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ROUNDTABLE ON PROMOTING COMPLIANCE WITH COMPETITION LAW

-- Note by the Delegation of Japan --

This note is submitted by the delegation of Japan to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 29-30 June 2011.

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ROUNDTABLE ON PROMOTING COMPLIANCE WITH COMPETITION LAW

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1. Introduction

1. To prevent violations of the AMA, Japan has strengthened sanctions against violations in various ways, such as through an increase in the surcharge rate, the introduction of a leniency program, and an increase in the amount of criminal fines as well as the maximum term of criminal sentences. On the other hand, not only stronger sanctions, but also improvement of corporate compliance is indispensable to prevent violations. Efforts in raising awareness of the importance of corporate compliance are essential for encouraging corporations to enhance it.

2. The JFTC has been promoting support for corporations to improve compliance with the AMA as one of its important policies. In this regard, it has conducted questionnaire surveys, etc., on companies listed on the first section of the Tokyo Stock Exchange or those affiliated with foreign capital, and compiled survey results as reports and recommendations. Moreover, to facilitate further promotion of competition policies effectively and properly, the JFTC has been seeking to enhance the understanding of competition policies by the general public, including elementary and junior high school students, through providing information to and hearing opinions/requests from them.

3. In the following, we introduce the current status of corporate compliance in Japan as well as successful cases of the JFTC in promoting corporate compliance, recommended practices for businesses to implement effective corporate compliance, etc.

2. Analyses in past reports on compliance

4. The JFTC has conducted five surveys in the past on efforts to promote compliance with the AMA. In the following, we introduce some of the issues, such as sectors and company size, as well as the current status and the causes of recidivism that are considered to be factors affecting compliance.

2.1 Analyses by industry

5. “Corporate Compliance System – the Present Status and Issues of Corporate Compliance Mainly with the Antimonopoly Act¹” (Japan Fair Trade Commission, 2006, hereinafter referred to as the “2006 report”), which surveyed the companies listed on the first section of the Tokyo Stock Exchange and analyzed the results, as below.

2.1.1 Construction industry

6. The ratio of companies is high for those which consider industry-wide efforts would be important as the most effective measure for full compliance with the AMA, etc. On the other hand, the ratio of the

¹ Available at <http://www.jftc.go.jp/en/pressreleases/uploads/2006-May-24.pdf> (English version).

companies that consider themselves unlikely to violate the AMA is low. The ratio of the companies that have reviewed their compliance manuals in response to the revision of the AMA in 2005 is high.

2.1.2. *Transportation and information-communication industry*

7. The ratio of the companies that consider it important to establish a monitoring system for legal compliance by the employees is high.

2.1.3. *Real estate industry*

8. The ratio of the companies which evaluate their current compliance systems as inadequate both in form and in substance is high. On the other hand, the ratio of the companies which consider themselves unlikely to violate the AMA is high.

2.1.4. *Service industry*

9. The ratio of the companies which evaluate their current compliance systems as inadequate in form but adequate in substantive function is high.

2.1.5. *Financial and insurance industry*

10. The ratio of companies is high for those which have prepared compliance manuals and developed them at an earlier time. The ratio of the companies that consider themselves unlikely to violate the AMA is low.

2.2 *Analyses by company size*

11. In 2007, the JFTC compiled surveys to make a report titled “Current Status of Corporate Compliance System in the Construction Industry – From the Viewpoint of the Antimonopoly Act-²” (hereinafter referred to as the “Construction Industry Report”). This report focused on both general-contractors which are operating their businesses nationwide and “regional-based” general -contractors, etc. Below are the analyses in the “Construction Industry Report”.

12. First, the table below shows the result of the analyses by company size in capital stock for the percentage of construction businesses which have formulated compliance manuals for the AMA or have established a certain department or staff in charge of compliance.

(Unit: %)

Company Size by Capital Stock	Department/Staff in Charge of Compliance	Formulation of Compliance Manual for the AMA
Less than 500 million JPY	39.4	13.4
More than 500 million JPY to less than 5 billion JPY	90.9	45.2
More than 5 billion JPY	100	80.0

13. In consideration of the circumstances shown above, analyses on each company size were concluded as follows.

14. In large-scale companies, developments of a system to promote compliance, such as the creation of compliance manuals or the establishment of a department in charge of compliance, etc., were observed. On the other hand, these companies lack awareness of the risks of violating the AMA and their efforts for

² Available at <http://www.jftc.go.jp/pressrelease/07.may/070516-hontai.pdf> (Japanese version only).

internal audit, etc., seem to be insufficient. Therefore, promotion of compliance in substance is a major challenge for these companies.

15. In small and medium-sized enterprises, both development of a compliance system and substantive efforts to promote compliance are significantly insufficient. This seems to be due to the recognition of the burdensome work to develop a system to promote compliance. However, positive responses can be expected for less burdensome efforts such as developing compliance manuals or designating staff for compliance. In addition, these companies should avail themselves of additional measures, such as taking advantage of training courses, etc., on compliance held by external organizations.

2.3 *Current status of recidivism and its causes*

16. With regard to the status of recidivism, the following analyses were provided in the 2006 report.

17. From the sample of 3,801 companies which were subject to the surcharge payment orders for the decade from 1995 to 2004, the number of repetitive violators was 77 (2.0% of total). Since surcharge payment orders were issued to a wide variety of companies, the ratio itself is not very high. However, for 123 companies which were subject to surcharge payment orders among those listed on the first section of the Tokyo Stock Exchange (TSE), 17 companies (13.8%) were regarded as repeat offenders. The reason why there are so many repetitive violators among the listed companies on the first section of the TSE can be attributable to the fact that they develop their businesses widely in geography, have many divisions, and have a significant impact on the markets.

18. Furthermore, a survey on the track record of repeated violation was made with regard to the 45 companies (of which 24 companies were listed on the first section of the TSE) that had received recommendations concerning a recent major bid rigging case related to an order by the Japan Highway Public Corporation. Nine companies (20%) were found to have repeated violations in the past 10 years. Three companies (7%) out of the nine had received recommendations three times. These nine companies are all large and listed on the first section of the TSE, which means repetitive violators account for 38% of 24 companies listed on the first section of the TSE that were involved in the case. The fact there are repeat offenders, although most of them have already been equipped with adequate compliance systems, is deemed to indicate that corporate compliance remains perfunctory. Efforts are required to substantiate its purposes³.

19. Furthermore, the “Construction Industry report” analyzes, as follows, the causes of recidivism in the construction industry where bid-rigging, including those initiated by government officials, occurs frequently.

20. About the causes of bid-rigging, the percentage of businesses pointing out longtime business practices in the construction industry was the highest. The percentage of businesses which point out the structure of the construction industry that suffered from excessive supply and decline in demand was the second highest. The third highest was the percentage of those pointing out the bidding system which is prone to bid-rigging. On the other hand, the percentage of businesses referring to insufficient deterrence against bid-rigging was the lowest.

21. In addition, with regard to effective efforts for preventing bid-rigging, while quite a few businesses consider industry-wide efforts important, many among the ordering parties think that it is important to improve corporate compliance by businesses and strengthen sanctions against bid-rigging. This means that there is a wide gap between the recognition of businesses and that of ordering parties.

³ A revision of surcharge payment system was implemented in the revision of the AMA in 2005. The surcharge calculation rate against recidivists was raised in this revision.

3. Promoting better compliance

3.1 *Best practices of promoting compliance*

22. With regard to the JFTC's assistance to improve corporate compliance, etc., concerning the AMA, the results of the "2006 report" and the "Survey on Current Status of Corporate Compliance System - Status after Revision of the AMA in January 2006" (Japan Fair Trade Commission, 2009, hereinafter referred to as the "2009 report") were compared for the purpose of analyzing their effectiveness.

23. As a result, improvements were found in all items. The reasons were analyzed as follows.

24. The leniency system, etc., introduced by the amendment of the AMA in 2005 have enhanced risk awareness of businesses regarding compliance with the AMA. In addition, the following activities are considered to have effectively contributed to the improvements:

1. Survey on the actual status and problems of corporate compliance systems, etc., issue of reports about the survey results as part of the support to promote corporate compliance with the AMA after 2006, and in particular distribution of the reports to companies surveyed such as those listed on the first section of the Tokyo Stock Exchange, etc.
2. Development of cooperative relationships⁴ with the Japan Competition Law Forum⁵.
3. Introduction of the results of the surveys and activities of awareness campaigns for compliance with the AMA at a meeting of a cooperation council concerning antimonopoly policy⁶, meetings with local key figures⁷, meetings with chambers of commerce, etc.
4. Some media coverage of the reports

Table: Comparison of survey results (Extraction) (Unit: %)

	1. Have formulated rules concerning compliance with the AMA.	2. Top management alerts staff on the importance of compliance.	3. Awareness of the risks of violating the AMA.	4. Consideration of the use of the leniency system.
2006 report	81	71	51	23
2009 report	86	74	72	43

3.2 *Public relations/Public hearings activities and a self-evaluation on these activities*

25. The JFTC is engaged in prevention of violations against the AMA and effective/proper promotion of competition policy by enhancing public understanding of the AMA through widely providing the public with information on the content of the AMA and its own activities, in addition to gathering opinions/requests from the public in the course of communications with them. Specifically, the JFTC issues press releases,

⁴ A voluntary organization consisting of lawyers with knowledge and experiences about the AMA.

⁵ The JFTC has developed cooperative relationships with the Japan Competition Law Forum through lectures, hearing of opinions and so on.

⁶ The council was set up for the promotion of understanding of competition policies and the facilitation of implementing policy to meet the actual situation of regional economy and society.

⁷ Consist of representatives from businesses, academics, media, consumer organization, etc. in each region.

prepares and distributes a wide variety of PR (public relations) documents, disseminates/edifies activities through school education, gathers opinions and provides information from/to the general public.

26. Furthermore, the JFTC conducted a self-evaluation from the viewpoint of necessity/effectiveness for the purpose of improving these activities and promoting corporate compliance more effectively. In this evaluation, the above activities were evaluated as necessary and effective, while strategies for enhancing public awareness and implementing easily understandable public relations were pointed out as necessary. In addition, it also revealed the following issues: 1. continuously enhancing policies on public relations by identifying needs for improvement from the general public through conducting questionnaire surveys, etc; 2. explaining the policy that is strongly demanded by the public and is highly effective through actively providing related parties with relevant information, and 3. expanding the size of public relations/public hearing activities by increasing the frequency of related events.

4. Toward achievement of effective compliance with the AMA

4.1 Opinions from lawyers

27. The JFTC conducted hearings from lawyers with expertise in the AMA in the “Survey on the current status of efforts made to enhance compliance in foreign companies and corporate compliance from the viewpoint of attorneys - focusing on compliance with the Antimonopoly Act -⁸” in 2008. The following opinions⁹ were gathered as “issues to be kept in mind for the effective functioning of compliance with the AMA, etc.”

- “For the compliance department/staff to gain credibility within the company, it is necessary to (1) have top management show their intention explicitly, and (2) repeatedly advocate that the compliance activities are functioning based on the intention of top management. In fact, companies where compliance functions well have good coordination between the above and can achieve results with the cooperation of lawyers.”
- “Although we emphasize the importance of compliance with the AMA when talking to the relevant staff in the companies, it seems difficult to change the minds of sales staff. Training courses on compliance do not seem to make sense for them. It seems that a drastic increase in surcharges and stricter crackdowns on cartels by more use of leniency (“carrot and stick” policy) are indispensable for expecting real change of awareness of the sales staff.”
- “Cartels have pervaded the Japanese economy and the culture of sales activity. It seems to be very difficult to achieve effective compliance without drastic reform of awareness by the top management or without getting into danger by crackdowns.”
- “It is definitely important to construct a system where it inevitably comes to light within the company if an employee violates the AMA. A system should be constructed where each employee conceives the concept of “Violation of the rule comes to light inevitably. This is detrimental to me. Therefore, I should not violate the rule.”
- “The number of cases where the whole company is involved in the violation has declined drastically. On the other hand, there are still cases where employees secretly participate in violations. To plan measures to deal with these cases systematically and implement them under the leadership of top management are really tough challenges.”

⁸ Available at <http://www.jftc.go.jp/pressrelease/08.may/08050901tenpu.pdf> (Japanese version only)

⁹ The number of obtained answers is limited; therefore, it does not mean that these answers properly represent the views of Japanese attorneys as a whole. Note that the answers are personal views of the attorneys answering the questions.

4.2 *To enhance effective compliance*

28. In the past survey conducted by the JFTC which focused on the actual status of efforts for promotion of compliance with the AMA, issues such as “effective operation of the compliance system” and “making the compliance system more specific and suitable for the actual status” were pointed out as challenges.

29. In response to this, “Survey on the situation of the corporate compliance system with the AMA - Measures for Enhancing the Effectiveness of Compliance¹⁰” (Japan Fair Trade Commission, 2010) focused on efforts to enhance the effectiveness of compliance with the AMA.

30. The survey focused on (1) Efforts to prevent violations of the AMA, (2) Efforts for early detection of violations of the AMA, and (3) Responses to information regarding violations of the AMA.

31. Results of the survey suggested that ongoing efforts in the following points are desirable for effective compliance with the AMA. In addition, on each point, it was recommended that the importance of both initiatives and involvement of top management need to be recognized and efforts need to be initiated by the top management.

1. Enhancing efforts by the department of legal affairs/compliance
 - The department of legal affairs/compliance should appoint staff for the AMA and make them engaged in compliance with the AMA expertly and intensively.
 - Staff for legal affairs/compliance should actively and constantly engage in compliance activities which include not only passive ones, such as the provision of consultations, but also periodic information exchange with sales departments and involvement in negotiation processes regarding trading terms, etc.
2. Enhancing efforts for delivering messages from top management on emphasizing the importance of compliance
 - Top management itself should directly, repeatedly, and explicitly deliver messages stressing the importance of compliance to employees by taking advantage of a variety of opportunities such as training courses.
3. Improving training courses for management executives
 - Improvement of training courses for management executives who play considerable roles in corporate compliance, internal control, application for leniency, etc., to become more knowledgeable about the AMA.
4. Active involvement of parent company in compliance by group companies with the AMA
 - Enhance engagement in foreign affiliated companies in which the parent company is less involved compared with domestic affiliated companies.
 - Regardless of whether affiliated companies are domestic or foreign, sharing information and collaboration between the parent company and affiliated companies is necessary on the assumption that the leniency programs is jointly applied within the company groups

¹⁰ Available at <http://www.jftc.go.jp/pressrelease/10.june/10063002honbun.pdf> (Japanese version only)

5. Development of a rule regarding contacts with peer companies in the same sector and compliance with the rule
 - Because contacts with peer companies in the same sector, especially those among sales staff, will include high risks of violation of the AMA, it is necessary to develop a specific rule and inform the employees about the rule. In addition, the department of legal affairs/compliance should substantively engage in checking the status of compliance with the developed rule in an objective and integrated manner.
6. Conduct an in-house investigation in response to information regarding violation of the AMA
 - In response to information concerning violation of the AMA, not only should such information be promptly reported to top management, but also an in-house investigation should be conducted with the help of related employees, through reduction of internal sanctions, etc., based on the decision of top management so that in-house investigations can be effectively conducted.

APPENDIX

1. Past compliance reports

2006	Corporate Compliance System - The present status and issues of corporate compliance mainly with the Antimonopoly Act - Available at http://www.jftc.go.jp/en/pressreleases/uploads/2006-May-24.pdf (English version)
2007	Current Status of Corporate Compliance System in the Construction Industry - From the Viewpoint of the Antimonopoly Act - Available at http://www.jftc.go.jp/pressrelease/07.may/070516-hontai.pdf (Japanese version only)
2008	Survey on Current Status of Efforts Made to Enhance Compliance in Foreign Companies and Corporate Compliance from the Viewpoint of Attorneys - Focusing on Compliance with the Antimonopoly Act - Available at http://www.jftc.go.jp/pressrelease/08.may/08050901tenpu.pdf (Japanese version only)
2009	Survey on Current Status of Corporate Compliance System - Status After Revision of the AMA in January 2006 - Available at http://www.jftc.go.jp/pressrelease/09.march/09031801-hokokusho.pdf (Japanese version only)
2010	Survey on the Situation of the Corporate Compliance System with the AMA - Measures for Enhancing the Effectiveness of Compliance - Available at http://www.jftc.go.jp/pressrelease/10.june/10063002honbun.pdf (Japanese version only)

2. Films related to PR activities

- For kids: “Dokkinn!! Please teach me the AMA!”

Available at <http://www.jftc.go.jp/kids/index.html> (Japanese version only)

Note: “Dokkinn” is the character for the PR activities. Its name comes from the abbreviation of the Antimonopoly Act (“Dokkin-hou” in Japanese) and the sound of the pulse of the heart (“Dokkin”) in Japanese.

- For adults: “Towards Fair and Free Competition”

Available at <http://www.jftc.go.jp/douga/100212index.html> (English version)