

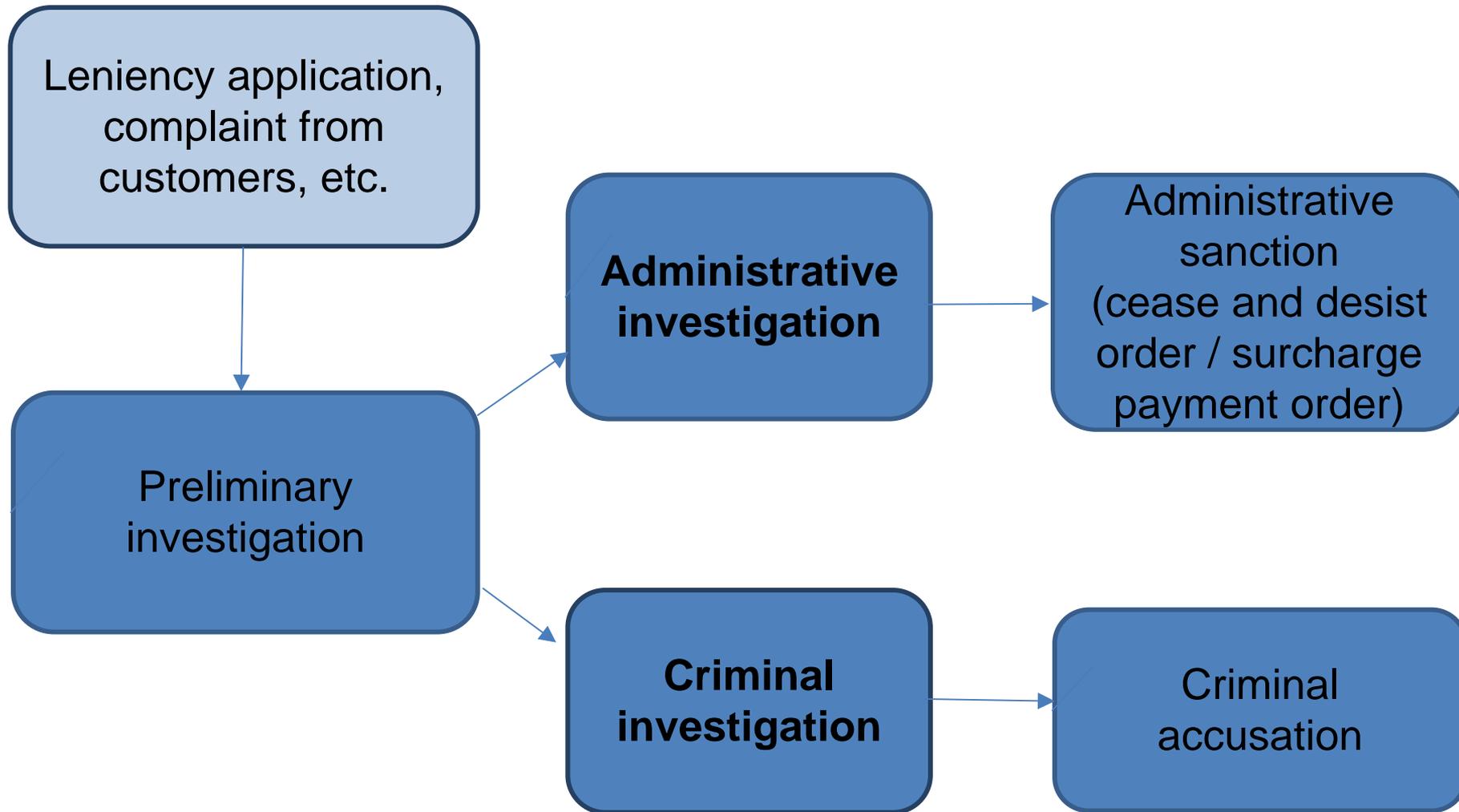


# Investigative Techniques in Cartel Cases

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- Cartels tend to be conducted behind closed doors
  - Evidences tend to be held exclusively by cartelists
- Cartels can lead to severe penalties
  - Cartelists are careful not to keep evidences
  - Evidences may be hidden or destroyed if cartelists become aware of the JFTC's investigation



- ❑ Typically starts with a surprise visit
- ❑ The JFTC can enter business premises and other places without any prior notification (“dawn raid”) and seize any relevant documents
- ❑ Rejection/obstruction of a dawn raid can lead to imprisonment for not more than one year or a fine of not more than JPY 3M (c. USD 30 thousand)
- ❑ A warrant issued by a court is not necessary

- ❑ Identify the premises to be searched, and key persons allegedly involved in cartels
  - premises of cartelists/trade associations
- ❑ Confirm the availability of the staff (100 – 200 staff may be necessary)
- ❑ Undertake covert reconnaissance of the premises to be searched
  - any impediments to gaining entry (such as security measures)?
- ❑ May need to coordinate with overseas competition authorities for a simultaneous raid

- ❑ When searching multiple premises, entry is made simultaneously
  - need to establish a team for each premise to be searched
- ❑ The composition of a search team depends on a number of factors, including:
  - the size of the search premise;
  - the number of “target” employees;
  - the volume of documents likely to be found; and
  - IT skills and language proficiency of the JFTC staff.

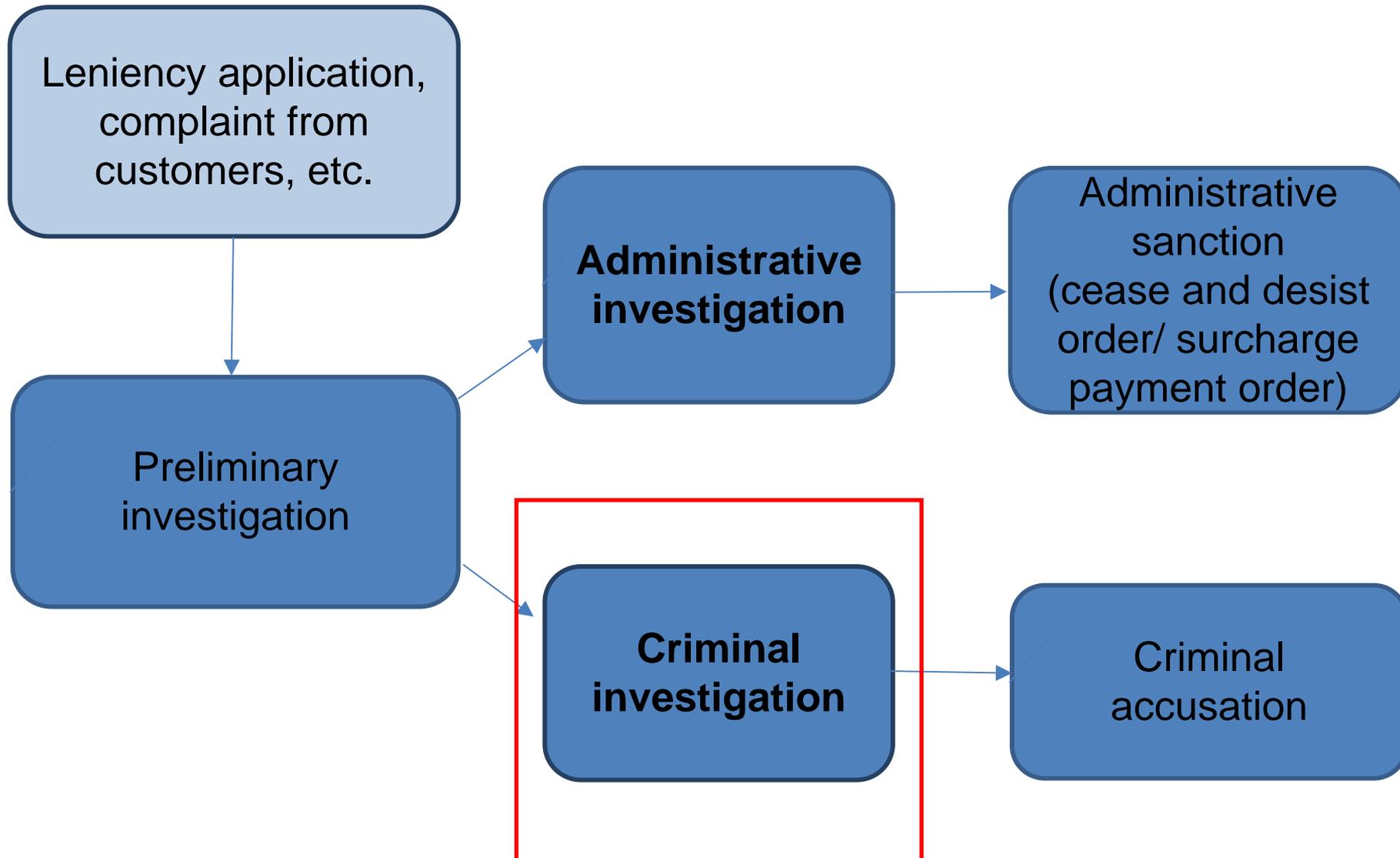
- ❑ Briefing sessions are held prior to a dawn raid
- ❑ A written briefing package is distributed at the briefing session
- ❑ The staff should be familiar with:
  - the composition of the teams and team leaders;
  - an overview of the alleged cartel, key individuals;
  - the locations of the search premises;
  - the types of evidence sought; and
  - logistical issues and important mobile phone numbers.

- Before commencing the search, a team leader
  - gives a paper to a senior company official setting out a summary of alleged cartel, etc.
  - explains the nature of the search
  - cautions against obstruction
  - obtains a consent for the search
  - asks for the explanation about the responsibilities of each company official
  
- Interviewing key employees on a voluntary basis
  - catching interviewees off guard

- ❑ Automobiles, mobile phones and briefcases of key individuals to be searched as necessary
- ❑ Establishment of a central command post
  - coordinates the sharing of emerging information among search teams
  - each team leader reports to the central command post on the development of the search
- ❑ At the end of the search
  - list of the seized documents provided to a senior company official
  - compare the list with the actual documents
  - no attorney-client privilege

- Importance of digital information
  - a dedicated internal team (“Digital Forensics Team”) works in the gathering/analyzing of digital evidence
- At each search premise:
  - understand the IT system – e.g., the number of client PCs and location of the server
  - identify the data to be gathered
  - use of a software to retrieve deleted data
  - careful analysis of the data can be conducted later
- A report is prepared for each search premise
  - outline of the IT system, the digital information gathered

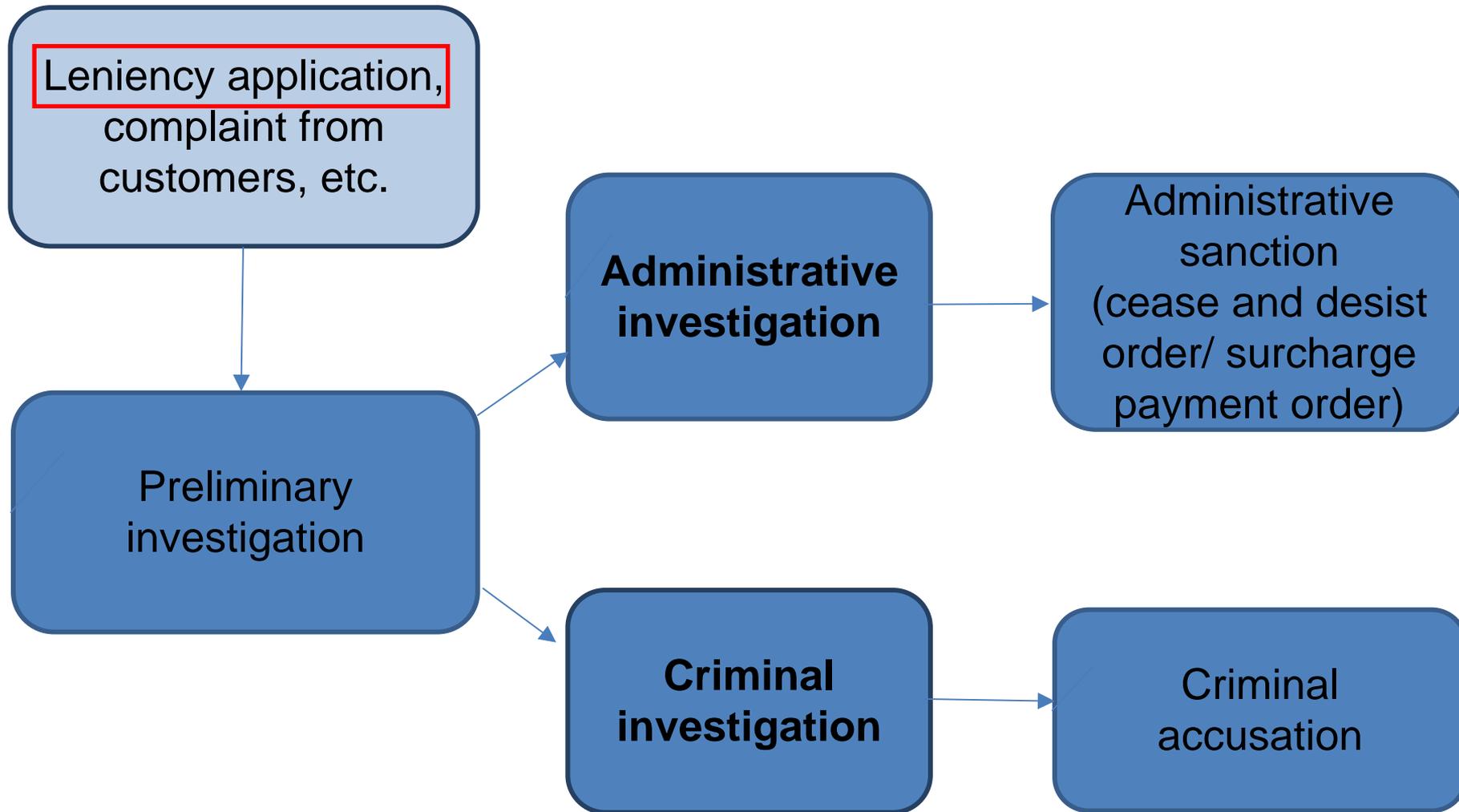
- Analysis of the seized documents and interview of the relevant persons on a voluntary basis
  - a challenge faced by the JFTC: no discretion over the amount of administrative fine (surcharge payment)
- The JFTC may also:
  - issue an order to submit a report - e.g., turnover generated from the cartelized products
  - issue an order to appear before the JFTC for interrogation
  - request a report from customers of cartelized products

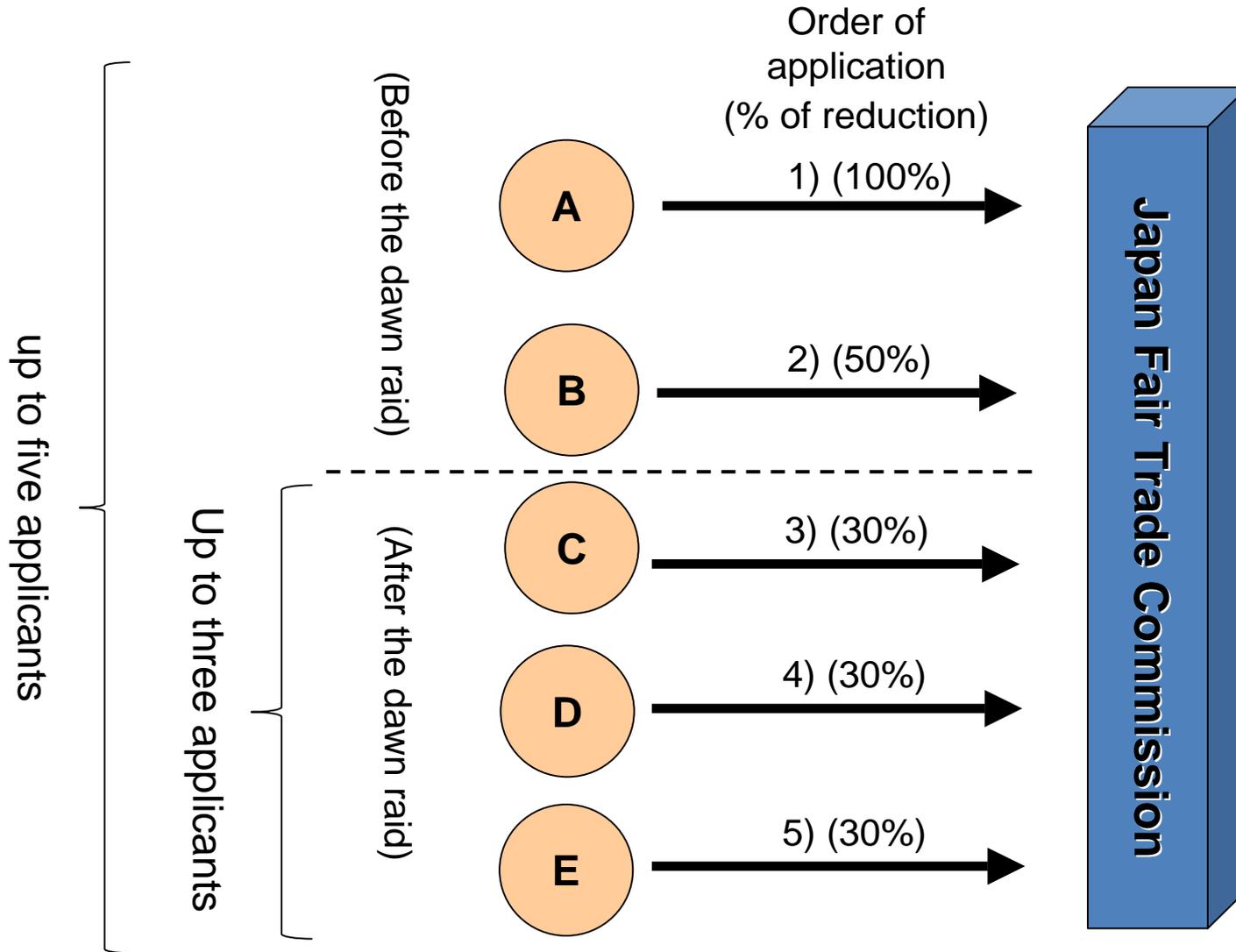


- ❑ Introduced in January 2006 to facilitate criminal accusation
- ❑ Investigative measures include:
  - dawn raid and seizure
  - interview on a voluntary basis
- ❑ Due process
  - a warrant issued by a court is necessary for a dawn raid and seizure
  - interviewees have a right to remain silent (privilege against self-incrimination)



# Leniency Program





- ❑ The leniency program can be effective in gathering information
  - obligation to report on the facts relating to the cartel
  - ongoing obligation to answer additional questions from the JFTC
- ❑ 100+ applications are made per year in recent years
- ❑ 623 applications since its introduction (1 Jan 2006 to 31 Mar 2012)



Thank you very much !!  
Please visit our English website at:  
<http://www.jftc.go.jp/en>

Disclaimer:

The views expressed in this presentation are mine and are not necessarily those of the JFTC. Any errors that may be contained in this presentation are mine.



Dokkin  
(JFTC mascot character for kids)