

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

Cancels & replaces the same document of 16 October 2013

Working Party No. 2 on Competition and Regulation

WASTE MANAGEMENT SERVICES

-- Japan --

28 October 2013

This note is submitted by Japan to the Working Party No. 2 of the Competition Committee FOR DISCUSSION under Item VII at its forthcoming meeting to be held on 28 October 2013.

Please contact Ms. Cristiana Vitale if you have any questions regarding this document [E-mail: cristiana.vitale@oecd.org].

JT03347034

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

– Japan –

1. Outlines of regulations concerning waste management in Japan

1. In June 2000, the Basic Act on Establishing a Sound Material-Cycle Society was enacted that stipulated a basic framework for the formation of a recycling-based society, including clarification on the responsibilities of the central and local governments, business, and the public, so that a recycling-based society can be implemented through the overall efforts of these entities. Under the framework of this Act, so-called extended producer responsibility (EPR) is established as a general principle, where the producers bear certain responsibility for the products, etc., they produce even after these products have been used and become waste.

2. Under this basic framework, the Waste Management and Public Cleansing Law (hereinafter referred to as the “Waste Management Law”) and the Law for the Promotion of Effective Utilization of Resources stipulate general rules on waste management to promote its proper disposal and recycling. In addition to these laws, the Law for the Promotion of Sorted Collection and Recycling Containers and Packaging (hereinafter referred to as the “Containers and Packaging Recycling Law”) and other laws have been enacted as regulations suited to characteristics of the individual products.

2. Definition of waste

3. According to the written request for this contribution, municipal solid waste (MSW) discussed therein is defined as “the waste collected from households, or waste which, because of its nature or composition, is similar to waste generated by households.” In Japan, waste, is largely divided into municipal solid waste and industrial waste. Industrial waste includes waste generated from business activities that falls under one of the 20 types of waste specified in the Waste Management Law¹ and imported waste. Municipal solid waste is defined as “waste other than industrial waste” in Article 2, paragraph (2) of the same act and includes waste generated by household and waste from business activities at certain offices and restaurants. Examples include combustible waste (kitchen waste, paper waste including used tissue paper, clothes, etc.), incombustible waste (glass used for eating utensils, etc., plastic used for beverage bottles, etc.) and bulky refuse (moveable closets and other furniture) from households, combustible waste (kitchen waste, paper waste including used tissue paper, etc.) and bulky refuse (large cupboards, desks, etc.) from certain enterprises, and excreta.

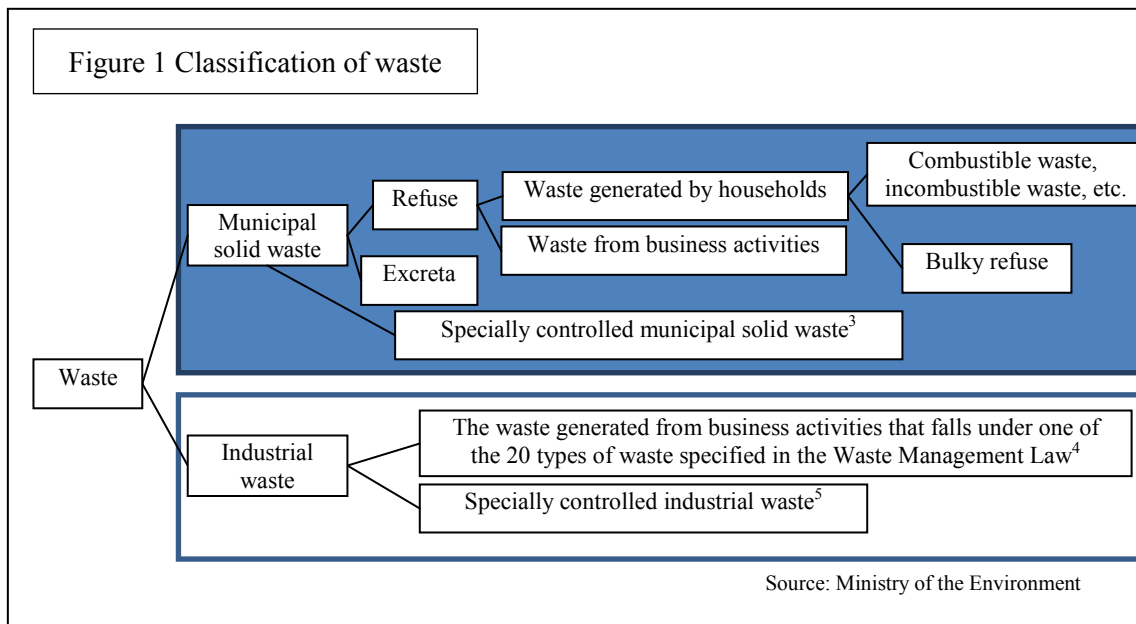
4. In this way, the definitions of MSW in the written request for this contribution and the municipal solid waste defined in Japan are very similar. Therefore, the following section provides explanations² on matters concerning the municipal solid waste as defined in Japan.

¹ Industrial waste is defined in Article 2, paragraph (4) of the Waste Management Law as follows.

In this law, “industrial waste” refers to the waste categories defined below:

- 1) Ash, sludge, waste oil, waste acid, waste alkali, waste plastic and others specified by a Cabinet Order among the waste generated from business activities.
- 2) Imported waste (excluding ... waste personally carried into Japan by persons entering ...)

² Excreta is excluded from the following explanations of the municipal solid waste management in consideration of the fact that MSW is defined as “the waste collected from households, or waste which is similar to waste generated by households” in this discussion.



(Source: “Annual Report on the Environment, the Sound Material-Cycle Society and the Biodiversity in Japan 2013”)

3. Municipal solid waste collection

3.1. Regulations and current status concerning collection and transportation of municipal solid waste

3.1.1 Outlines of the regulations

5. It is stipulated that municipalities should collect and transport municipal solid waste (hereinafter referred to as “direct management”). It is also stipulated that municipalities may consign the collection and transportation to other parties (hereinafter referred to as “private consignment”). Regarding consignment to other parties (consignee), the standards for consignment stipulate that the “consignment fee shall be sufficient for conducting the consigned work” in addition to showing requirements for the consignee’s ability, etc. It is also provided that “emphasis should be placed on steady implementation of the work rather than requests to ensure economic efficiency, etc., in consideration of the importance of environmental protection and the public nature of municipal solid waste management.”⁶

³ Refers to those municipal solid waste specified by a Cabinet Order as wastes which are explosive, toxic, infectious or of a nature otherwise harmful to human health or the living environment.

⁴ Refers to ashes, sludge, waste oil, waste acid, waste alkali, waste plastics, paper waste, wood waste, fiber waste, animal and plant residues, solid animal waste, waste rubber, scrap metal, waste glass, concrete and ceramic, slag, debris, animal excrement, carcasses, soot and dust, imported waste, and the above industrial waste that has been treated for disposal.

⁵ Refer to those industrial wastes specified by a Cabinet Order as wastes which are explosive, toxic, infectious or of a nature otherwise harmful to human health and the living environment.

⁶ Notification No. 080619001 from Waste Management Division, Waste Management and Recycling Department, Ministry of Environment, June 19, 2008, “Guidelines for Defining municipal solid waste management plan Based on Provisions of Article 6, Paragraph (1) of the Waste Management and Public Cleansing Law “

6. In addition to the above, municipal solid waste may be collected and transported by private entities with fees paid by enterprises that generated it. In this case, a private entity who intends to conduct the service of collecting and transporting municipal solid waste must obtain permission from the mayors of the municipalities with the jurisdiction over the area (hereinafter referred to as a “permitted operator”)⁷. It is stipulated, however, that a party consigned by a municipality to collect and transport municipal solid waste is not required to obtain the above permission⁸. When a permitted operator directly collects fees from enterprises generating municipal solid waste under a contract between the two parties, the set amount of such fees shall not exceed the amount the municipalities specify.

7. It is interpreted that municipalities have the overall responsibility concerning collection and transportation of municipal solid waste. A municipality is responsible for the services of collecting and transporting municipal solid waste even when a consignee performs such services, not to mention when the municipality does them itself. In addition, when permitted operators collect and transport municipal solid waste, the collection and transport shall be appropriately performed under the supervision of the municipality in accordance with the principle of the overall responsibility of municipalities.

3.1.2 *Status of consignment of collection and transportation of municipal solid waste*

8. According to statistics from the Ministry of the Environment, the amount of waste collected and transported with each of the three methods mentioned above – direct management, private consignment, and collection by a permitted operator – is as shown in the table below.

Amount of collected waste by method

(%)

Fiscal year		FY2007	FY2008	FY2009	FY2010	FY2011
Collection by local governments	Direct	28.9	28.0	27.3	26.5	25.9
	Consignment	44.2	45.3	46.2	46.9	47.5
Collection by permitted operator		26.9	26.7	26.5	26.5	26.6

Note: Direct; collection by municipalities or special district authority; consignment: consignee

(Source: Waste Management of Japan FY2011)

3.2 *Measures taken by the Japan Fair Trade Commission*

9. While some municipalities seek competitive bidding to consign collection and transportation of municipal solid waste, there has never been any cases of consultation from businesses or case of the violation in the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as the “Antimonopoly Act”) where the Japan Fair Trade Commission (hereinafter referred to the “JFTC”) has taken measures regarding such bids. Guidelines to be specifically applied for this field have yet to be established as well. On the other hand, there is a case concerning collection of municipal solid

⁷ It is provided that the mayors of the municipalities shall grant the permission only if it is difficult for each municipality to collect or transport municipal solid waste by itself.

⁸ Article 2, item (i) of the Ordinance for Enforcement of the Waste Management and Public Cleansing Law.

waste by permitted operator, in which the JFTC took a legal measure because the trade association whose membership is made up of the permitted operators had restrained sales activities of members for clients of other members in order to limit competition for clients among its members⁹.

10. In addition to the above, there is a recent civil lawsuit case. In this case, local residents filed a lawsuit requesting that the mayor charged successful bidders for the damages resulting from suspected bid rigging involving a consignment contract for collection and transportation of waste generated by households concluded with a local government (comparison of estimates for the contracts). The district court found that there was in fact bid rigging¹⁰.

4. Recycling of waste containers and packaging

4.1 Regulations and current status concerning recycling of waste containers and packaging

4.1.1 Purpose of enactment of the Containers and Packaging Recycling Law

11. The purpose of the Containers and Packaging Recycling Law is, by reducing waste containers and packaging as municipal solid waste discharged and clarifying the division of roles among consumers (cooperating with sorted collection), municipalities (conducting sorted collection) and enterprises (recycling), to ensure proper management of waste and effective utilization of resources through reduction of municipal solid waste and adequate use of recyclable resources.

4.1.2 Outlines of the regulations

12. The Containers and Packaging Recycling Law stipulates responsibilities of enterprises, consumers, local governments and the state concerning recycling of waste containers and packaging.

4.1.2.1 Responsibilities of enterprises and consumers

13. Enterprises and consumers shall endeavor to reduce waste containers and packaging discharge through rationalization of use of containers and packaging. Enterprises and consumers shall also endeavor to promote sorted collection of waste containers and packaging, and their recycling, etc.. In addition, specified container¹¹ users, specified container manufacturers, and specified packaging¹² users are obligated to recycle waste containers and packaging¹³.

⁹ A case involving *Sapporo Kankyo Iji Kanri Kyokai* (Recommendation decision by the JFTC: December 2, 1991).

¹⁰ Judgment by Kochi District Court: February 8, 2013.

¹¹ Specified containers include steel cans, aluminum cans, glass bottles, paper beverage containers (paper cartons), cardboard boxes, other paper containers, plastic bottles (for beverages and soy sauce) and other plastic containers.

¹² Specified packaging includes package paper and plastic wrap used with trays for perishable foods, etc.

(Reference [Japanese only]: http://www.hkd.meti.go.jp/hokik/youki/recycle_qa.htm).

¹³ Aluminum cans, steel cans, paper beverage containers (paper cartons) and cardboard boxes are excluded from the subjects of recycling obligation stipulated in the Containers and Packaging Recycling Act because they have already been traded as valuables in the market and therefore have been effectively recycled. (Article 3 of the Ordinance for Enforcement of the Containers and Packaging Recycling Law).

(Reference [Japanese only]: <https://www.jcpra.or.jp/law/what/what02.html>).

4.1.2.2 Responsibility of the state

14. The state shall endeavor to take measures such as securing of funds necessary to promote reduction of waste containers and packaging discharged and sorted collection thereof, and recycling, etc.

4.1.2.3 Responsibility of local governments

15. The municipal governments shall endeavor to take measures necessary to carry out sorted collection of waste containers and packaging in their areas. The prefectural governments shall endeavor to provide the municipal governments with necessary technical assistance to ensure that their responsibility is sufficiently fulfilled.

4.2 Measures taken by the JFTC

16. Concerning recycling of waste containers and packaging, the JFTC published the guidelines related to recycling and has responded to consultations by enterprises concerning recycling.

4.2.1 Guidelines concerning joint activities for recycling under the Antimonopoly Act

17. As measures for establishing a sound material-cycle society mentioned above, promotion of “Reduction” (reduction of waste generation) and “Reuse” (collection and reuse of waste) are to be promoted along with “Recycling”. These three measures are collectively called the “3Rs.” (hereinafter referred to as “recycling, etc.”). To clarify its ideas about joint activities for these 3Rs under the Antimonopoly Act, the JFTC has published “the Guidelines Concerning Joint Activities for Recycling under the Antimonopoly Act” (June 26, 2001, JFTC; revised on January 1, 2010). These guidelines provide basic recognition on recycling, etc. and then explain the approach to joint development of recycling systems and joint activities pertaining to recycling, etc. under the Antimonopoly Act through examples. The following section explains the part of those guidelines concerning joint development of recycling systems.

4.2.1.1 Joint development of recycling system

18. Specific examples of recycling systems that are developed by enterprises in joint operations include cases where machinery manufacturers jointly use collection facilities to split the waste according to the enterprises (manufacturers) and transport them to each enterprise (manufacturer) of waste products, or jointly establish such collection facilities, for example, establishing collection facilities for products that have been used and discarded by users. In determining whether the above-mentioned joint operations become problems under the Antimonopoly Act, examinations are undertaken into what effect the joint operations have on the product and recycling markets. Possible impacts on the product market are as follows.

- **Product market:** In the event that enterprises develop a recycling system in a joint operation to deal with product waste, although the necessary costs for recycling, etc. (usage charges for recycling facilities, usage charges for collection facilities, transportation charges, etc.) are shared, in cases where the proportion of the required costs for recycling, etc., of the product concerned compared to the selling prices are small, the joint operation has an indirect effect on competition in the product market itself, and is therefore considered unlikely to become a problem under the Antimonopoly Act. However, if the recycling system covers a broad scope, for example, by the inclusion of the collection and transportation of waste and the process for recycling, there will be cases where the proportion of the required costs for recycling, etc., of the product concerned through joint operations are large compared to the selling prices. In such cases and when the total

share of the participating enterprises in the product market becomes large, it would have an effect on competition in the product market and become problematic under the Antimonopoly Act as an “unreasonable restraint of trade.” Furthermore, in the event that enterprises jointly develop a recycling system because it is difficult to independently develop a recycling system in doing business in the product market, by denying or restricting the use of that recycling system to new entrants or certain existing enterprises without justifiable grounds, by for example, obstructing new entry of other enterprises into the product market or causing difficulties in the business activities of existing enterprises, in the case that such actions substantially restrain competition in the product market, they shall fall under the provisions prohibiting private monopolization or unreasonable restraint of trade. In addition, even if such actions do not substantially restrain competition in the product market, if there is a possibility that such actions cause difficulties in the normal business activities of enterprises that are denied or restricted participation in the recycling system, they shall be problematic under the provisions prohibiting unfair trade practices as concerted refusal to trade.

4.2.2 *Consultation cases from businesses*

19. The JFTC provides consultations services to give advice regarding whether a specific action planned by an enterprise or trade association will become a problem under the Antimonopoly Act, etc. The following sections show two such consultations the JFTC provided in FY2007¹⁴. One is “an activity for joint collection of containers by enterprises”, which is related to recycling, and the other is concerning a charge for plastic shopping bags (hereinafter referred to as “plastic bags”) in stores aimed at reducing their use by a city government, resident group and retailers, which is related to reducing.

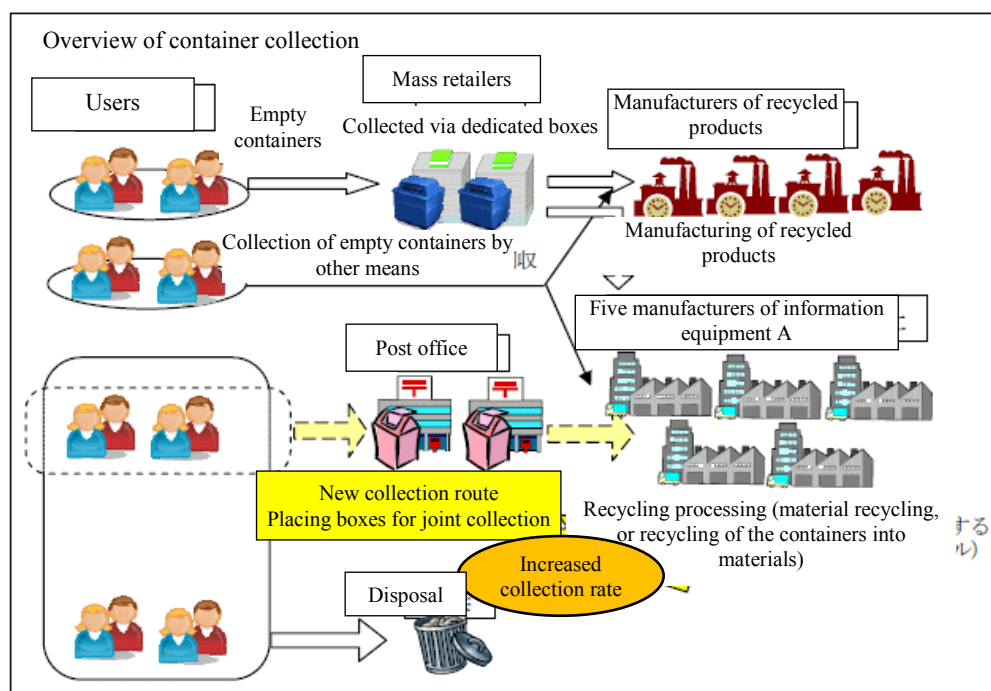
4.2.2.1 *Consultation case concerning an activity for joint collection of containers*

- Contents of the consultation:
 - Five information equipment manufacturers (hereinafter referred to as “five companies”) produce and sell consumable B used for information equipment A (Consumable B manufactured and distributed by the five companies is hereinafter referred to as “genuine products.”). Consumable B is made for equipment A from each company, and there is no compatibility between consumable B from the different manufacturers. Concerning consumable B, there are multiple enterprises who produce and sell what are called “recycled products,” in addition to the five companies that manufacture and sell genuine products.
 - The five companies are planning to jointly collect the containers of consumable B, in addition to continuing to collect them individually. Specifically, the five companies intend to collect the containers by placing joint collection boxes in post offices, sort the collected containers by manufacturers, and bring them back for recycling processing (material recycling, or recycling of the containers into materials) at each of their facilities, in addition to continuing to collect the containers individually from collection boxes placed at mass retailers, etc. The cost of this joint collection is α yen per unit of consumable B on average, which is less than 1% of its sales price. Each company can decide whether or not to increase the sales price by the amount of this cost. The question is whether such an activity by the five companies becomes a problem under the Antimonopoly Act.

¹⁴

Contents of the consultations summarized below have been revised in consideration of maintaining the confidentiality of the consulters, such as by leaving them anonymous, while adjustments have been made to make them easy to understand as references. Accordingly, specific details of the consultations are not necessarily consistent with those of the actual details thereof.

- **The JFTC's answer:** The JFTC responded that the planned joint collection by the information equipment manufacturers would not immediately become a problem under the Antimonopoly Act. Contents of the reviews are as follows:
 - Impact on sales competition among the five companies concerning consumables B. The joint collection may become a problem under the Antimonopoly Act if the five companies arrange that the price of the product be increased by the amount of cost for the collection (a yen per unit). In this case, however, it is left to the discretion of each company whether or not to increase the sales price by the amount of the said cost. Accordingly, the joint collection in question is not deemed to affect price competition among the five companies concerning genuine products of consumable B.
 - Impact on competition between genuine products and recycled products. The joint collection is aimed at collecting a large number of empty containers, which used to be disposed of. It is unlikely that this joint collection will hinder the collection of empty containers by third-party manufacturers of recycled products, which have been conducted at mass retailers, etc., and result in a significant reduction in the amount of containers collected by such manufacturers. In consideration of this, it is deemed unlikely that implementation of the joint collection in question will restrain competition between genuine products and recycled products.



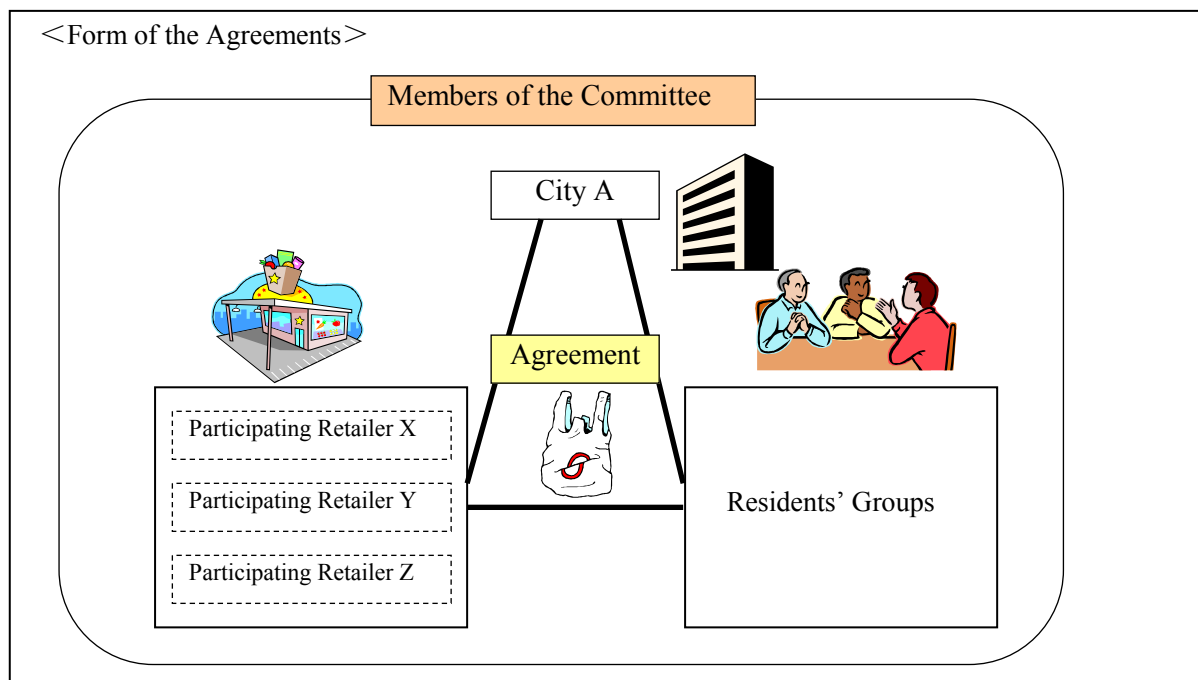
(Source: Examples of Consultations: in FY2007, JFTC)

4.2.2.2 *Consultation concerning charge for plastic bags in stores aimed at reducing their use*

- Contents of the consultations:
 - Each retailer in the city A has so far been providing free plastic bags to its customers for shopping. Under this circumstance, to further promote the reduction of their use, retailers have focused on an initiative to impose a fee for using plastic bags. However, only a fraction of retailers actually introduced a fee on plastic bags due to retailers' concern that their competitors might deprive them of their customers if they charge for plastic bags ahead of their competitors who provide free plastic bags.
 - The city A decided to set up a committee by calling for the participation of resident groups and respective retailers in the city to consider how to reduce the use of plastic bags. Although it was up to each retailer whether to participate in this committee or not, almost all the retailers in the city decided to join the committee.
 - After the discussion at the committee mentioned in the above, the city A, the resident groups, and participating retailers in this city (hereinafter referred to as “Three Parties”) concluded an agreement that customers should pay for the plastic bags when they buy things at retailers in the city, and the unit price of five Japanese Yen per bag. The question is whether such an activity for charging fees for plastic bags becomes a problem under the Antimonopoly Act.
- **The JFTC's answer:** The JFTC responded that it would not immediately become a problem under the Antimonopoly Act for the city government, resident group and retailers to conclude an agreement under which fees will be charged for plastic bags used for goods bought at retailers in the city and the unit price will be five Japanese Yen per bag. Contents of the review are as follows:
 - Generally speaking, it can be said that the customers do not visit the retailer for the purpose of buying its plastic bags and the act of providing plastic bags to the customers is regarded as one of ancillary services. Therefore, the market in which participating retailers compete with each other is considered not the trade of plastic bags but the trade of all the goods sold by the concerned retailers.
 - Since almost all of the retailers in the city A will join this initiative, customers who need plastic bags will have very little room to choose retailers that provide free or cheaper plastic bags. However:
 - The decision in this case does not restrict competition for selling goods by retailers.
 - Plastic bags are not necessarily indispensable for customers when they shop in retailers, and they do not visit retailers to buy plastic bags, etc.
 - Regarding the contents of agreements in this case:
 - For achieving the goal of plastic bag use reduction, introducing fee-based plastic bags can be considered effective.
 - If the unit price of the plastic bags is not fixed, a lower unit price would be implemented, which might result in failing to reach the goal of plastic bag use reduction.

- The five Japanese Yen unit price as a result of agreements on the unit price cannot be considered as unacceptable level for customers to achieve the objective.

20. Based on the above mentioned, this initiative does not immediately constitute a problem under the Antimonopoly Act.



(Source: Examples of Consultations in FY2007, JFTC)

5. Incineration service market

5.1 Regulations and current status concerning incineration service market

5.1.1 Outlines of the regulations

21. Incineration is one of the methods of disposing of municipal solid waste. The same as collection and transport, disposal of municipal solid waste is performed pursuant to the Waste Management Law, which permits municipalities to consign the disposal of municipal solid waste to other parties, as well as to dispose of the waste on their own. Regarding the consignment to other parties (consignees), the standards for consignment stipulate that the “consignment fee shall be sufficient for conducting the consigned work” in addition to showing requirements on the consignee’s ability, etc. It is also provided that “emphasis should be placed on steady implementation of the work rather than requests to ensure economic efficiency, etc., in consideration of the importance of environmental protection and the public nature of municipal solid waste management.”

22. In addition to the above, municipal solid waste may be disposed by private entities with fees paid by enterprises that generated it. In this case, a private entity who intends to conduct the service of disposing of municipal solid waste must obtain permission from the mayors of municipalities with

jurisdiction over the area (hereinafter referred to as a “permitted operator”)¹⁵. It is stipulated, however, that a party consigned by a municipality to dispose of municipal solid waste is not required to obtain the above permission¹⁶. Permitted operators directly collect fees from enterprises generating municipal solid waste under contracts concluded with such enterprises. It is provided that a set amount of such fees shall not exceed the amount the municipalities specify.

23. The same as in the case of collection and transport, it is interpreted that municipalities have overall responsibility concerning disposal of municipal solid waste. A municipality is responsible for the services of disposing of municipal solid waste even when a consignee performs such services, not to mention when the municipality does them itself. In addition, when permitted operators dispose of municipal solid waste, the disposal shall be appropriately performed under the supervision of the municipality in accordance with the principle of the overall responsibility of municipalities.

5.1.2 *Current status of incineration services*

5.1.2.1 *Amount of incinerated waste*

24. Data on disposal of municipal solid waste in FY2011 shows that the amount of directly incinerated municipal solid waste was approximately 33,990 thousand tons (approximately 79.3% of the total amount of municipal solid waste), constituting the majority. Accordingly, the following sections describe the actual situation of municipal solid waste disposal services in Japan with a focus on incineration.

Amount of directly incinerated municipal solid waste

Fiscal year	FY2007	FY2008	FY2009	FY2010	FY2011
Amount of directly incinerated municipal solid waste (thousand tons/year)	37,011	35,742	34,517	33,799	33,989
Total amount of municipal solid waste that was disposed of (thousand tons/year)	47,725	45,136	43,634	42,791	42,840
Proportion of direct incineration (%)	77.6	79.2	79.1	79.0	79.3

(Source: Waste Disposal of Japan FY2011)

5.1.2.2 *Status of consignment of disposal of municipal solid waste*

25. The amount of municipal solid waste that was directly incinerated in FY2011 was 33,990 thousand tons. Among such waste, the amount that was consigned to operators within the same prefectures was approximately 1,780 thousand tons (approximately 5.0% of the total) and one that was consigned to operators in other prefectures was approximately 93 thousand tons (approximately 0.3% of the total). This shows that municipalities on their own incinerate an overwhelming majority of municipal

¹⁵ It is provided that the municipality mayors shall grant the permission only if it is difficult for the particular municipality to dispose of municipal solid waste by itself.

¹⁶ Article 2-3, item (i) of the Ordinance for Enforcement of the Waste Management and Public Cleansing Law.

solid waste and the rate of consignment to private enterprises is approximately 2.0% of the total amount consigned within prefectures and approximately 0.2% of the total amount consigned in other prefectures. Thus, the rate of consignment to enterprises is extremely low.

Status of consignment of municipal solid waste incineration (FY2011 results)

(Unit: ton)

Segment	Amount consigned to parties within the same prefectures				Amount consigned to parties in other prefectures				Total Amount consigned
	Municipalities	Public corporations, etc.	enterprises	Total	Municipalities	Public corporations, etc.	enterprises	Total	
Incineration	721,046	157,600	905,720	1,784,366	117	314	92,753	93,184	1,877,550
Total	1,646,296	380,273	3,853,084	5,879,653	1,382	483	895,792	897,657	6,777,310

Notes: The figures above show the amount of waste disposed of by municipalities, some special district authorities, and parties other than local municipalities and special district authorities on consignment.

- Waste that was disposed of by special district authorities consisting of municipalities is excluded from the above.
- The amount of waste the Japan Containers and Packaging Recycling Association recycled on consignment is excluded from the above.

(Source: Waste Disposal of Japan FY2011)

5.2 Measures taken by the JFTC

26. Concerning municipal solid waste incineration services, there has never been any cases of the violation in the Antimonopoly Act where the JFTC has taken measures or cases of consultation from businesses. Accordingly, the JFTC has yet published guidelines to be applied for this field in particular.

27. On the other hand, there is a case of bid rigging concerning construction of incineration facilities, in which the JFTC took administrative measures. The case concerned construction work of waste disposal facilities ordered by local governments (Decision for a cease and desist order on June 27, 2006; decision for surcharge payment order on November 10, 2010).