



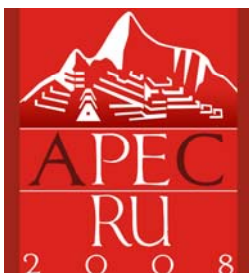
**Asia-Pacific
Economic Cooperation**

2008/SOM3/CPDG/006

Agenda Item: 6

Updates of Competition Policy and Law in Japan

Purpose: Information
Submitted by: Japan



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

Updates of Competition Policy and Law in Japan



Japan Fair Trade Commission
August, 2008

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Section 1

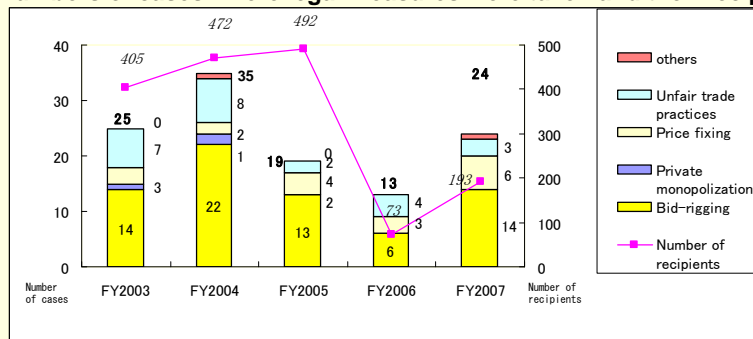
Enforcement of Antimonopoly Act in FY 2007

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Legal measures

- In FY 2007, JFTC took legal measures against a total of 193 entrepreneurs in 24 cases in violation of Antimonopoly Act.

Numbers of cases where legal measures were taken and their recipients

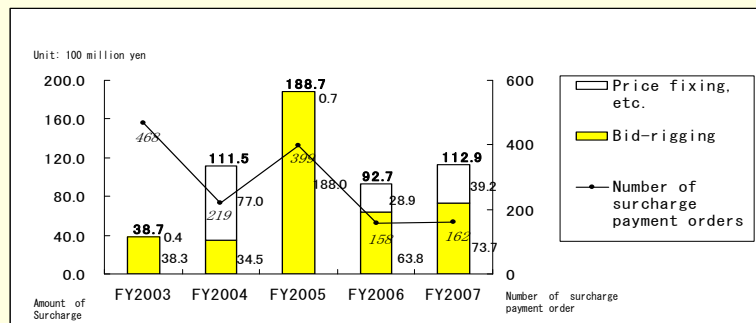


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Surcharge payment orders

- With respect to surcharge payment orders, the amount of payment confirmed in FY 2007 was about 11.3 billion yen against 162 entrepreneurs.

Trend in amount of surcharge, etc.



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Main cases

- Bid-riggings over geological survey business and location survey planning business concerning main forest road projects ordered by the Japan Green Resources
 - ➔ JFTC filed criminal accusation with the Prosecutor General against 4 companies and 7 individuals
- International cartels over Marine Hose
 - ➔ Investigations were commenced simultaneously in May 2007 by competition authorities including the US Department of Justice etc.

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Leniency Program

- Leniency program was introduced in the Antimonopoly Act in January 2006
- In FY 2007, 74 leniency applications were received (179 applications were received from January 2006 until March 2008)
- In FY 2007, JFTC published the names of a total of 37 entrepreneurs that received lenient treatments in 16 cases

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Section 2

Summary of the Antimonopoly Act Amendment Bill

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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Major Points of the bill

1. Surcharge Payment Order

- expansion of the scope of surcharge
- Increase in surcharge rate to ring-leaders
- Review of the leniency program
- Extension of the statute of limitations for administrative orders

2. Notification and Report to the JFTC as to Business Combination

- Introduction of pre-notification system on business combination by acquiring shares
- Expansion of the Scope of Exemptions from Notifications

3. Others

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1. Surcharge Payment Order

- Expansion of Types of Conduct Subject to Surcharges

While the current scope of surcharge covers unreasonable restraint of trade (cartel, bid-rigging etc) and control type of private monopolization, the bill intends to expand the scope of surcharge to the following anti-competitive activities.

- 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)
- Levied against the 2nd offence of the same type of infringement

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1. Surcharge Payment Order
 - Surcharges Rate Table

	Manufacturer, etc.	Retailer	Wholesaler
(Under the existing law)	10% (4%)	3% (1.2%)	2% (1%)
	10%	3%	2%
(Under the proposed bill)	6%	2%	1%
	3%	2%	1%
	1%		
	3%		

Percentages in parentheses are applicable to small and medium enterprises

1. Surcharge Payment Order
 - Increase in Surcharge rate applicable to ring-leader
 - Review of the Leniency Program

Increase in Surcharge Rates Applicable to those playing Leading Role

- Applicable to cartels, bid rigging
- Surcharge rates increased by 50%
(e.g., 10% → 15%)

Review of the Leniency Program

Joint Application

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

Expansion of the Number of Leniency Applicants

A total of 5 (currently 3) violators including before and after JFTC's investigation will be permitted to file an application for surcharge reduction or immunity. (Up to 3 applicants after the investigation start date.)

1. Surcharge Payment Order

- 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.

➔ 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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2. Review of Regulations on Business Combination

- Introduction of Prior Notification Sys for Share Acquisitions

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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2. Review of Regulations on Business Combination

- Review of notification thresholds for mergers

- The scope of notifications for mergers, acquisition of business, etc. will be determined by a “corporate group” in principle.
- Mergers, acquisitions of businesses, etc. among corporations within a “corporate group” will be exempted from notifications.

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Thank you very much for your attention.

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