

## A Study of Screening Approach as a Tool to Detect Violations of the Antimonopoly Act (Abstract)

In this report, we investigated academic studies on screening approaches and gathered the information about cases of their utilization by foreign competition authorities. We performed simulations by applying various screening approaches into the past cases which included concerns under the Antimonopoly Act, and verified their effectiveness. We found that there is no internationally accepted best practice with respect to the utilization of screening approaches and that an examination according to the conditions in each country is required. Regarding Japan, our findings confirmed the significance of performing market screening and company screening with respect to cartels for the purpose of identifying the scope of suspected cartel activities and enterprises suspected of violations. Our findings also indicated issues in question with respect to the data access and the disclosure of screening approaches.

### 1. Definition of screening approaches, etc.

We defined the screening approaches examined in this report as “approaches that mainly use generally available data to perform statistical analysis, for the purpose of using this as clues to detect the violations of the competition law, such as collusion or cartel, in order to identify enterprises suspected of violations or suspected violations” and we classified screening approaches into three types according to their purposes: industry screening, market screening and company screening.

### 2. Background and cases of utilization of screening approaches, etc.

- The utilization of screening approaches by competition authorities makes it possible to statistically narrow down, using data, cases of suspected cartels, including stable cartels where there seems to be no prospect of a leniency application.
- The utilization of screening approaches also helps increase the incentive for enterprises to apply for leniency by increasing the risk of detection of cartels.
- The internal audits of enterprises have an affinity for screening approaches in the sense that they detect risk, suggesting the possibility that they could apply screening approaches.
- Although there have been cases in foreign countries where screening enabled the detection of cartels as in Mexico or Sweden, some authorities such as the U.S. Department of Justice are explicitly skeptical about the effectiveness of screening and there is no international consensus on best practice.

### 3. Application of various screening approaches

- We performed simulations for industry screening, market screening and company screening.

- Industry screening: Results of analysis of the estimated top ten least competitive industries showed that while the existence of cartels was actually proved in the ten least competitive industries (in five-year period from FY2010), the usefulness of screening approaches as a tool for detecting industries with violations may be low.
- Market screening: Results of applying screening approaches into the cement industry to verify time series variations over a nine-year period starting from FY1983 showed that standard deviation over the three years 1985, 1986 and 1987 was low compared with other periods. The three years in question were actually included in a six-year cartel period, and therefore half the cartel period could be detected through screening.
- Company screening: Screening based on the bid data (for a six-year period starting from FY2001) of Shikoku Regional Development Bureau (former Ministry of Construction department) could not find any correlation between bid prices and estimated cost for each company for bids in which a group of companies suspected of bid-rigging (suspected bid-rigging group) participated. Moreover, for the bids in which the suspected bid-rigging group participated, the correlation between finishing position in the bid and estimated costs of the company that won the bid and the rest of the companies was different, suggesting that the rest of the companies made bids without taking their cost into consideration.
- Summary of screening simulations: The results of the three simulations outlined above confirmed that Japan could also use existing data to conduct screening and also confirmed the problems involved in applying screening approaches: the lack of data about non-manufacturing industries and imports in the case of industry screening; the possibility of performance improvement of screening through the acquisition of cost data in the case of market screening; and, the data retention period at ordering institutions in the case of bid screening.

#### 4. Issues and Points to Remember, etc. Regarding Utilization by the Competition Authorities

- There is no internationally accepted best practice with respect to the utilization of screening approaches, and utilization needs to be examined according to the situation in each country, such as specific purposes, benefits arising from other detection methods, data acquisition methods and personnel resources to perform screening.
- Regarding Japan, we confirmed the significance of performing market screening and company screening for the purpose of identifying the scope of suspected cartel activities and enterprises suspected of violations with respect to cartels in relation to which reasonable clues and information exist as a result of complaint, etc., and we indicated issues in question with respect to data access and disclosure of screening approaches.
- We hope that the approaches, cases and simulation results in this study will be of some help for the enhancement of screening approaches in Japan.