



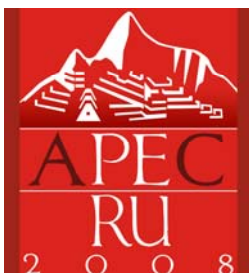
**Asia-Pacific
Economic Cooperation**

2008/SOM3/CPDG/004

Agenda Item: 6

Summary of the Antimonopoly Act Amendment Bill

Purpose: Information
Submitted by: Japan



**Competition Policy Deregulation Group
Meeting
Lima, Peru
13–14 August 2008**

Summary of the Antimonopoly Act Amendment Bill



Japan Fair Trade Commission
April, 2008

Note : The bill to amend the AMA was submitted to the 169th Diet session on March 11, 2008.
The Diet has carried the deliberation on the bill over to the next session.

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Expansion of Types of Conduct Subject to Surcharges: Outlines

- Exclusionary type of private monopolization
- Certain types of unfair trade practices
 - concerted refusal to trade
 - discriminatory pricing
 - unjust low price sales
 - resale price restriction
 - abuse of superior bargaining position
- Misleading representations (under the Premiums and Representations Act)

Expansion of Types of Conduct Subject to Surcharges (1)

- Exclusionary type of private monopolization

- Surcharge calculation:

- (Sales of goods or services concerned) x 6%

Note: Applicable surcharge rate will be 2% for retailers and 1% for wholesalers

- New guidelines as to exclusionary conduct will be made public

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Expansion of Types of Conduct Subject to Surcharges (2)

- Four types of unfair trade practices

- (i) concerted refusal to trade, (ii) discriminatory pricing, (iii) unjust low price sales, (iv) resale price restriction

- Surcharge calculation :

- (Sales of goods or services concerned) x 3%

Note: Applicable surcharge rate will be 2% for retailers and 1% for wholesalers

- Levied against the second offence of the same type of infringement within ten years

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Expansion of Types of Conduct Subject to Surcharges (3)

- Another type of unfair trade practices
 - Abuse of superior bargaining position
 - Surcharge calculation :
 - (Amounts of transaction with trade partner(s) that suffered the abuse) x 1%
 - Levied against the continuous offence
 - Elements of violation defined in the AMA
 - coercion to purchase, unjust receipt of economic benefits, refusal to receive, unjust return of goods, etc.

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Expansion of Types of Conduct Subject to Surcharges (4)

- Misleading representations (under the Premiums and Representations Act)
 - Surcharge calculation :
 - (Sales of goods or services concerned) x 3%
 - Note: threshold of sales → 100 million yen
 - Levied against the offence by intention or by gross negligence

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Surcharge Rate Table

	Manufacturer, etc.	Retailer	Wholesaler
(Under the existing law)			
Unreasonable restraint of trade	10% (4%)	3% (1.2%)	2% (1%)
Control type of Private monopolization	10%	3%	2%
(Under the proposed bill)			
Exclusionary type of Private monopolization	6%	2%	1%
Concerted refusal to trade, discriminatory pricing, etc.	3%	2%	1%
Abuse of superior bargaining position	1%		
Misleading representations	3%		

Percentages in parentheses are applicable to small and medium enterprises

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Increase in Surcharge Rates Applicable to those playing Leading Role

- Applicable to cartels, bid rigging
- Surcharge rates increased by 50% (e.g., 10% → 15%)
- Levied against those who
 - Originate the illegal scheme, and request other firms to participate in or not to cease from the infringement
 - Continuously set prices or allocate trade partners, in response to conspirator's request

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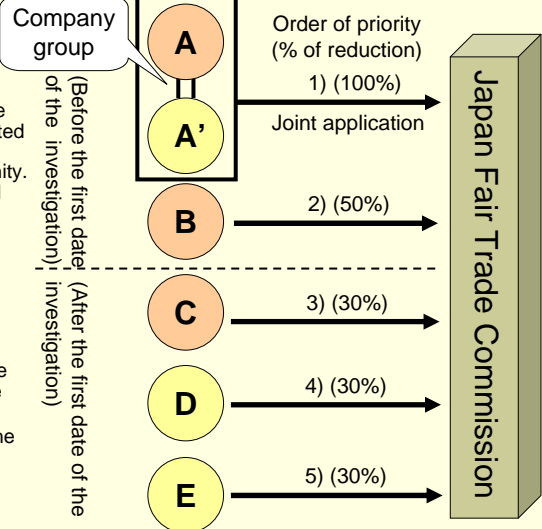
Review of the Leniency Program

Joint application

Upon certain conditions being met, two or more violating entrepreneurs within the same company group will be permitted to jointly file an application for surcharge reduction or immunity. All applicants will be assigned the same order of priority.

Expansion of the number of leniency applicants

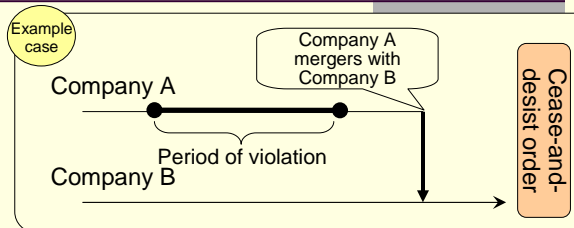
A total of five (currently three) violators including before and after JFTC investigation will be allowed to apply for surcharge reduction or immunity. (Up to three applicants after the first date of the investigation)



Review of Addressees of cease-and-desist order and surcharge payment order

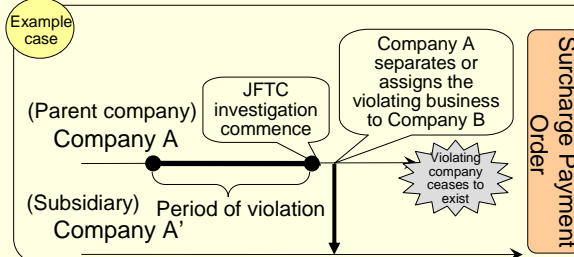
Cease-and-desist order

Clarify that cease-and-desist order can be issued to the surviving company that takes over the violating business from the violator in a case where the violating company merges with another, etc.



Surcharge payment order

Stipulate that in certain cases surcharge payment order can be issued to the company that takes over the violating business.



Extension of the Statute of Limitations for Administrative Order

- There have been cases where an order cannot be issued because the statute of limitations * has elapsed.

* maximum period between discontinuation of violation and issuance of an order

➔ Need to Extend the statute of limitations applicable to cease-and-desist order and surcharge payment order: from the current three years to five years

<the statute of limitations of other statutes>

National Tax Procedure Act	Financial Products Trading Law	Certified Public Accountant Law	U.S. antitrust law	E.U. competition law
five years	three years	seven years	five years	five years (max. 10 years)

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Review of Regulations on Business Combination (1)

Introduction of Prior Notification System for Share Acquisitions

- Prior notification system for share acquisitions will be introduced, similar to those for other forms of business combinations.
- Minimum yen thresholds for notification will be revised as the following;

	Current	Amendment Bill
Acquiring corporation	10 billion JPY on the basis of the total of the assets of an acquiring corporation, its parent corporation and its subsidiaries in Japan	20 billion JPY on the basis of the total of domestic turnover of a "corporate group"
Acquired corporation	1 billion JPY on the basis of the asset of an acquired corporation (Japanese corporation)	2 billion JPY on the basis of the total of domestic turnover of an acquired corporation and its subsidiaries

Note: "corporate group" refers to a group of corporations consisting of an ultimate parent company of the acquiring corporation and its subsidiaries.

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Review of Regulations on Business Combination (2)

Review of Notification Thresholds for Share Acquisitions

- Percentage thresholds will be simplified from three-step thresholds (10%, 25% and 50% on the basis for voting rights held solely by an acquiring corporation) to two-step thresholds(20% and 50% on the basis for voting rights held by a “corporate group” as a whole).

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Review of Regulations on Business Combination (3)

Review of Notification Thresholds for Mergers, etc.

- The scope of notifications for mergers, acquisitions of business, etc. will be determined by a “corporate group” in principle.
- Domestic turnover will be used as minimum yen thresholds.
- Minimum yen thresholds will be revised in general as the following;

Current	Amendment Bill
10 billion JPY on the basis of the total of the assets of an acquiring corporation, its parent corporation and its subsidiaries in Japan	20 billion JPY on the basis of the total of domestic turnover of a “corporate group”
1 billion JPY on the basis of the total of the assets of an acquiring corporation, its parent corporation and its subsidiaries in Japan	2 billion JPY on the basis of the total of domestic turnover of a “corporate group”

- Same notification thresholds will be applied to both Japanese and foreign corporations.

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Review of Regulations on Business Combination (4)

Expansion of the Scope of Exemptions from Notifications, etc.

- Mergers, acquisitions of businesses, etc. among corporations within a “corporate group” will be exempted from notifications.
- Provisions on notifications for joint share transfer, etc. will be introduced.

Note: “Joint share transfer” refers to a transfer whereby more than two corporations cause all of their issued shares to be acquired by a newly incorporated corporation.

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Provisions for Information Exchange with Foreign Competition Authorities

- Introduce of provisions that stipulates conditions to be satisfied when the JFTC exchanges information with foreign competition authorities

- * Competent foreign competition authorities are able to provide JFTC with information equivalent to information provided by JFTC.
(→Reciprocity)
- * The same degree of confidentiality as is practiced in Japan is assured.
(→Assured confidentiality)
- * Information provided by JFTC will not be used by competent foreign competition authorities for any purpose other than that sought for their duties.
(→Prohibition of information use for inappropriate purposes)
- * Appropriate measures will be taken to prevent provided information from being used for criminal procedures.
(→Restrictions on use of information for criminal procedures)

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Provisions Concerning Access to the Case Record by Interested Parties

- Article 70.15 of the AMA provides that interested parties may access to or copy the case record pertaining to the taken decision.
 - Tokyo High Court decision (dated September 27, 2006; pending at the Supreme Court)
 - “JFTC is NOT allowed to restrict the scope of access or copying the case record of its discretion without statutory provision.”
- Need to introduce statutory provisions to allow the JFTC to restrict the access to case records by interested parties if there is a justifiable reason for such restriction

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Special Rules of Document Production Order issued by Courts

- In private (civil) injunction suits seeking an injunction to stop unfair trade practices, documents containing “trade secrets” (e.g., account books) is exempt from submission obligation under the Code of Civil Procedure.
- Need to introduce special rules: The court can issue an order to produce documents unless there is a justifiable reason for refusing the production
- Note: similar to the rules in the Patent Act, etc.
- Simultaneously introduce provisions that allow the judge can issue a confidentiality order to those litigants who touch upon “trade secrets.”

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