

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

DAF/COMP/WD(2014)7  
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**ROLE OF COMPETITION IN FINANCIAL CONSUMER PROTECTION**

-- Note by Japan --

**26 February 2014**

*This note is submitted by Japan to the Competition Committee FOR DISCUSSION under Item VII of the agenda at its forthcoming meeting to be held on 26 February 2014.*

**JT03352325**

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## **1. Introduction**

1. The issue of consumer protection in financial services is mainly handled by the financial authorities (the Financial Services Agency) in Japan. On the other hand, Antimonopoly Act prohibits abuse of superior bargaining position, and the Japan Fair Trade Commission (JFTC) addresses the said abuse in relation to trade practices in financial services. While the victims of the abuse of superior bargaining position are usually enterprises (mainly small and medium-sized enterprises), such enterprises can also be regarded as consumers of financial services in a broad sense. Therefore, the JFTC's activities in relation to the abuse of superior bargaining position in the financial sector is considered to be a part of discussion.

2. As recent examples, therefore, this paper will present in 2 below the case of the abuse of superior bargaining position by a major bank against enterprises as borrowers, where the JFTC has taken legal action. It will also present in 3 below "the Survey on Business Practices between Financial Institutions and Enterprises", in an attempt to contribute to appropriate trade practices between financial institutions and enterprises.

## **2. The case of the abuse of superior bargaining position by a major bank**

3. A major bank that had the largest total assets among Japanese banks at the time (91 trillion Japanese Yen at the end of March 2005) conducted the following acts against enterprises that had relationships with the bank through loans and whose bargaining positions were supposed inferior to that of the bank, in processing loan procedures.

4. The major bank forced the borrower of the loans as described above to purchase a interest rate swap<sup>1</sup> by stating or suggesting that such purchase was a precondition for granting the loans, or that, without the purchase, the borrower would be unfavorably treated when obtaining the loans.

5. As the borrower would have had difficulties in its business activities if it did not obtain the loans from the major bank, the borrower was in a position in which, to maintain the loan transactions, it had no choice but to comply with a variety of requests from the major bank in addition to accepting the conditions for loans, which means its bargaining position was inferior to that of the major bank.

6. By taking advantage of its superior bargaining position over the borrower, the acts as described above taken by the major bank to force the borrower to purchase the interest rate swap (i.e., a product or service other than those related to loans) unjustly in light of normal trade practices, fell into the abuse of superior bargaining position in violation of Article 19 (Prohibition of Unfair Trade Practices) of the Antimonopoly Act. Accordingly, in December 2005, the JFTC issued a recommendation decision against the major bank for the elimination of such acts.

## **3. Survey on Business Practices between Financial Institutions and Enterprises**

7. The JFTC has long been watching the actual situation of unfair trade practices between enterprises that obtain loans ("the borrower enterprises")<sup>2</sup> and financial institutions<sup>3</sup>, in which, for example,

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<sup>1</sup> An interest rate swap is a financial derivative contract in which enterprises swap different types of interest rates in a contract period that are calculated based on notional principal amounts (calculated principal amounts for the calculation of interest) that are set up between the entrepreneurs.

<sup>2</sup> Enterprises with a record of short-term borrowings in financial statements

<sup>3</sup> Financial institutions include banks, shinkin banks and credit unions, but exclude government affiliated financial institutions, nonbank financial institutions (enterprises that carry out credit operations by

financial institutions sell financial products to the borrower enterprises by taking advantage of their superior bargaining position in the transactions. The JFTC has revealed such trade practices by publishing “the Survey on Business Practices between Financial Institutions and Enterprises” in July 2001<sup>4</sup> and in June 2006<sup>5</sup>.

8. Since then, amid changes in the economic situation, such as financial crisis after the collapse of Lehman Brothers and the appreciation of the yen, the JFTC carried out a follow-up survey on the actual situation of trade practices between financial institutions and the borrower enterprises and published the results of the survey in June 2011<sup>6</sup>.

9. In this 2011 survey, in the same manner as the previous survey, the JFTC sent questionnaires to the borrower enterprises regarding whether or not the borrower enterprises had ever received requests for loans without their own applications (“the requests for loans”) or whether the borrower enterprises had ever received requests for higher interest rates than specified in the agreements (“the requests for higher interest rates”), or whether or not the borrower enterprises had complied with such requests against their will.

10. Based on the results of the survey, the ratio of the enterprises that received the requests for loans declined from 40.5% in 2006 to 22.6% in 2011. The ratio of the companies that received the requests for higher interest rates also declined, from 13.2% to 4.3%. In addition, of the borrower enterprises that received the requests, the ratio of the borrower enterprises that complied with the requests against their will declined from 31.9% to 17.6% (in the case of the requests for loans) and from 78.0% to 64.6% (in the case of the requests for higher interest rates). As these figures show, the overall situation has been improving. This is considered to be attributable to the progress in compliance initiatives taken by financial institutions.

11. However, compared to the survey undertaken in 2006, there were no major declines in the ratio of the borrower enterprises that found it difficult to turn down various requests from financial institutions or in the ratio of the borrower enterprises that, as a reason for complying with the requests against their will, answered that they felt it would otherwise become difficult to obtain future loans. Moreover, the ratio of the borrower enterprises with the answer that they had not changed the financial institutions they borrow from stood at 71.8%, which may indicate that it was not necessarily easy for the borrower enterprises to change financial partners. For these reasons, it was pointed out, as notes for financial institutions in making various requests, that the financial institutions need to take careful steps in such a manner that the borrower enterprises would not consider that they would be unfavorably treated in future loans and other transactions unless they comply with the requests.

12. To ensure that fair and free competition is maintained and promoted in the financial market and so on, the JFTC expects that each financial institution will promote further compliance-related initiatives,

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receiving registrations in accordance with Article 3 of the Act for the Control of Moneylending Business, etc., without carrying out deposit operations), securities companies, insurance companies and trust companies.

<sup>4</sup> “Survey on Business Practices between Financial Institutions and Enterprises – Survey results from the perspective of unfair trade against borrowers –”(July 4, 2001; Japan Fair Trade Commission)(available only in Japanese)

<sup>5</sup> “Survey on Business Practices between Financial Institutions and Enterprises” (June 21, 2006; Japan Fair Trade Commission)(available only in Japanese)

<sup>6</sup> “Survey on Business Practices between Financial Institutions and Corporations – 2011 follow-up investigation report –” (June 15, 2011; Japan Fair Trade Commission)(available only in Japanese)

and will ensure that its employees are fully aware of “Viewpoints from the Antimonopoly Act<sup>7</sup>” presented by the JFTC in the recent and previous surveys, and that it will continually review and inspect its trade practices. If the JFTC finds a case where fair and free competition is impeded, it will rigorously enforce the Antimonopoly Act.

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In the 2006 survey, the Japan Fair Trade Commission stated as “the Viewpoints from the Antimonopoly Act” that acts taken against the borrower enterprises by financial institutions with superior trading positions, including establishing or changing conditions for loans unfavorably, making requests to purchase their own financial products or services, forcing the commencement of business with their affiliates, etc., and restricting transactions with competitors of the financial institutions and involvement in business activities of the borrower enterprises would become problems under the Antimonopoly Act.