitions of small business.

## **Rationalization cartels or agreements**

**18. Rationalization cartels are agreements between firms, and authorized by the government, to close down inefficient plants, reduce capacity and reorganize production in order to increase overall industry efficiency and performance. Does your competition law contain any exemptions or partial exemptions for rationalization cartels? Please specify the law and the provision of that law.**

Ans: No.

## **Depression cartels or agreements**

**19. Depression cartels are agreements between firms and authorized by the government to reduce production to meet a temporary downturn in the market. Does your competition law contain any exemptions or partial**

**exemptions for depression cartels? Please specify the law and the provision of that law.**

Ans: No.

### **Government agencies**

**20. Are Government agencies exempted or partially exempted from your competition law? Please specify the law and the provision of that law.**

Ans: No.

### **Practices authorized by administering bodies**

**21. Is there any provision for competition agencies or the relevant ministers exempt specific activities from the competition law? Please specify the law and the provision of that law.**

Ans: Yes.

Refer to Appendix: Exemption from application of the AMA.

### **Intellectual property**

**22. Does your competition law contain any exemptions for actions relating to the protection of intellectual property rights? Please specify the law and the provision of that law.**

Ans: Yes.

Article 21 of the AMA.

**And what is the nature of this exemption?**

Ans:

Refer to Article 21 of the AMA.

### **Labour markets**

**23. Does your competition law exempt or partially exempt labour market activities? Please specify the law and the provision of that law.**

Ans: No.

#### **Other exemptions**

**24. Are there any other exemptions from your competition law other than those outlined above? Please specify the law and the provision of that law.**

Ans:

Refer to Appendix: Exemption from application of the AMA.

### **INTERNATIONAL APPLICATIONS**

#### **Acts by citizens or organizations outside the country**

**25. To what extent are the overseas activities of your citizens or organizations covered by your competition law?**

Ans: Reservation.

#### **Acts by foreign citizens or organizations**

**26. To what extent are the actions of foreign citizens or organizations covered by your competition laws for actions that take place inside your borders?**

Ans: They are covered by the AMA.

**27. To what extent are the actions of foreign citizens or organizations covered by your competition laws for actions that take place outside your borders but affect markets within your borders?**

Ans: Reservation.

**28. To what extent are the actions of foreign citizens or organizations covered by your competition laws for actions that take place outside your borders but affect exporters from your country?**

Ans: Reservation.

## **ENFORCEMENT, REMEDIES AND PENALTIES**

### **Mode of operation**

**29. Different countries have different ways of controlling anti-competitive behaviour. Which of the following best describes your approach?**

Ans: We tend to prohibit specified anti-competitive activities.

**30. In this section we wish to examine the sanctions which are available to the competition agencies and/or courts to deal with contraventions of the law.**

**30A. What is the maximum fine chargeable for the various offenses against your competition law?**

Ans:

Entrepreneur: 500 million yen

Individual persons: 5 million yen

(As for the Administrative Surcharge, refer to 30E )

**30B. Are any other criminal penalties, including imprisonment, available for offenses against the competition law? Please specify the law and the provision of that law.**

Ans: Yes.

Refer to Chapter 11 of the AMA.

**And what are those penalties?**

Ans: Imprisonment with work up to 5 years.

**30C. Does the competition agency have the power to order restitution or payment of damages to affected parties? Please specify the law and the provision of that law.**

Ans: No.

**30D. Does the legislation provide for orders to be made by government or other bodies to prevent repeat contraventions? Please specify the law and the provision of that law.**

Ans: Yes.

Refer to Article 7, Article 8-2 and Article 20 of the AMA.

**What form of orders can be made, any by what body?**

Ans:

[Cease and Desist Order]

In the case that there exists any act in violation of the AMA, the JFTC may order the relevant entrepreneur to cease and desist from the said acts, transfer a part of his/her business, or take any other measures necessary to eliminate such acts in violation. Any person who fails to comply with a cease and desist order after it has become final and binding shall be punished by imprisonment with work for not more than two years or by a fine of not more than three million yen.

(As for the Administrative Surcharge, refer to 30E )

**30E. What other penalties or sanctions are available?**

Ans:

[Surcharge Payment Order]

In the case that there exists any act in following types of violation of the AMA, the JFTC shall order the said entrepreneur to pay to the national treasury a surcharge. Surcharge Payment Order is not criminal penalties but administrative sanction.

(Types of violation subject to surcharge)

- Private Monopolization
- Unreasonable Restraint of Trade
- 5 types of Unfair Trade Practice (Concerted Refusal to Trade, Discriminatory Pricing, Unjust Low Price Sale, Resale Price Restriction, Abuse of Dominant Bargaining Position)

### **Private parties**

**31A. Do private parties have the right to take action against prohibited activities in the absence of action by the enforcement agency?**

Ans: Yes.

Irrespective of existence of the enforcement by the JFTC, private parties can file a civil lawsuit against violators of the AMA

**31B. What damages and remedies are available to private parties?**

Ans:

Damage Compensation (Refer to Article 709 of the Civil Code.)

Suspension or Prevention of the Infringement of “Unfair Trade Practices” (Refer to Article 24 of the AMA)

**31C. Can private parties seek orders to prevent contravention? Please specify the law and the provision of that law.**

Ans: Yes.

Refer to Article 24 of the AMA.

**What form of orders can they seek?**

Ans:

A person whose interests are infringed upon or likely to be infringed upon by Unfair Trade Practices activities and who is thereby suffering or likely to suffer extreme damage is entitled to seek the suspension or prevention of such infringements from an entrepreneur or a trade association that infringes upon or is likely to infringe upon such interests.

### **Foreign complainants**

**32. Are there any restrictions or special limitations where the complainant is not domestically based? Please specify the law and the provision of that law.**

Ans: No.

**33. Are there any restrictions or special limitations where the complainant is a foreign government?**

Ans: No.

### **Other aspects**

**34. Are there any other aspects of your competition law or enforcement policy which you would like to comment on?**

Ans: No.

Appendix:

### **Exemption from application of the AMA**

(As of June 2010)

#### **Exemption from application under the AMA itself**

<b>Act to which shall be not apply the AMA</b>	<b>Provision</b>
The acts recognizable as the exercise of rights under the Copyright Act, the Patent Act, the Utility Model Act, the Design Act, or the Trademark Act	Article 21
The acts of a specific partnership including a federation of partnerships	Article 22

The specific legitimate acts in order to fix and maintain the resale price	Article 23
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#### Exemption from application under the other individual laws

Name of Legislation	Act to which shall be not apply the Antimonopoly Act	Provision
Corporate Reorganization Law	Acquisition of shares of companies under reorganization	Article 229
Act on Non-Life Insurance Rating Organizations of Japan	Exemption concerning the earthquake insurance and compulsory automobile insurance	Article 7-3
Insurance Business Law	Insurance cartels	Article 101
Law concerning Liquor Business Association and Measure for Securing Revenue from Liquor Tax	Rationalization cartels	Article 93
Copyright Act	Cartels on fees for commercial usage of music records	Article 95(13), Article 97(4)
Law concerning Coordination and Improvement of Hygienically Regulated Business	Cartels to prevent excessive competition	Article 10
Agricultural cooperative Association Law	Agricultural Association corporation	Article 72-8-2
	Federation of agricultural co-operatives	Article 73-24
Export and Import Transaction Law	Cartel on export	Article 33
Law concerning the Organization of Small and Medium Enterprise Organizations	Joint economic undertakings	Article 89
Law on the cooperative Association of Small and Medium Enterprises	Federation of small business association	Article 75-2
Maritime Transportation Law	maritime transportation cartels (international)	Article 28

	maritime transportation cartels (coastal service)	Article 28
Road Transportation Law	Transportation cartels	Article 18
Civil Aeronautics Law	Aviation cartels (international)	Article 110
	Aviation cartels (domestic)	Article 110
Coastal Shipping Association Law	Maritime transportation cartels (coastal service)	Article 18
	Joint shipping businesses	Article 18