Introduction to the Antimonopoly Law

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What Practices are Subject to Control by the Antimonopoly Act?

- Cartels
- Monopolization
- Mergers
- Unfair Trade Practices
Purpose of the Antimonopoly Act
- Assure the interest of consumers
- Democratic and wholesome development of the national economy

Promote free and fair competition
- Stimulate creative initiative of firms
- Enliven business activities of firms
- Elevation the level of employment and people's real income

- Prohibition of cartels
- Prohibition of private monopolization
  - Restriction of mergers and acquisitions
- Prohibition of unfair trade practices
  - Regulation in accordance with the Subcontract Act
  - Regulation in accordance with the Premiums and Representations Act

Structure of Antimonopoly
How is the Antimonopoly Act Implemented?

- Enforcement by the JFTC
  - Elimination Measures
  - Surcharge Order
    - price cartels, bid-riggings etc.
- Criminal Penalties by the courts
- Civil Penalties by the courts
  - Civil Damage Suits
  - Civil Injunction Suits against unfair trade practice (since 2001)
Prohibition of Cartels

■ Prohibition of Unreasonable restraint of trade (Section 3)
  ◆ price cartels, volume cartels, market allocation cartels, bid riggings and boycott

■ Regulation of Activities of Trade Associations (Section 8)

■ Prohibition of Participation in International Cartels (Section 6)
Regulation against Monopolies and Oligopolies

- Prohibition of Private Monopolization (Section 3)
  - Formation of market power or the exercise of existing market power by a firm, or by combination or conspiracy with other firms.

- Measures against a Monopolistic Situation
  - Divestiture order (we have no case)
Continued….

- Monitoring Parallel Price Increase
  - JFTC orders the filing of a report describing reasons for a price increase.
Control of mergers (Chapter 4)

- Definition of Merger
  - merger (amalgamation)
  - acquisition of business
  - stock holdings
  - interlocking directorates

- Mergers are prohibited
  - if they may cause a substantial restraint of competition in any field of trade: may create, maintain or increase a market power in any relevant markets.
Regulation of the Overall Concentration through mergers

- Restriction of the Establishment of Holding Company
- Restriction on Total Amount of Stockholding by a Large Non-financial Company
- Restriction on Stockholding by a Financial Company

Repeal of Restriction on Total Amount of Stockholding

Regulation on establishment of a company with Excessive Concentration of Economic Power
Regulation of Unfair Trade Practice (Section 19)

- Refusal to Deal
- Discriminatory Pricing; Discriminatory Treatment
- Predatory Pricing, Unjust Low Price Sales, and Unjust High Price Purchasing
- Deceptive Customer Enticement and Customer Enticement by Unjust Benefit
Continued….

- Tie-in Sales
- Dealing on Exclusive Terms
- Resale Price Maintenance
- Dealing on Restrictive Terms
- Abuse of Dominant Position
- Interference with a Competitor’s Transaction, Interference with Internal Operation of a Competing Company
What laws Supplement the Antimonopoly Act?

- **Premium and Representation Act of 1962**
  - Prohibition of Excessive Premiums
  - Prohibition of Misleading Representation
- **Subcontract Act of 1956**
Structure of the JFTC
Continued....

The Commission's Three powers

Administrative Power

Quasi-legislative Power

Quasi-judicial Power
How is the Antimonopoly Act Implemented?

Procedure in Dealing with a Violation of the Antimonopoly Act:

1. Detection by the Fair Trade Commission
2. Report by the Public to the Fair Trade Commission
3. Notification from the Public Prosecutor General

- Investigation
  - Criminal Accusation
  - Decision to initiate hearing
  - Consent decision
  - Indictment

- Recommendation
  - Refusal
  - Acceptance
  - Urgent Injunction Order

- Lawsuit
  - Appeal for withdrawal
  - Tokyo High Court
  - Supreme Court
Elimination Measures

■ Three Types of JFTC Decisions
  ◆ Recommendation Decision
  ◆ Consent Decision
  ◆ Hearing Decision

■ Judicial Review
  ◆ Tokyo High Court
  ◆ Supreme Court
Surcharge Order

- Surcharges are imposed in the case that *price cartels and bid-riggings as well as cartels that influence prices by restricting production and/or sales quantity are carried out*. The surcharge order is issued to firms and members of trade associations which engaged in such cartels.
The sum of surcharge is calculated by the following formula:

\[
\text{Sales amount of the concerned goods during the period of the surcharge} \times \begin{cases} 
8\% \text{ for non-wholesalers and non-retailers} & \\
1\% \text{ for wholesalers} & \\
2\% \text{ for retailers} & 
\end{cases}
= \text{Sum of surcharge}
\]

* The calculation period consists of a maximum of three years from the final phase of the surcharge.
Civil Suits

- Civil Damage Suits
  - Section 26 of the Antimonopoly Act
  - Section 709 of the Civil Code (Torts)

- Injunction Relief Suits against Unfair Trade Practices
  - New Section 24 of the Antimonopoly Act
Criminal Penalties

- For instance, those who engaged in unreasonable restraints of trade or private monopolization may be sentenced to a penal servitude of up to three years or fined up to 5 million yen (Section 89). Those who did not comply with the final decision are sentenced to a penal servitude of up to two years or fined up to 3 million yen. In addition, maximum fines up to 100 million yen may be imposed on persons or juridical persons in the case of the double punishment (Section 95) of Section 89 offenders. However, in regard to unfair trade practices, there are no penalties except for violations of the final decision.
Amendment of the AMA (2002)

- maximum fines up to 100 million yen
- maximum fines up to 500 million yen (about 4 million dollars)
History of the Japanese Antimonopoly Act

- Enactment of original Antimonopoly Act (1947)
  - End of the World War II (1945)
  - GHQ’s Occupation of Japan
  - GHQ’s order to enact Antimonopoly Act
    - Judge Kime’s Draft: influence of “New Dealer”

- Amendment of Antimonopoly Act (1949, 1953)
  - Deletion of the influence of “New Dealer”
History ....

- Amendment of Antimonopoly Act (1977)
  - Introduction of new regulations; surcharge, measures against a monopolistic situation, and monitoring parallel price increase
  - Reinforcement of the regulation of the overall concentration, especially against corporate groups
History....

- Amendment of Antimonopoly Act in the 1990s
  - Hike in the calculated rate of surcharges (1991)
  - Reinforcement of criminal penalties (1992)
  - Reinforcement of organization in JFTC (1996)
  - Lifting of ban on holding company, etc
Amendment of Antimonopoly Act in the 1990s…continued…

- Promulgation of the omnibus law for abolishing exempted cartels and other exemptions under various laws (1997, 1999 etc)
- Introduction of the injunction system (2000)
- (1) Amendment of the provisions concerning the regulation of the overall concentration through mergers; (2) the upper limit of criminal fine was pulled up from 100millionyen to 500million yen (2002)
Three piers (?) of the world competition laws

**U.S. antitrust law**
- prohibition of collusion (Section 1 of the Sherman Act, etc)
  - horizontal collusion: cartels, bid rigging etc.
  - vertical collusion (including vertical restraints)
- prohibition of monopolization, attempt to monopolize (Section 2 of the Sherman Act)
- Merger Control (Section 7 of the Clayton Act)
- Regulation of Unfair Method of Competition (Section 5 of FTC Act)
Three piers.....

- EC Competition law
  - prohibition of collusion (Section 81 of the EEC Treaty)
    - horizontal collusion: cartels, bid rigging etc.
    - vertical collusion (including vertical restraints)
  - Prohibition of Abuse of Dominant Position (Section 82 of the EC Treaty)
    - Creation of the dominant position is NOT prohibited
  - Merger Control (Merger Regulation)
    - Since 1990
Japanese Antimonopoly Act

- prohibition of collusion (Section 3)
  - horizontal collusion: cartels, bid rigging etc.
  - vertical restraint is NOT prohibited as collusion
- prohibition of monopolization (Section 3)
  - Creation of the dominant position is prohibited
- Merger Control (Chapter 4)
- Regulation of Unfair Trade Practice (Section 19)
  - vertical restraint is prohibited by Section 19