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Methodologies for Conducting Market Studies - Note by Japan

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More documents related to this discussion can be found at www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm.

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Japan

1. Introduction

1. The Japan Fair Trade Commission (hereinafter “JFTC”) has been conducting “Fact-finding Surveys” almost every year since 1947 when the Antimonopoly Act (hereinafter “AMA”) was enacted. Fact-finding Surveys are conducted to reveal actual situations and/or business practices of specific markets, industries and so on, in accordance with the needs for competition policies under the circumstances of the times. Therefore, these market studies differ from investigations in specific violation cases. The attached Annex lists Fact-finding Surveys carried out by the JFTC for the past ten years. The total number of Fact-finding Surveys amounts to 25 at the end of March in 2017.

2. Hereinafter, this contribution paper comprises three parts, (i) Information gathering, (ii) Information analysis, and (iii) Summary of a recent report on Fact-finding Survey conducted by the JFTC, in accordance with the major questions raised by the call for contribution.

2. Information Gathering

2.1. Overview

3. Types of information collected in Fact-finding Surveys by the JFTC vary widely depending on the objective of each survey. However, main sources for information are (i) Publicly-available sources (financial statements of companies, data published by regulatory agencies, etc.), (ii) Questionnaire survey, and (iii) Stakeholder interview.

4. Publicly-available sources are typically used to conduct preliminary research described below, and to complement information collected by questionnaire survey and stakeholder interview as compiling a report on Fact-Finding Survey.

5. Fact-Finding Survey mainly consists of questionnaire surveys and stakeholder interviews, in which the JFTC actually gathers information by itself. Although the role of these information gathering methodologies differ depending on the objectives of each Fact-Finding Survey and targeted markets, questionnaire survey is conducted to grasp the overall situation in the relevant market and conducted relatively *widely but shallowly* in general.¹ On the other hand, stakeholder interview is basically conducted *narrowly but deeply* to gain more detailed information, as information collected by the questionnaire survey is sometimes not sufficient.

6. In the following, this contribution paper introduces the Fact-Finding Surveys conducted by the JFTC in chronological order, while focusing on the information gathering by the questionnaire survey and the stakeholder interview.

¹ In some cases, it is difficult or inefficient to send questionnaires directly depending on subjects of the survey. Therefore, recently, information is collected by means of web-based questionnaire instead of sending questionnaires.

2.1.1. Information Gathering in Preliminary Research

7. The JFTC conducts preliminary research before starting the main research. Main research is a full-scale research including a questionnaire survey. Preliminary research is a study to determine whether main research is required or not.

8. Dissemination of questionnaires and collection and analysis of answers in such questionnaires need considerable monetary and human resources. Therefore, preliminary research is conducted before starting the main research, and when a high possibility of competition concern is found, main research will be conducted.

9. The JFTC does not issue any press release on the start of its study. However, when the questionnaire survey is conducted in a main research and questionnaires are distributed widely to the target companies, the Fact-finding Survey by the JFTC will be practically revealed to the public. Therefore, before main research starts, it is common to gain internal consensus on the objective and necessity of the study.

10. In more detail, if a market study team believes that there is a high possibility of the presence of competition concerns as a result of preliminary research, the team will prepare an internal report on the preliminary research and obtain authorization of starting main research.

11. As described above, the roles and characteristics significantly differ between preliminary research and main research. Information gathering in preliminary research is limited compared to that in main research. In particular, information gathering in preliminary research is centered on the collection of publicly-available sources (financial statements, data published by regulatory authorities, and relevant academic articles, etc.) and that does not require significant resources. In some preliminary research, interviews from related trade associations or companies are also conducted; however, the scope of such interviews are limited and not conducted on a mass scale.

2.1.2. Information Gathering in Main Research

Questionnaire survey

Subjects of Questionnaire Survey

12. As mentioned above, although Fact-finding Survey is mainly consisted of questionnaire surveys and stakeholder interviews, in principle, methodologies and subjects of questionnaire survey is determined individually based on the targeted markets and the potential competition concerns.

13. For example, in the case of a market study focusing on trades among companies with regard to the abuse of superior bargaining position, the main subjects of the questionnaire survey will be basically companies who are considered to be in a superior bargaining position and their business partners. Information on the business scale, the degree of dependence on the trade, trade forms and presence of conducts that might lead to the abuse of superior bargaining position, etc. will be collected.

14. On the other hand, in the case of a market study focusing on regulations in a specific sector, questionnaire surveys are also conducted on authorities having the power to approve business activities by companies in the sector (e.g. the local government) or on users of services supplied by such companies, in addition to companies active in the sector.

15. In particular, for authorities having the power to approve business, information on authorization policy and its grounds may be collected. As for users, opinions on the disclosure of information by companies may be collected.

16. Regarding dissemination of questionnaires, it is impossible in practice to send questionnaires to all companies active in the target sector because available lists of companies and resources usable for the survey are limited. As such, selection of companies subject to a questionnaire survey (so-called sampling) is required. Sampling is also an important factor of information gathering², because sampling exerts a significant influence on the results of the study.

17. First, a sufficient number of samples have to be secured to grasp the actual situation in the target sector. In this respect, market study teams in the JFTC sometimes refer to internal economists' opinions on how many samples at least could be gathered in a Fact-finding Survey.

18. In addition, points to be focused in the sampling may vary depending on the objectives of each Fact-finding Survey. That is, in a Fact-finding Survey to grasp the difference in actual trade situations of various business scales, it is important to balance the business scale of companies in the sampling process. If a Fact-finding Survey focuses on the locality of trading, it is necessary to pay attention to balance the regional distribution of companies.

Legal Power to conduct Questionnaire Survey, etc.

19. Although the JFTC has a legal power to impose a duty to answer questionnaires on the target companies (Article 40 of the AMA), the JFTC basically adopts the methodologies of voluntary answers from companies. Only when it is impossible to achieve the objectives of the market study without exercising its legal power does the JFTC exercise its legal power.

20. Such procedure is considered effective. This is because honest opinions can be expected in voluntary answers from companies. At the same time, the risks of failure of market studies, due to no-response by uncooperative companies, can be avoided by exercising legal power if needed.

21. Regarding improvement of the credibility of the results of market studies, it is important that a greater number of companies cooperate with questionnaire surveys and answer to the questions based on common understanding. Therefore, simple questions should be developed considering the burdens on respondents. For example, it is essential to adopt closed-ended questions and avoid difficult questions which can be understood only by AMA experts.

² Upon sampling, first, lists of possible target companies for questionnaires have to be obtained. There are various methodologies to obtain these lists. For example, the JFTC asks trade associations in the target sector for lists of member companies, collects related information from industry journals or magazines, and purchase data from think-tanks or research firms, to obtain these lists. Sometimes the JFTC can obtain lists of only either the upstream market or the downstream market. In such a case, the JFTC sends questionnaires to companies included in the obtained lists at first and make them to answer their business partners (company names and addresses) to obtain information on companies in the other market.

Stakeholder Interview

22. As mentioned above, drafting a relatively simple questionnaire is better. On the other hand, questionnaire survey is often not sufficient to grasp the actual situations and specify competition concerns in the targeted market. Stakeholder interview complements such an insufficiency.

23. Basically, the JFTC conducts interviews on parties which might be engaged in or affected by possibly anticompetitive practices, identified by the results of questionnaire survey. The specific information to be obtained varies depending on the objectives of the respective Fact-finding Surveys. The JFTC basically obtains the means, purposes, and backgrounds of practices of concern from engaged parties by the interview. In a case of interview from affected parties, the JFTC asks them how to deal with the practices. Details of stakeholder interview are subscribed in Section 3 below “Information Analysis” with case examples.

3. Information Analysis

24. In a questionnaire survey, the JFTC makes a compilation of answers to the closed-ended questions such as calculating percentages of companies who chose each choice among all companies answering the question. Then, the JFTC analyzes the existence of any special tendency depending on business scales, contract forms and so on.

25. For example, the “Report on the Fact-finding Survey on Transactions for the Production of TV Programs (2015)” is a survey on transactions between TV stations and station-affiliated TV program production companies (hereinafter “TV stations”) on the one hand and TV program production companies on the other hand. In this Fact-finding Survey, the JFTC gathered (i) information on the business scales of TV stations and TV program production companies, (ii) how many TV stations each TV program production company has a business relationship with and (iii) the degree of dependence of TV program production companies on TV stations that had the biggest annual transaction, and so on by a questionnaire survey.

26. Based on the analysis of answers in the survey, it was found that the business scale of TV program production companies tended to be smaller than that of TV stations, and there was a tendency that TV program production companies depended on transactions with particular TV stations.

27. Furthermore, the JFTC gathered information by the questionnaire survey as to whether TV program production companies were asked to conduct unprofitable business from TV stations and whether they accepted such request. After that, the JFTC conducted a stakeholder interview on companies who answered that they accepted such requests. Detailed information such as reason to accept such requests was also obtained by the interview.

28. Among the past Fact-finding Surveys, the JFTC has seldom used economic analysis. To use economic analysis in a Fact-finding Survey, methodologies to collect and analyze necessary data have to be determined. Therefore, whether economic analysis is employed in a Fact-finding Survey may depend on the balance between the necessity of the analysis and the increase in the burden with the analysis.

29. The “Report on Fact-finding Survey on Transactions in the Bridal Industry (2017)” and the “Report on Fact-Finding Survey on Transactions in the Funeral Industry

(2017)” are reports on Fact-finding Surveys on business transactions between bridal companies or funeral companies and their respective suppliers.

30. Some bridal companies or funeral companies engaged in practices that might constitute an abuse of superior bargaining position, such as request for paying monetary contributions or providing goods and request for unprofitable business. The JFTC compared the duration of business relationships between bridal companies or funeral companies and suppliers who accepted those practices with the duration between those and suppliers who did not accept those practices. After that, the JFTC conducted t-test on the gap between each average duration.

31. Methodologies of the study and analysis are determined individually on the business, potential competition concerns, and so on. Therefore, it is difficult to say which specific methodologies of analysis are frequently used in market study compared with enforcement actions and which type of information and analysis are weighed.

4. Case Study

32. In Paragraphs 2 and 3 above, methodologies of Fact-finding Surveys are described within individual cases. However, grasping the overall picture of a specific Fact-Finding Survey develops a better understanding of JFTC’s market studies. This section describes “Report on Fact-Finding Survey on the Bridal Industry (2017)” which is one of recent Fact-Finding Surveys conducted by the JFTC.

4.1. Methodologies of the Fact-Finding Survey

33. Firstly, questionnaires were sent to 3,500 companies that seemed to be engaged in bridal business³, etc. Then, questionnaires were sent to 7,000 suppliers in business relationships reported from companies who answered that they were engaged in the bridal business, etc. among those 3,500 companies.

Table 1.

Target companies	Number of questionnaires sent	Number of responses in relation to bridal business
Bridal companies, etc.	3 500	Number of companies who answered that they were engaged in bridal business 255
Suppliers	7 000	Number of suppliers who answered that they were in business relationships with bridal companies 1 157

Note: Survey period: The latest business year (parts of survey are of the recent past five business years or ten business years).

³ In Japan, there are many companies who collectively operate wedding ceremonies and accompanying events and give related services, including the lease of wedding venues and the supply of meals and gifts to guest of wedding parties.

4.2. Results of the Fact-Finding Survey

4.2.1. Overview of bridal business

Overview of bridal market

34. Market scale of bridal business is expected to be approximately 1,416 billion Japanese yen (about 11.3 billion euros) in 2015. The market has been gradually shrinking.

35. The number of marriages is approximately 640,000 in 2015 for an 11% decrease in the past ten years. The trend for the decrease is expected to continue, and the number is expected to become approximately 580,000 in 2025.

Decrease in scale of wedding parties and shrinkage of bridal market

(i) Trend in the number of annual transactions and annual sales in the bridal industry

36. As for the number of annual transactions, 76.8% answered “decreasing,” and as for the annual sales, 81.5% answered “decreasing.”

(ii) Trend in sales and the number of guests per wedding

37. As for the sales, 69.4% answered “decreasing”, and as for the number of guests, 77.9% answered “decreasing.”

38. Many bridal companies answered that the number of annual transactions and the annual sales were decreasing, and the sales and the number of guests per wedding were also decreasing. It is found that the scale of the bridal market is shrinking along with the decrease in the size of the wedding ceremony and party.

Diversification of wedding venues

39. Of all wedding venues, 30.5% are specialized wedding venues and 27.2% are hotels. Both percentages are relatively high. On the other hand, when looking at the trend in the number of annual transactions and annual sales in each wedding venues, high percentages are taken by guesthouses and restaurants, which answered that the number of annual transactions and annual sales was in an increasing trend.

40. Regarding the wedding ceremony and party, guesthouse (mansion-style facility with garden, pools, etc.) has a characteristics that it is freely used within the premises and settings and stage performances with high flexibility can be made. On the other hand, restaurant is provided at affordable price and can serve special foods in an at-home atmosphere. In such a situation, these venues are becoming more popular than conventional specialized wedding venue or hotel.

New entry from other industries

41. As 76.1% of the bridal companies answered that new companies entered their geographical market for the recent past ten business years, there are many new entrants in the bridal industry. The biggest entry to their geographical market was made by bridal companies in other geographical market which expanded their business. 71.6% of new entrants answered that “they were engaged in the bridal business outside of own

geographical market.” Meanwhile, 19.9% answered that “they were new entrants from other industries.”

42. While the market scale of the bridal business is shrinking, there are new entrants in the market. New entrants from other industries are mainly engaged in businesses related to bridal, such as restaurant operations, wedding attire rentals, or hotel operations.

4.2.2. *Situation of transactions between bridal companies and suppliers*

Table 2. Observed transactions involving conducts which might constitute the abuse of a superior bargaining position (classified by categories of conduct)

Categories of conduct ¹	Number of transactions concerned	Percentage (number of responses concerned / all responses)
Request for purchasing goods or services	278	24.0%(278/1,157)
Request for paying monetary contributions or providing goods	194	16.8%(194/1,157)
Request for unprofitable transaction (beating price down)	142	12.3%(142/1,157)
Request for changing trade terms (including refusing to receive goods)	94	8.1%(94/1,157)
Request to redoing	77	6.7%(77/1,157)
Request for providing labor services	77	6.7%(77/1,157)
Return of goods	43	5.1%(43/ 840)
Request for providing services which are not in the contract	56	4.8%(56/1,157)
Price reduction	28	2.4%(28/1,157)
Delay in payment	22	1.9%(22/1,157)
Total (the number of transactions in which any of the above conducts were observed)	435	37.6%(435/1,157)

Note: ¹All conduct is made without appropriate compensation to suppliers.

43. Some suppliers answered that they were subject to more than one conduct by bridal companies that might constitute the abuse of a superior bargaining position. The percentage of such transactions is 37.6% (435 transactions).

44. Among 435 transactions, 90 transactions can be subject to the Act Against Delay in Payment of Subcontract Proceeds, etc., to Subcontractors (hereinafter “Subcontract Act”) which prohibits abuse of buying power like the AMA.

45. There is a tendency that the longer the duration of the business relationship is, the greater the proportion of suppliers accepted conducts that might constitute the abuse of a superior bargaining position. The average duration of business relationships between bridal companies and suppliers who accepted conducts that might constitute the abuse of a superior bargaining position is 17.8 years. On the other hand, the average duration of business relationships between them and suppliers who did not accept the conducts is 15.2 years. The statistically significant gap between two figures is observed.

Examples of responses from suppliers

Request for purchasing goods or services

46. We are forced to purchase event tickets from a bridal company. When we purchased the tickets, we were told by the bridal company that we must buy tickets for

several tens of thousand Japanese yen (several hundreds of euros), based on the annual sales, and there was no room to raise an objection to it.

Request for paying monetary contributions or providing goods

47. We were requested by a bridal company to pay a monetary contribution for its advertisements in newspapers. We didn't know how the payment benefits us, but we provided the support money reluctantly.

Request for unprofitable transaction (beating price down)

48. In cases of transactions with a bridal company with multiple suppliers of beverages, the purchase prices of beverages will be forced to be the same as to the prices set by the supplier who offers these at the cheapest prices.

49. The number of transactions and the costs of delivery to the bridal company are supposed to be different for each supplier; however, such a fact is not considered at all, and suppliers are forced to supply their products at the same prices as those set by the supplier who offers these at the cheapest prices. Although we would like to increase the purchase price, it is obvious that transactions will be cut if we request it. We have no choice but to accept the prices.

Request for changing trade terms (including refusing to receive goods)

50. The categories of temporary staffing to wedding ceremonies vary depending on the styles of the wedding ceremony, for example, a priest is dispatched to the Christian-style wedding, and a master of ceremony to a non-religious wedding ceremony.

51. In some cases, bridal companies had reported that the style of a wedding ceremony was a nonreligious one and not a Christian one just one day before the wedding, and they arbitrarily canceled the dispatch of a priest. As it was a cancel on the previous day, various preparations were made and the costs already incurred; however, bridal companies did not pay the costs for such preparations.

Return of goods

52. In cases of customized goods with names of the bride and groom on them, if the goods are returned because fewer guests than expected, we have no choice but to dispose of the goods. It is just unprofitable for us, but we cannot refuse the return of goods, if we consider influence on future trade.

Table 3. Observed transactions involving conducts that might constitute the abuse of a superior bargaining position (classified by details of goods or services in the transaction)

Details of goods or services in the transaction	Number of transactions concerned	Percentage (number of responses concerned / all responses)
Temporary staffing	54	45.8% (54/ 118)
Gifts to the guests	125	44.5%(125/ 281)
Flowers	54	43.9%(54/ 123)
Performance	29	35.4%(29/ 82)
Video/Photo recording	51	34.9%(51/ 146)
Attire rentals	39	33.3%(39/ 117)
Beverages	29	29.6%(29/ 98)
Meals	54	28.1%(54/ 192)
Total	435	37.6%(435/1,157)

53. Percentages of observed transactions in which conducts that might constitute abuse of a superior bargaining position surpassed 40% in transactions of temporary staffing, gifts to guests, and flowers. Such figures were higher than those of other transactions.

4.2.3. Points of attention upon transactions

Bridal companies

54. Requests for purchasing goods or services and paying monetary contributions or providing goods are actually typical conducts of the abuse of a superior bargaining position. Administrative measures were taken by the JFTC against such violations.

55. On the other hand, request for unprofitable transaction (beating price down) is a conduct related to price, which is one of the most important factor in conditions of transactions, and the existences of such requests were pointed out by many suppliers in other Fact-finding Surveys.

56. To prevent violations against the AMA or the Subcontract Act, bridal companies must keep in mind not to engage in those conducts that might constitute the categories of violations such as mentioned above.

Suppliers

57. It is important for suppliers to deepen their understanding of the abuse of a superior bargaining position or the Subcontract Act, so that they can consult with or report to the JFTC when they are subject to violations.

4.3. Follow up by the JFTC

58. As a result of the Fact-Finding Survey, the JFTC observed conducts by bridal companies in a significant portion of transactions that might constitute the abuse of a superior bargaining position or violations of the Subcontract Act. From the viewpoint of preventing violations and securing of fairness in transactions, the JFTC published the results of the Fact-Finding Survey and announced a plan to take following actions.

The JFTC explains the result of the Fact-Finding Survey to trade associations related to bridal companies and ask them to make efforts to secure fair trade. For example, it is desired that the trade associations ensure that member bridal companies understand the regulations against the abuse of a superior bargaining positions and the Subcontract Act so that they can make voluntary efforts for resolution of competition concerns.

The JFTC gives training sessions targeting bridal companies, and explain the result of the Fact-Finding Survey and the contents of regulations against the abuse of a superior bargaining positions and the Subcontract Act.

The JFTC calls for participation in each training session and the use of training videos by bridal companies and suppliers, through JFTC's website, Twitter, Facebook, and other means, so that they can deepen their understanding of the regulations against the abuse of a superior bargaining positions and the Subcontract Act.

The JFTC closely observes transactions related to bridal business and endeavor to detect the conducts that might constitute the abuse of a superior bargaining position or violations of the Subcontract Act. In addition, the JFTC keeps strict enforcement to those violations.

Annex A.

List of Fact-Finding Surveys by the JFTC since FY 2007

Title	Date of Publication of the Report
1 Fact-Finding Survey on Textbook Distribution	Aug 3, 2007
2 Fact-Finding Survey on the Current Situation of Transactions in the City Gas Sector	Jun 10, 2008
3 Fact-Finding Survey on the Animation Industry	Jan 23, 2009
4 Fact-Finding Survey on the Actual State of Competition over the Import and Export of International Air Cargo	Apr 17, 2009
5 Fact-Finding Survey on Transactions between Large-Scale Retailers and Suppliers	May 26, 2010
6 Follow-up Study on the Transactions in the Advertisement Industry	Sep 1, 2010
7 Follow-up Study on Transactions Practices between Financial Institutions and Corporations	Jun 15, 2011
8 Study on Transactions between Franchise Chain Head Office and Franchisee	Jul 7, 2011
9 Fact-Finding Survey on the Transactions between Food Manufacturers and Wholesalers	Oct 19, 2011
10 Fact-Finding Survey on the Transactions between Hotels and Suppliers	May 16, 2012
11 Fact-Finding Survey on the Transactions between Large-Scale Retailers and Suppliers	Jul 11, 2012
12 Proposals for the Electricity Market from the viewpoint of Competition Policy	Sep 21, 2012
13 Fact-Finding Survey on Transactions between Food Service Operators and Suppliers	May 27, 2013
14 Follow-up Study on Gasoline Transactions	Jul 23, 2013
15 Fact-Finding Survey on Transactions Involving the Use of Logistics Centers	Aug 8, 2013
16 Fact-Finding Survey on Transactions of Private Brand Products in the Food Sector	Jun 20, 2014
17 Study on the Childcare Sector	Jun 25, 2014
18 Study on Transactions between Shippers and Logistics Companies	Mar 11, 2015
19 Fact-Finding Survey on Transactions for the Production of TV Programs	Jul 29, 2015
20 Review of the System for Exemption from the Antimonopoly Act for International Ocean Shipping	Feb 4, 2016
21 Follow-up Study on Gasoline Transactions	Apr 28, 2016
22 Issues Concerning Competition Policy in the Mobile Phone Market	Aug 2, 2016
23 Study on the Nursing-Care Sector	Sep 5, 2016
24 Fact-finding survey on Transactions in the Bridal Industry	Mar 22, 2017
25 Fact-finding survey on Transactions in the Funeral Industry	Mar 22, 2017