

Unclassified

English - Or. English

6 October 2022

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Japan

-- 2021 --

This report is submitted by Japan to the Competition Committee FOR INFORMATION.

JT03504263

Table of contents

Japan	3
1. Introduction	3
2. Strict and Accurate Law Enforcement	3
2.1. Active Elimination of the AMA Violations.....	3
2.2. Promotion of Fair Trade Practices	6
2.2.1. Efforts against Abuse of Superior Bargaining Position	6
2.2.2. Efforts against Unjust Low Price Sales (Predatory Pricing).....	6
2.3. Improvement in Merger Review.....	7
3. Improvement of Competitive Environment (Advocacy)	7
3.1. Establishment and Revision of Guidelines	7
3.2. Fact-Finding Survey	7
3.3. Participation in the Digital Market Competition Council.....	8
3.4. Implementation of Competition Assessment	8
3.5. Efforts to Prevent Bid Riggings.....	8
3.6. Consultation Services	9
4. Reinforcement of Foundations for Operation of Competition Policy	9
4.1. Development of Theoretical and Empirical Foundations for Competition Policy.....	9
4.2. Response to Economic Globalization.....	9
4.2.1. Reinforcement of Cooperation with Other Competition Authorities.....	9
4.2.2. Bilateral Meetings between Competition Authorities.....	10
4.2.3. Economic Partnership Agreements.....	10
4.2.4. Participation to the Multi-National Conferences	10
4.2.5. Technical Assistance	10
4.3. Raising Public Awareness of Competition Policy	10
5. Resources.....	11
5.1. Budget	11
5.2. Number of Officials.....	11

Japan

1. Introduction

1. In FY2021 (from April 1st, 2021 to March 31st, 2022), the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) was proactively committed to the implementation of competition policy, including “enforcement” of the Antimonopoly Act (hereinafter referred to as the “AMA”) to recover competition by eliminating violations through strict and accurate law enforcement, and “advocacy” in which the JFTC recommends to improve trade practices and to revise the regulations and systems in order to promote the competitive environment, for the purpose of enhancing vitality of enterprises, increasing consumers’ utility and stimulating innovation through fair and free competition. It focused on the following measures in FY2021.

2. Strict and Accurate Law Enforcement

2.1. Active Elimination of the AMA Violations

2. Under the fundamental policy of conducting prompt and effective case investigations, the JFTC takes strict and active measures against diverse cases that accurately respond to social needs, including price-fixing and bid rigging cases that have significant impacts on the public, abuse of superior bargaining position that unjustly disadvantages SMEs and unjust low price sales (predatory pricing).

3. In FY2021, the JFTC opened investigations against 113 cases of suspected AMA violations and of these, completed 100 cases.

4. During the same period of time, the JFTC took five legal measures, including three cease and desist orders and two commitment plan approvals, amid the severe restrictions on the investigative actions due to the spread of Covid-19. In terms of conduct types, the legal measures were taken against three bid rigging cases and two unfair trade practice cases (See Figure 1). The JFTC also ordered payment of surcharge (administrative fine) totaling JPY 2.18 billion (approximately USD 18.93 million) to a total of 31 enterprises (See Figure 2).

5. Under the leniency program to motivate enterprises to self-report their violations, the JFTC received a total of 52 applications in FY2021.

Cases involving cease and desist orders in FY2021

Bid Rigging	<ul style="list-style-type: none"> • Bid rigging by the participants in biddings for specific electronic security services ordered by the public offices, etc. in Gunma Prefecture¹ The violators substantially restrained competition in the field of the specific electronic security services by, in concert with one another, deciding prospective bidders. [Cease and desist order, surcharge payment order (JPY 14.8 million, approximately USD 0.12 million)] • Bid rigging by the participants in bidding for specific data printing services ordered by the Japan Pension Service²
-------------	---

¹ <https://www.jftc.go.jp/en/pressreleases/yearly-2022/February/220225.html>

² <https://www.jftc.go.jp/en/pressreleases/yearly-2022/March/220303.html>

	<p>The violators substantially restrained competition in the field of the specific data printing services by, in concert with one another, deciding prospective bidders. [Cease and desist order, surcharge payment order (JPY 1.74 billion, approximately USD 15.12 million)]</p> <ul style="list-style-type: none"> • Bid rigging by the participants in biddings for pharmaceutical procurement ordered by Japan Community Health Care Organization (JCHO)³ The violators substantially restrained competition in the field of the pharmaceutical procurement ordered by the JCHO, in concert with one another, deciding prospective bidders. [Cease and desist order, surcharge payment order (JPY 423.85 million, approximately USD 3.68 million)]
Cases involving approvals of the commitment plans in FY2021*	
Trading on Restrictive Terms	<ul style="list-style-type: none"> • Approval of the Commitment Plan submitted by Booking.com B.V.⁴ Booking.com B.V. required, in the contract with Accommodation operators, that the room rates and availability of the Accommodation operators' Accommodation facilities located in Japan listed on the Booking.com website shall be equivalent to or more favorable than those offered through other sales channels (except for the "narrow parity clauses for room rates" i.e. requirements provided in these contracts that such room rates shall be equivalent to or more favorable than those offered through the sales channels such as the websites operated by the Accommodation operators, etc.). <p>Booking.com B.V. also required the Accommodation operators to comply with the conditions described above either through Booking.com B.V., or through Booking.com Japan K.K., which provides support services to Booking.com B.V. in Japan.</p>
Interference with a Competitor's Transactions	<ul style="list-style-type: none"> • Approval of the Commitment Plans submitted by Amer Sports Japan, Inc. and Wilson Sporting Goods Co.⁵ Amer Sports Japan, which is a Wilson's subsidiary, obtained a certain type of legitimate/non-counterfeit hard-ball tennis racquets for advanced players manufactured by Wilson and sold through itself or affiliated companies of its company group including Amer Sports Japan, that had been imported from overseas authorized retailers by importers in Japan who deal in parallel-imported Goods, informed Wilson of information on hologram seals attached to the parallel-imported goods, and asked Wilson to identify from such information overseas authorized retailers who sold the parallel-imported goods to the parallel-importers and then to make such overseas authorized retailers not sell the tennis racquets to parallel-importers. In response to this, Wilson warned certain identified overseas authorized retailers not to sell the tennis racquets to parallel importers in Japan, partially based on the documents that prohibit sale of the tennis racquets outside appointed sales areas.

Note: An approval of the commitment plan does not mean that the JFTC found the violation of the AMA.

6. In FY2021, the JFTC also closed three investigations in light of voluntary measures taken by the suspected enterprises, all of which were made public.

Cases closed in accordance with voluntary measures of enterprises, etc. in FY2021

- Closing the Investigation on the Suspected Violation of the Antimonopoly Act by Apple Inc.⁶
- Closing the Investigation on the Suspected Violation of the Antimonopoly Act by UNIQUEST INC.⁷
- Closing the Investigation on the Suspected Violation of the Antimonopoly Act by Rakuten Group, Inc.⁸

³ <https://www.jftc.go.jp/en/pressreleases/yearly-2022/March/220330.html>

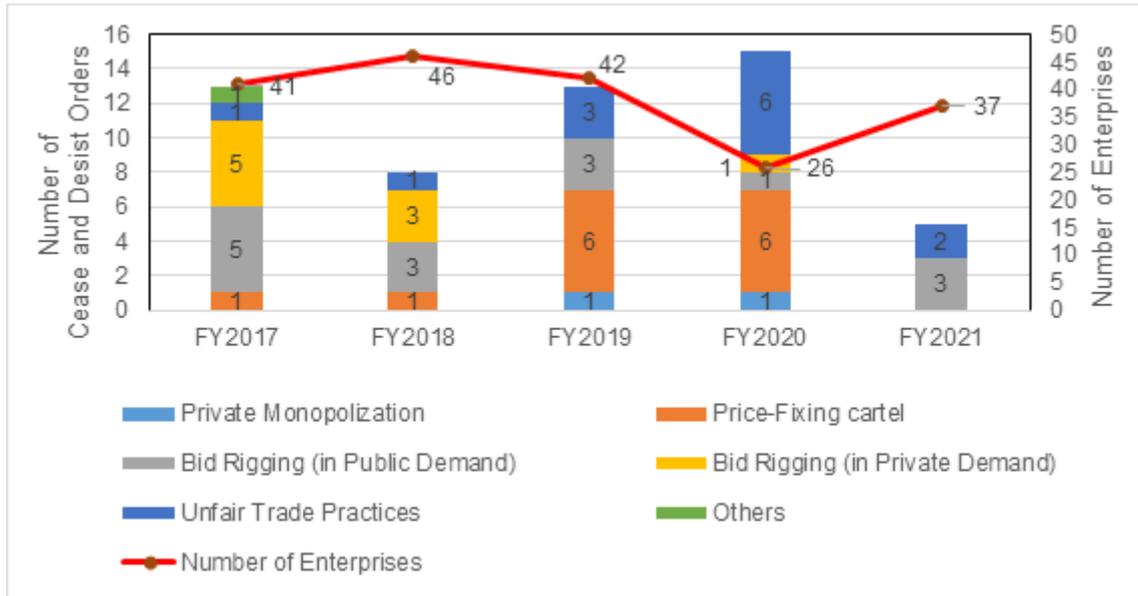
⁴ <https://www.jftc.go.jp/en/pressreleases/yearly-2022/March/220316.html>

⁵ <https://www.jftc.go.jp/en/pressreleases/yearly-2022/March/220325.html>

⁶ <https://www.jftc.go.jp/en/pressreleases/yearly-2021/September/210902.html>

⁷ <https://www.jftc.go.jp/en/pressreleases/yearly-2021/December/211202.html>

⁸ <https://www.jftc.go.jp/en/pressreleases/yearly-2021/December/211206.html>

Figure 1. Number of Cases Involving Legal Measures¹

Fiscal year	FY2017	FY 2018	FY2019	FY 2020	FY2021
Private Monopolization	0	0	1	1	0
Price-Fixing cartel	1	1	6	6	0
Bid Rigging (in Public Demand)	5	3	3	1	3
Bid Rigging (in Private Demand)	5	3	0	1	0
Unfair Trade Practices	1	1	3	6	2
Others ³	1	0	0	0	0
Total	13	8	13	15	5

Notes:

1 "Legal measures" refer to cease and desist orders, surcharge payment orders and approvals of the commitment plans. The case in which both a cease and desist order and a surcharge payment order are issued is counted as one legal measure.

2 The cases which fall into both private monopolization and unfair trade practice are categorised as "Private monopolization."

3 "Others" refer to cases of unjustly restricting the number of enterprises in a particular field of trade by a trade association

Figure 2. Amount of Surcharges (Administrative Fines)



Note: Surcharges have been rounded down to the nearest ten million yen.

7. In addition, JFTC's efforts for appropriate and prompt law enforcements include 336 cautions on practices likely to lead to the AMA violations.

8. The JFTC requests procurement bodies, etc. to take the necessary measure in light of competition policy, when it finds in the course of the investigation on the AMA that such a measure should be taken in terms of competition policy.

9. In FY2021, the JFTC made such a request to the Japan Pension Service.

2.2. Promotion of Fair Trade Practices

2.2.1. Efforts against Abuse of Superior Bargaining Position

10. The JFTC has long conducted surveillance to prevent abuse of superior bargaining position that constitutes unfair trade practice under the AMA and has tackled the violations.

11. In FY2021, the JFTC issued 46 cautions against suspected abuses of superior bargaining position.

2.2.2. Efforts against Unjust Low Price Sales (Predatory Pricing)

12. The JFTC takes a prompt action against unjust low price sales in the retail industry. When unjust low price sales by retailers are repeated, or conducted by large-scale retailers, and they are considered to significantly affect other competing retailers operating in neighboring areas, the JFTC investigates the impact of their conduct on respective competing retailers. If the JFTC finds it anticompetitive, it takes stern actions including legal measures.

13. In FY2021, the JFTC issued cautions in 244 cases in the retail sector, including liquor, petroleum products, and household appliance, on the grounds of practices likely to lead to unjust low price sales (29 cases for liquor, 206 for petroleum products, one for household appliance, and eight for products in other categories).

2.3. Improvement in Merger Review

14. The AMA prohibits an acquisition of shares, shareholding, merger and other transactions (hereinafter collectively referred to as "merger(s)") that would substantially restrain competition in a particular field of trade. The JFTC operates merger regulations in a prompt and appropriate way in order to ensure competitive market structure in Japan. The JFTC also actively utilizes economic analysis in merger review if necessary.

15. In FY2021, based on Articles 9 to 16 of the AMA, the JFTC approved 15 cases of acquiring and holding of voting rights of non-financial companies by banks or insurance companies; and it also received 114 reports from holding companies on their business and 337 prior notifications of mergers, and conducted necessary review on these cases. In addition, the JFTC conducted necessary review based on the "Policies Concerning Procedures of Review of Business Combination", which stipulate that the JFTC reviews merger cases of which the total consideration for the acquisition is large and which are expected to affect domestic consumers, even if they do not meet the notification thresholds in the AMA.

Major merger cases in FY2021

- Acquisition of Shares of The Fukuho Bank, Ltd. by The Fukui Bank, Ltd.⁹
 - Acquisition of Slack Technologies, Inc. by salesforce.com, inc.¹⁰
 - Acquisition of Shares of Siltronic AG by Global Wafers GmbH¹¹
-

3. Improvement of Competitive Environment (Advocacy)

3.1. Establishment and Revision of Guidelines

16. The JFTC has established and published Guidelines that identify the actions that may actually be AMA violations in activities of enterprises and trade associations, in order to prevent enterprises and trade associations from violating the AMA and to help them promote proper business activities.

Establishment and Revision of Major Guidelines in FY2021

- Revision of the "Guidelines concerning the Franchise System under the Antimonopoly Act"¹²
 - Establishment of "Guidelines on Business Partnership Contracts with Start-ups and Investments in Start-ups"
 - Revision of the "Guidelines for Proper Electric Power Trade"
-

3.2. Fact-Finding Survey

17. The JFTC has conducted fact-finding surveys in a variety of fields actively and, based on their results, pointed out problems and issues from a viewpoint of the AMA and competition policy to encourage enterprises and trade associations to improve the trade practices by themselves, and recommended that regulatory authorities should review regulations and systems, thereby promoting competitive environment.

⁹ <https://www.jftc.go.jp/en/pressreleases/yearly-2021/June/210616.html>

¹⁰ <https://www.jftc.go.jp/en/pressreleases/yearly-2021/July/21071.html>

¹¹ <https://www.jftc.go.jp/en/pressreleases/yearly-2021/November/211126.html>

Major fact-finding surveys in FY2021

- Issues Concerning Competition Policy in the Mobile Phone Market (Survey in FY2021)
 - Inquiry on Initial Public Offering (IPO) Pricing Process, etc.¹³
 - Report on Public Procurement of IT System
 - Survey on Credit Card Market
-

3.3. Participation in the Digital Market Competition Council

18. Under the Headquarters for Digital Market Competition established within the Cabinet, the Digital Market Competition Council has been held to examine and discuss the important matters concerning digital markets. The Council is chaired by Chief Cabinet Secretary, and includes the Minister of State for Special Missions of the Cabinet Office, who is in charge of administrative affairs related to the JFTC, and the Chair of the JFTC as its members.

19. The 5th and 6th conference of the Council were held on April 27th, 2021 and April 26th, 2022 respectively, and the Minister of State for Special Missions of the Cabinet Office and the Chair of the JFTC participated in them.

3.4. Implementation of Competition Assessment

20. All of the government ministries and agencies have been in principle mandated to conduct an Ex-ante Regulatory Impact Assessment (“RIA”), which includes an analysis of the impacts of the regulations on competition (competition assessment), when establishing, revising or abolishing regulations. The Ex-ante RIA requires the relevant ministries and agencies to fill out the “competition assessment checklist” and then submit the completed checklist together with an Ex-ante RIA report to the Ministry of Internal Affairs and the Communications (“MIC”), which is supposed to forward the checklists to the JFTC.

21. In FY2021, the JFTC received 109 competition assessment checklists from the MIC and examined them. In addition, the JFTC held three meetings in which the experts with knowledge or insights about economics or policy evaluation of regulation discussed competition assessment, in order to improve an approach of competition assessment, for the purpose of appropriate implementation of RIA.

3.5. Efforts to Prevent Bid Riggings

22. Since procurement officers’ efforts are extremely important for the thorough elimination of bid rigging, the JFTC has been holding training seminars on the AMA and the Act for the Prevention of Collusive Bidding at the Initiative of Government Officials for procurement officers at local governments, providing them with practical knowledge about competition law and policy. The JFTC has also been cooperating with other government ministries and agencies, local governments and publicly owned companies by dispatching its officials as resource persons or providing materials to the related seminars organized by those ministries and agencies.

23. In FY2021, the JFTC held 30 training seminars and dispatched resource persons to 187 training seminars hosted by government ministries and agencies, local governments and publicly owned companies.

¹³ <https://www.jftc.go.jp/en/pressreleases/yearly-2022/January/220128.html>

3.6. Consultation Services

24. The JFTC answers questions about the AMA and related laws from enterprises, trade associations, general consumers, etc. in writing or orally.

4. Reinforcement of Foundations for Operation of Competition Policy

4.1. Development of Theoretical and Empirical Foundations for Competition Policy

25. Since its establishment in the JFTC in June 2003, the Competition Policy Research Center (“CPRC”) has been strengthening theoretical and empirical foundations for the enforcement of the AMA, and for planning, policy making and evaluation of the JFTC’s competition policy. In FY2021, the CPRC held two symposiums and the “Study Group on Competition Policy for Data Markets.” The Study Group organized eight meetings after November 2021 to discuss various issues and challenges of competition policy in data markets, based on the actual circumstances of the markets in Japan. It published the “Report of the Study Group on Competition Policy for Data Markets” on June 25th, 2021.

4.2. Response to Economic Globalization

26. In recent years, there has been an increasing need to reinforce cooperation and coordination among competition authorities, as there has been an increase in the number of cases in which competition laws in multiple jurisdictions are violated, or cases that require concurrent investigations by competition authorities of multiple jurisdictions. In light of these circumstances, the JFTC cooperates closely with foreign competition authorities, by e.g. conducting joint enforcement activities, in accordance with the relevant international agreements including bilateral competition agreements and economic partnership agreements.

27. Also, the JFTC is actively involved in multilateral frameworks such as the International Competition Network (ICN), the Organisation for Economic Co-operation and Development (OECD), the Asia-Pacific Economic Cooperation (APEC), the United Nations Conference on Trade and Development (UNCTAD) and the East Asia Top Level Officials’ Meeting on Competition Policy (EATOP).

28. In addition, in light of accelerated movements to strengthen existing competition laws or introduce new competition legislation in developing countries, the JFTC engages in technical assistance for competition authorities in those countries such as dispatching JFTC officials and offering trainings.

29. The JFTC also aims to strengthen its international presence by disseminating Japan’s competition policy worldwide. To this end, the JFTC endeavours to enhance its public relations by providing an English version of its press releases and other public announcements on its website and dispatches resource persons to seminars organized by overseas universities and other organizations.

30. In FY2021, the JFTC mainly worked on the following items:

4.2.1. Reinforcement of Cooperation with Other Competition Authorities

31. Based on bilateral and multilateral competition agreements, the JFTC closely cooperates with foreign competition authorities through the ways such as notifying competition authorities of the related jurisdictions of enforcement actions. In FY2021, the JFTC signed “Memorandum on Cooperation Between Japan Fair Trade Commission and

The Competition Commission of India" with the CCI, which is the competition authority in India, on August 6th, 2021.

4.2.2. Bilateral Meetings between Competition Authorities

32. The JFTC regularly holds bilateral meetings with competition authorities in countries or areas with particularly active economic relations with Japan.

4.2.3. Economic Partnership Agreements

33. The JFTC considers competition policy as an important element in Economic Partnership Agreements (EPAs) and participates in negotiations with an intention to incorporate the competition chapter including articles related to a cooperation framework on competition in EPAs.

34. Signed by 15 countries including Japan on November 15th, 2020, the Regional Comprehensive Economic Partnership (RCEP) Agreement, which includes competition chapter, entered into force for 10 countries including Japan on January 1st, 2022.

4.2.4. Participation to the Multi-National Conferences

35. The JFTC's chair has been a member of the ICN Steering Group since its establishment, and the JFTC has been a co-chair of the Unilateral Conduct Working Group since May 2020. Furthermore, the JFTC manages the "Framework for the Promotion of the Sharing of Non-confidential Information" under the Cartel Working Group and the "Framework for Merger Review Cooperation" under the Merger Working Group, both of which were formed under the initiative of the JFTC.

36. With regard to the OECD, the JFTC has been participating in the meetings of the Competition Committee and contributing to the discussions by, for example, sharing the JFTC's experiences and efforts in accordance with the topics of round tables.

37. In addition, on November 29th and 30th, 2021, the Chair of the JFTC participated in the "Enforcers Summit," which was held with the attendance of heads of the G7 competition authorities and those of the guest competition authorities.

4.2.5. Technical Assistance

38. The JFTC has been providing technical assistance regarding competition policy to competition authorities of the developing countries such as dispatching its officials or providing training courses. In FY2021, the JFTC carried out technical assistance projects in Vietnam, Mongolia, Malaysia, and Thailand in cooperation with the Japan International Cooperation Agency (JICA), and also provided training courses on competition law and policy for officials from jurisdictions where competition laws had been newly introduced or strengthened.

39. In addition, the JFTC and the Association of Southeast Asian Nations (ASEAN) member states, etc. implemented the joint research on competition law by using the Japan-ASEAN Integration Fund.

4.3. Raising Public Awareness of Competition Policy

40. The JFTC solicited opinions, requests and suggestions from members of the "Antimonopoly Policy Cooperation Committee" for the purpose of utilizing them in implementing competition policy, and of promoting better understanding of it.

41. In order to ensure a timely response to socioeconomic changes and advance competition policy in an effective and appropriate manner, the JFTC organizes the “Council on Antimonopoly Policy” to promote broad opinion exchanges with experts and greater public understanding of competition policy. In FY2021, three council meetings were organized.

42. In addition, the JFTC commissioners and senior officials had meetings with locally based experts in nine cities in FY2021. The JFTC also arranged meetings between directors of the JFTC's regional offices and locally based experts or members of bar associations in various districts in FY2021.

43. Moreover, the JFTC hosted “Consumer Seminars” to introduce an overview of the AMA and the JFTC’s activities to general consumers in cities without the head or regional office, in order to increase people’s awareness of the AMA and the related laws.

44. The JFTC’s efforts also included activities for raising awareness of competition policy through school education. The JFTC dispatches its officials to junior high schools, high schools and universities (including junior colleges) and they introduce the roles of competition in economic activities to the students. The effort is called “Antimonopoly Act Class” or “Delivery Lecture.”

5. Resources

5.1. Budget

45. The budget of the JFTC is as follows:

Fiscal Year	FY2017	FY2018	FY2019	FY2020	FY2021
Budget Amount (JPY billion)	11.2	11.0	11.4	11.6	11.5
Budget Amount (USD million) (Note)	97.5	95.3	98.9	100.4	99.6
Change over Previous Year (%)	2.1%	-2.2%	3.8%	1.4%	-0.8%

Note: Based on the USD-JPY exchange rate as of December 30th, 2021.

5.2. Number of Officials

46. The number of officials in the General Secretariat of the JFTC is as follows (unit: persons):

Fiscal Year	FY2017	FY2018	FY2019	FY2020	FY2021
Number of Officials	832	837	839	842	841
Enforcement against Anti-Competitive Practices	438	437	430	429	428
Merger Review Enforcement	39	41	44	43	48
Advocacy Efforts	33	33	35	43	43

