

GUIDELINES CONCERNING JOINT ACTIVITIES FOR RECYCLING UNDER THE ANTIMONOPOLY ACT

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Introduction

1. For the sake of Japan's sustainable economic development it is an urgent task to move away from the mass production-consumption-disposal cycle in the economic system and to form and promote a recycling-based society founded on the three principles of reduce, reuse and recycle. Against this backdrop, in June 2000 the Basic Law for Establishing a Recycling-based Society was enacted, whereby a basic framework was stipulated for the formation of a recycling-based society, including clarification the responsibilities of the central and local governments, entrepreneurs and the public, in order that it can be implemented through the overall efforts made by these entities.

In the Basic Law for Establishing a Recycling-based Society, so-called extended producer responsibility (EPR) is established as a general principle, as where the producers bear specific responsibility for the products, etc. that they made until after these products have been used and become waste. In the future it is expected that many entrepreneurs from a broad range of areas will promote measures of restraints on the production of waste, and the collection, transportation and recycling of waste (hereinafter referred to as "recycling, etc.").

It is considered to be desirable that activities on the part of entrepreneurs toward recycling, etc. will promote further efforts toward recycling, etc. through the application of competitive principles.

However, in many cases, activities toward recycling, etc. are characterized with low incentive for entrepreneurs because they require continuous additional concomitant costs on the part of entrepreneurs, and do not necessarily lead to direct benefits for individual entrepreneurs. Therefore, there are cases where a law or ordinance makes recycling, etc. mandatory, or in which entrepreneurs take measures in response to a strong social request. In such cases, unless entrepreneurs jointly carry out activities for

recycling, etc., it is difficult to build recycling systems or to promote the recycling efficiently, which in certain cases these could create obstacles to fulfill the obligations as stipulated in the law or ordinance. In addition, such joint activities form a momentum of their own toward the smooth establishment of a recycling system, which, if promoted, will lead to the vitalization of the recycling market and create new demand in the market, the effects to promote competition can be expected.

In the examination into the existence or non-existence of problems related to the Antimonopoly Act concerning joint activities by the entrepreneurs toward recycling, etc., it is therefore necessary to duly consider the necessities from social and public objectives based on the aims of the above-mentioned Basic Law for Establishing a Recycling-based Society. However, even if such a necessity is considered, problems surrounding the Antimonopoly Act arise in the case whereby through joint actions on recycling, etc. among the entrepreneurs, there is an adverse impact resulted on competitive order in the product and recycling markets.

These “Guidelines Concerning Joint Activities for Recycling under the Antimonopoly Act” are published based on the above recognition, with the expectation that by making the principles of the Antimonopoly Act clear with regard to joint activities by entrepreneurs toward recycling, etc., such recycling, etc., will be smoothly promoted without hindering competition thereby to contribute to the formulation and promotion of a recycling-based society.

2. The scope of application of these guidelines is the joint actions related to the development of a recycling system and recycling, etc. that is jointly undertaken by entrepreneurs such as manufacturers or distributors who implement recycling, etc. in tandem with their main operations (hereinafter referred to as “entrepreneurs”), and considered to be the most necessary to realize the formation and promotion of a recycling-based society.

For the purpose of these guidelines, recycling systems refer to a framework to smooth promotion of recycling, etc., for example, a series of systems where entrepreneurs collect the products they have once sold as waste, and reuse them as raw materials (recycling). This includes a wide range of systems, from systems that comprehensively include activities such as the collection, transportation and recycling of waste, to systems that only partially include recycling, for example only the collection of waste by the distributors.

3. Although these guidelines clarify the principles of the Antimonopoly Act concerning joint activities by entrepreneurs toward recycling, etc. assumed at the current time, looking at the whole situation, full-fledged activities by entrepreneurs toward recycling, etc. are still in their infancy, and it is thought that in future entrepreneurs will engage in various activities that will change the market situation. For this reason, the guidelines will be revised if necessary, while a closely observation to status of activities implemented by entrepreneurs in the future toward recycling, etc. and market status.

Section I Joint Development of Recycling Systems

The following are specific examples of recycling systems that are developed by entrepreneurs in joint operations:

- (1) Cases where consumer electronics manufacturers use processing facilities jointly for waste recycling, or establish such facilities jointly, for example, factories for reprocessing and recycling household electrical appliances that have been disposed of (see Examples 1 to 3);
- (2) Cases where machinery manufacturers jointly use collection facilities to split the waste according to the entrepreneurs and transport them to each entrepreneur of waste products (relay facility), or jointly establish such collection facilities, for example, establishing collection facilities for products that have been used and discarded by users (see Example 4); and
- (3) Cases where electrical appliance retailers jointly use the same contractor for the collection and transportation of waste, or jointly implement the collection and transportation of waste, for example, commissioning a transportation company jointly to transport household electrical appliances that have been disposed of (see Example 5).

In determining whether the above-mentioned joint operations become problems under the Antimonopoly Act, examination is undertaken into what effect the joint operations has on the product and recycling markets.

1. Product Market

(1) Basic Principle

In the event that entrepreneurs develop a recycling system in a joint operation to

deal with product waste, although required 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 problems under the Antimonopoly Act. In particular, with regard to joint operations as mentioned in (2) and (3) above, as their effect on competition in the product market itself is usually only small, they are not considered to be problems under the Antimonopoly Act.

(Note) Although there are cases where entrepreneurs collect required fees for recycling, etc. as a recycling charge from demanders as additional price to the product itself, from the perspective that demanders decide their purchasing product based on the total amount of the product price itself and its recycling charge, in such cases, considerations concerning the impact of joint operations to the product market are the same as description above.

(2) Cases That Become Problems under the Antimonopoly Act

A. Wide-ranging Recycling Systems

In cases where entrepreneurs develop a recycling system as a joint operation, when the recycling system has covered broad scope, for example, the inclusion of the collection and transportation of waste and the process for recycling (e.g. including all cases covered under (1) and (3) above), cases emerge where the proportion of the required costs for recycling, etc. of the product concerned through joint operations compared to the selling prices are large. In such cases and when the total share of the participating entrepreneurs in the product market increased significantly, according to the status of competition in the product market, although there exists vigorous competition in the product market, such cases could effect on competition in the product market, for example, that the selling price of products of the participating entrepreneurs become a standardized figure through the joint operation, and it would therefore have implications under the Antimonopoly Act (Section 3 of the Antimonopoly Act (Unjust restriction on trade)).

B. Exclusive Recycling Systems

In the event that entrepreneurs jointly develop a recycling system because it is

difficult to independently develop a recycling system in doing business in the product market, for no rational reason, for example, by denying or restricting the use of that recycling system to entrepreneurs newly entering the market or specified existing entrepreneurs (see Note), obstructing new entry of other entrepreneurs into the product market, or causing difficulties in the business activities of the existing entrepreneurs, in the case that such actions substantially restrict competition in the product market, they shall fall under the provisions prohibiting private monopolization or unreasonable restraint of trade (Section 3 of the Antimonopoly Act).

In addition, even in cases that the above actions do not substantially restrict competition in the product market, such actions, there has possibility of resulted difficulties in the normal business activities of entrepreneurs, which are denied or restricted participation in the recycling system, they shall fall under the provisions prohibiting unfair trade practices (General Designation 1 (Concerted Refusal to Deal)).

Accordingly, in cases where entrepreneurs develop recycling systems jointly, it is preferable that in general such systems are opened to entrepreneurs so that they can participate in them under rational conditions.

(Note) For example, in cases where entrepreneurs develop a recycling system through the construction of processing facilities for waste recycling by established a joint investment company, at such a time the other entrepreneurs request to use the recycling system, there shall be no problem in the setting of a difference in usage charge that is rational and in accordance with the investment.

C. Even if the required costs for recycling, etc. undertaken as joint operations become the same for participating entrepreneurs, in cases where those costs are added to the existing price of products that are sold by those entrepreneurs, each entrepreneur should ensure that it makes its own, independent judgment concerning how much to add to the price for recycling cost. Accordingly, even in cases where the joint development itself of a recycling system does not cause problems under the Antimonopoly Act, the joint decision by entrepreneurs on the amount added to the price is nothing less than a decision among entrepreneurs on a

part of the price that is an important means for competition, and could have an effect on competition in the product market, posing problems under the Antimonopoly Act (Section 3 of the Antimonopoly Act (Unjust restriction on trade)).

(Note) In cases where entrepreneurs collect recycling charges corresponding to required costs for recycling, etc. from consumers separately from the price products itself, in the same manner as described above, actions, in which entrepreneurs jointly decide a specific recycling charge fee, shall also become problems under the Antimonopoly Act.

2. Recycling Market

(1) Because the construction of recycling systems creates the recycling market (see Note) and new opportunities for trade in the recycling market could be expected to expand, there are at times some concerns about the restriction of competition in the recycling market, but it is therefore unlikely to become an problem under the Antimonopoly Act. However, in cases where many entrepreneurs develop a recycling system jointly, causing difficulties in the business activities for the existing recycling entrepreneurs (contractors for collection and transportation of waste, contractors for recycling, etc.), or making difficulties for other entrepreneurs to enter the recycling market, then leading to substantial restrictions on competition in the recycling market, this shall fall under the provisions prohibiting private monopolization or unjust restriction on trade (Section 3 of the Antimonopoly Act).

(Note) The recycling market shall be the market related to trade in the transportation services of the collection of waste, the recycling services of waste, etc.

(2) In addition, in the case that entrepreneurs jointly develop a recycling system which has covered broad scope, there are cases where there is no other recycling system in the recycling market. In such cases, having examined whether it is necessary for entrepreneurs to jointly develop a recycling system and if there are alternative means, the points must be considered (i) if participation in the recycling system is free and (ii) if there are any unfair restrictions on the independent development of a recycling system by the participating entrepreneurs, thereby judging if any problems arise under the Antimonopoly Act.

(3) In the case that the development of a recycling system is undertaken by a trade association, for example, substantial restraint of competition in a particular product or recycling market occurs, this shall become problems in terms of Section 8-1 of the Antimonopoly Act, and in the case that a joint investment company is established by multiple entrepreneurs for the development of a recycling system, if substantial restraint of competition in particular products or recycling markets occurs, this may become problem in terms of Section 10 (1) of the Act.

Section II Joint Activities Pertaining to Recycling, etc.

In the event that entrepreneurs jointly develop or a trade association develops a recycling system, for the purpose of its efficient operation, etc., there are cases where various arrangements are made concerning the development of such a system. In addition, even in cases where a recycling system is not jointly developed, there are cases where similar arrangements are made by entrepreneurs or a trade association in order to heighten the effectiveness of recycling, etc.

The concepts concerning joint activities pertaining to recycling, etc. under the Antimonopoly Act are organized as follows:

1. Decision on a Target for Recycling Ratio, etc.

In the event that each member entrepreneur in a trade association collect waste and recycled, etc., it, there are cases where the recycling ratio of each member entrepreneur should achieve is decided within the trade association, and the recycling ratio achieved by each member entrepreneur is publicized in an attempt to increase it.

According to law or ordinance, the setting of an obligatory recycling ratio, with which individual entrepreneurs have to comply, under the guidance of a trade association will not become problem under the Antimonopoly Act to the extent that certain legal conditions are fulfilled. In addition, even in cases that have no basis in law or ordinance, actions whereby criteria, rules, etc. are set independently by trade associations concerning the achievement of recycling ratios, making them known to member entrepreneurs and promoting their dissemination, or making arrangements concerning their use and compliance, or conducting activities such as giving

instructions, making requests, etc. (independent regulations), shall in principle not be considered to be problems under the Antimonopoly Act, to the extent that there is no unfair discrimination among members and that compliance with these is not enforced (See Trade Associations Guidelines 7-6 (Setting Criteria Based on Social or Public Aims)).

In addition, from the perspective of promoting the achievement of the recycling ratio, the announcement of the achievement of ratios by member entrepreneurs shall in principle not be considered to be problems under the Antimonopoly Act, to the extent that there is no unjust market exclusion (see Note) on the products of members that do not achieve their recycling ratio.

(Note) For example, the setting targets of recycling ratios that could not be achieved by specific members in order to exclude them from the product market of the members that are being sold inexpensively would become problems under the Antimonopoly Act.

2. Integration of Specifications for Components that are Easy to Recycle and Component Standardization

There are cases where, in order to efficiently reuse and process waste, manufacturers jointly aim or a trade association aims to integrate product component specifications and standardize components.

The integration, etc. of component specifications in order to promote efficient recycling, etc., reduces the required costs for recycling, etc. and are considered not to unjustly obstruct benefits for the consumers in general. Hence, even if manufacturers jointly make or a trade association makes arrangements concerning the use of components with integrated specifications or components that had been standardized, to the extent that there is no unjust discrimination among specific manufacturers or component manufacturers and that compliance with these is not enforced, the impact on competition in the product market is small (See Trade Associations Guidelines 7-5 (Setting Criteria Regarding Standardization of Specifications) and in principle are not considered to be problems under the Antimonopoly Act.

3. Joint Research and Development of Products That Are Easy to Recycle

There are cases where, in order to develop products that are easy to recycle and improve the recycling ratio, multiple manufacturers are engaged in joint research and development (R&D) project.

Although the research results of joint R&D projects of products that are easy to recycle naturally have direct impact to the product market, the project intends to address so-called external factors such as environmental measures, the necessity for joint undertaking is considered to be high. Accordingly, the joint R&D project, depends on the number of participants, market share, access to results achieved, etc., it is unlikely to become an problem under the Antimonopoly Act, in cases where it is not so easy to carry it out alone taking into account cost, risk etc. related to research (see Note).

(Note) The “Guidelines Concerning Joint Research and Development under the Antimonopoly Act” state that, “a joint R&D project intended to address so-called external factors, such as developing an environmental or safety measure, may not in itself immediately exclude the possibility for such a project to become an problem under the Antimonopoly Act. However, taking into account cost, risk, etc. related to research, it may not be so easy to carry it out alone. In such a case, it is unlikely to become an problem under the Antimonopoly Act.”

4. Standardization of Formats of Waste Management Forms (Manifests) and Enforcing their Use

Pursuant to such laws as the Waste Disposal and Public Cleansing Law, in some cases entrepreneurs are required to use a waste management form this is called a manifest in order to prevent the illegal disposal of waste,. The formats of these manifests are standardized within trade associations, and the members of the association are obliged to use that manifest. In cases where the use of a manifest is a legal requirement and in addition to that, there are legal provisions concerning the items that must be recorded in the manifest, although it is matter of course, however, even in cases where there are no such provisions, considering the character of the manifest, which is used for the management of appropriate activities for the recycling, etc. of waste, even if the manifest is in a standardized format and its use is enforced among the members of the association, there should be no impact on competition in the product and recycling markets, and therefore are not considered to be any problems under the Antimonopoly

Act.

5. Joint Activities Concerning Recycling Expenses

In the event that the implementation of recycling shall be a requirement by laws or ordinances, or strongly required from social purposes, since appropriate additional costs are required on a continual basis of activities for recycling, etc., it can be expected that the promotion of recycling, etc. will be difficult if the burden of the required costs for collection and transportation of waste or processing for their recycling, etc. (hereinafter referred to as “recycling costs”) are not placed on the demanders such as consumers (hereinafter referred to as “demanders”), there are cases where entrepreneurs jointly employ or a trade association employs various measures for recycling costs. The principles under the Antimonopoly Act are as follows:

(1) Setting Independent Criteria Regarding Collection Methods

- A. There are cases where, as part of activities for recycling, etc., entrepreneurs collect waste at the time of the sale of their products to demanders, and in these cases the collection method of recycling cost is either to include the equivalent recycling cost into the price of the product itself and collect them from the demander, or to collect a recycling charge separate from the price of product.

In such cases, in order to gain the understanding of demanders, if entrepreneurs jointly set or a trade association sets independent criteria with the aim of collecting a recycling charge separate from the price of product itself, to the extent that compliance with them is not enforced, they are not considered to be problems under the Antimonopoly Act (See Example 5 and Example 6).

- B. However, if entrepreneurs jointly set or a trade association sets a specific recycling charge fee results in the product sale and the collection of waste transaction being treated as one, there could be a significant impact on competition in the product market, and also reduce incentive on the part of entrepreneurs to reduce required costs for recycling, etc., which would obstruct the promotion itself of efficient recycling, etc., having a significant impact on competition in the recycling market, and therefore would become problems under the Antimonopoly Act (Section 3 or Section 8(1)(i) of the Antimonopoly Act).

(2) Setting Independent Criteria at the Time of Collection

In the case that entrepreneurs undertake new activities for recycling, etc., the methods for collection of recycling costs are pointed to demander to pay at the time of waste collection, or collect it at the time of sale by incorporating the cost into the selling price of the product in advance. Even if entrepreneurs jointly set or a trade association sets independent standards to facilitate recycling, etc. and make the collection of costs easy to understand by consumers, by either collecting recycling costs at the time of waste collection or collecting them at the time of sale, to the extent that compliance with these is not enforced, they are not considered to be problems under the Antimonopoly Act.

(3) Setting Independent Criteria Regarding the Indication Methods

Since appropriate additional costs are required on a continual basis for activities for recycling, etc., gaining the understanding of demanders, even if entrepreneurs jointly set or a trade association sets independent criteria for indicating recycling costs, for example, providing a form for the indication, to the extent that compliance with these is not enforced, they are not considered to be problems under the Antimonopoly Act. However the decision of a specific sum for recycling costs by entrepreneurs acting jointly or by a trade association could increase the selling prices of products and therefore would become problems under the Antimonopoly Act (Section 3 or Section 8(1) (i) of the Antimonopoly Act) (see Example 2).

6. Development of a Deposit System

(1) As one kind of recycling system, there are cases where, in order to improve collection ratios for waste such as empty bottles, an association of distributors introduces a deposit system (meaning a system that entails collecting a specific amount of deposit at the time of sale of the product, and returning the same amount once the waste is collected; hereafter the same) (see Examples 7 and 8).

In the event that the deposit system is being smoothly implemented and it has become a norm for demanders to return waste to distributors, etc., since the amount of money returned is the same as that which was paid as a deposit, the deposit amount has little impact on the choice of product purchased by consumers, and does not entail a direct means of competition among entrepreneurs.

Accordingly, in order to enhance the collection ratio for empty cans, bottles, batteries, etc., when entrepreneurs jointly develop or a trade association develops a deposit system, if the amount of deposit collected at the time of sale of the product and the amount returned at the time of collection of waste are the same and is the same for all entrepreneurs, it is usually the case that it is not considered to be a problem under the Antimonopoly Act.

(2) However, although there are cases where entrepreneurs jointly set or a trade association sets the deposit amount higher than the amount of money that is returned in order to incorporate the required costs for waste collection into the deposit amount, and arrange to make the deposit and returned amount of money the same, the problem of degree to which demanders should bear the required costs for waste collection should be left to the independent decision of entrepreneurs, and such arrangements could lead to increases the selling prices of products and is therefore a problem under the Antimonopoly Act (Section 3 or Section 8(1)(i) of the Antimonopoly Act).

Example 1 Development of a Recycling System by Manufacturers

1. Overview

Five companies, including company A are large household appliance manufacturers. The Law for the Recycling of Specified Kinds of Home Appliances (hereinafter referred to as the "Home Appliance Recycling Law") obliges household appliance manufacturers to take back products that have been disposed of, to implement their re-merchandizing, etc., and to publicize the charges for their re-merchandizing, etc. for four specified home appliances (air conditioners, televisions, refrigerators and washing machines). It is necessary for the appliance manufacturers to develop a system for the taking back and re-merchandizing of the four specified appliances that have been disposed of. However, each individual manufacturer would have difficulty in developing a system independently due to the cost burden involved.

For this reason, the five companies, including company A, are considering the development of a recycling system as detailed below.

- (i) To establish processing facilities nationwide to deal with re-merchandizing.
- (ii) To establish sites nationwide to which home appliance retailers can forward disposed appliances that have been taken back from their users to specific locations (hereinafter referred to as "designated collection sites"), and to commit a transportation company to transport the disposed appliances from the designated collection sites to the re-merchandizing facility.
- (iii) To establish a jointly financed company to manage and operate the recycling system.

In addition to the five companies including company A, two other large household appliance manufacturers are acting jointly in looking into the development of a similar recycling system. Small and medium household appliance manufacturers are looking into using the systems developed by the large household appliance manufacturers.

2. Views under the Antimonopoly Act

(1) This example is one in which the costs required for recycling, etc. undertaken as a joint operation are charged as cost for re-merchandizing, etc. separate to the selling price of the product. The participants in the said recycling system are large household appliance manufacturers and joint operations are being applied to the establishment of designated collection sites, the transportation from the collection sites to the re-merchandizing facilities and re-merchandizing itself. It is considered that the costs required for recycling, etc. undertaken as a joint operation are generally small in comparison to the selling price of the products and in the usual case have little influence on competition in the product market of the four specified home appliances. However, in the case that the five companies, including company A, deny use of the said recycling system by small and medium household appliance manufacturers without rational reason, thereby causing difficulties in the business activities for the small and medium manufacturers, this would present a problem under the Antimonopoly Act (General Designation 1 (Concerted Refusal to Deal)).

(2) In addition, in this example, due to the fact that multiple recycling systems exist, it cannot be concluded that this would restrain competition in the recycling market. However, if users of the recycling system in this example are unjustly restricted from developing a separate system, or if use of other recycling systems is unjustly restricted, there is the possibility of presenting a problem under the Antimonopoly Act ((General Designation 11 (Dealing on Exclusive Terms) or General Designation 13 (Dealing on Restrictive Terms)).

Example 2 Development of a Recycling System and Indication Methods for Recycling Costs by Trade Association

1. Overview

Association A is a trade association that has a membership comprising almost all manufacturers of product B, a consumable item. Product B is sold to consumers through retail distributors. Product B has been disposed of after use by consumers as non-combustible garbage, but awareness of environmental problems is rising and it has been pointed out that the recycling of product B should be promoted. In response, Association A is looking into establishing a recycling facility for product B, setting up collection boxes at individual retail distributors to collect the disposed product, and commissioning a collecting company to collect the disposed products from retail distributors on a regular basis. In addition, the costs required for collection and recycling of the disposed product (hereinafter referred to as “recycling costs”) are split between the individual members of the association according to the number of their products collected. Since there is also a need to get users to bear the burden of the costs involved in order to improve recycling effectiveness, association A is currently considering making a form concerning an indication method to display the recycling costs (e.g. indicating on the packaging of product B that “recycling costs: XXX JPY).

2. Views under the Antimonopoly Act

(1) The recycling system in this example is undertaken by the association made up of manufacturers of product B, and joint operations are being applied from the collection of waste to their recycling. Unless the proportion of costs required for recycling, etc. undertaken as a joint operation to the price of product B does become large, it is generally considered to have little influence on competition in the product market.

In addition, even if the recycling system in this example is currently the only system in the industry for this product, in the case that a joint operation is required and there are no alternative means, unless Association A does unjustly restrict the use of the recycling system by entrepreneurs other than association members and does unjustly restrict the independent development of a recycling system by members, it is considered to have little influence on competition in the recycling market.

(2) In addition, in order for Association A’s recycling to be efficient, even if the association makes a form concerning an indication method to display recycling costs, unless it forces to comply with this form, it would not present problem under the Antimonopoly Act. However, the deciding of a specific recycling charge fee would present a problem under the Antimonopoly Act (Section 8(1) (i) of the Antimonopoly Act).

Example 3 Development of Recycling System by a Trade Association

1. Overview

Association A is a trade association that has a membership comprising the great majority of manufacturers of product B, a chemical product. In order to deal with environmental problems, Association A is looking into establishing a recycling center and recycling waste from product B.

Specifically, the recycling center will be commissioned to an industrial waste processing operator, which will collect, sort and grind the waste produced by entrepreneurs, and commission another recycling business to conduct recycling.

On the other hand, although the association has no choice but to request that entrepreneurs that use product B bear the operating costs, etc. of the recycling center, since it is difficult to collect such costs directly from each entrepreneur at the time of waste collection, due to product B's qualities, association A is currently considering procuring operation costs, etc. for the recycling center by adding on a fixed amount to the selling price of product B shipped by manufacturers of product B and collecting this fixed amount from the manufacturers of product B.

2. Views under the Antimonopoly Act

(1) The recycling system in this example is undertaken with the participation of the great majority of domestic manufacturers of product B, and joint operations are being applied from the collection of waste to their recycling. Unless the proportion of costs required for recycling, etc. undertaken as a joint operation to the price of product B does become large, it is generally considered to have little influence on competition in the market for product B.

In addition, even if the recycling system in this example is currently the only system in the industry of this product, in the case that a joint operation is required and there are no alternative means, unless Association A does unjustly restrict the use of the recycling system by entrepreneurs other than association members and does unjustly restrict the independent development of a recycling system by members, it is considered to have little influence on competition in the recycling market.

(2) In addition, with regard to the decision to add on a fixed amount to the selling price of product B as a means of procuring operations costs, this action would result in selling price rise for product B and would cause a problem under the Antimonopoly Act (Section 8(1)(i) of the Antimonopoly Act) as a price restriction by an association.

Example 4 Development of a Recycling System by Manufacturers

1. Overview

Multiple manufacturers including company A (hereinafter referred to as “company A, etc.”) produce machinery product B for entrepreneurs, accounting for an approximate 80% share in the market for product B.

When users replace product B with a new model, the manufacturers of product B collect the old products and by commissioning a recycling entrepreneurs recycle the components of the product. However, there are many cases in which users of product B use products from multiple manufacturers and the old products that are collected by the manufacturer are not necessarily the product of the company collecting it. Therefore, in order to proceed with recycling, it is necessary for each manufacturer, after collecting old products, to sort out the products made by other companies and exchange these products for their own products that are collected by other manufacturers as old products. This causes a backlog in recycling due to the complexity in the sorting process of old products.

Therefore, in order to promote recycling of old products, company A, etc. is looking into developing the following recycling system:

- (i) To establish a jointly financed separation center to undertake the work of sorting out the old products according to manufacturers.
- (ii) Each manufacturer will forward the old products they have collected to a separation center, and in addition to commissioning the job of sorting out the products by manufacturers, will take receipt of their own products that have been sorted out at the center, and recycle the components.
- (iii) The costs for the separation center will be paid by each manufacturer in accordance with the number of products received by each company.

2. Views under the Antimonopoly Act

The recycling system in this example is participated by approximately 80% of all manufacturers of product B. However, joint operations are being limited to the sorting by manufacturer of old products that have been collected, and it is generally considered to have little influence on competition in the product market. However, in the case that the company A, etc. act jointly to deny or restrict use of the recycling system by other manufacturers of product B without rational reason, this would present a problem under the Antimonopoly Act (General Designation 1 (Concerted Refusal to Deal)).

Example 5 Development of a Recycling System and Collection Method for Recycling Costs by an Association

1. Overview

Association A is a trade association of home appliance retailers in city X, having a membership comprising the great majority of home appliance retailers in that city. The Home Appliance Recycling Law obliges home appliance retailers to take back from four specified kinds of home appliances that have been disposed of and to deliver them to the manufacturer.

Association A is looking into the following method for the efficient collection and transportation of disposed home appliances.

- (i) To establish a temporary storage facility for disposed home appliances in city X, and to bring in disposed of home appliances that have been taken back by the retailers from users.
- (ii) The transportation from the temporary storage facility to designated collection sites of each manufacturer would be commissioned to a transportation company in a joint operation by Association A.
- (iii) The costs required for transportation will be collected uniformly by Association A from each of the home appliance retailers, who will cover their collection and transportation costs by charging a take-back fee to the users.

In addition, with regard to the take-back fee that would be an additional cost charged by the home appliance retailers in city X, if some member of the association does not charge consumers for this cost it would be difficult for other members to charge and therefore there is a concern that it would not be possible to implement collection and transportation with certainty.

Therefore, in order to ensure that collection of the take-back fee is implemented, Association A is considering making payment of the take-back fee in monetary form a direct requirement to users (i.e. not allowing a free take-back).

2. Views under the Antimonopoly Act

(1) The recycling system in this example is participated by the great majority of home appliance retailers in city X. However, joint operations are limited to the establishment of a temporary storage facility and transportation of disposed home appliances to designated collection sites, and it is generally considered to have little influence on competition in the product market. However, if specified members were unjustly denied use of the facility, this would present a problem under the Antimonopoly Act (Section 8-1-4 of the Antimonopoly Act).

(2) The Home Appliance Recycling Law stipulates that home appliance retailers can charge users a take-back fee and in order to ensure that recycling activities are implemented, even if Association A made the payment of the take-back fee in monetary form a direct requirement, unless its compliance is enforced, it would not present a problem under the Antimonopoly Act. However, deciding on a specific take-back fee would present a problem under the Antimonopoly Act (Section 8(1)(i) of the Antimonopoly Act).

Example 6 Collection Method of Recycling Costs by an Association

1. Overview

Association A is a trade association of manufacturers of a product made using material B (hereinafter referred to as “product C”), having a membership of more than 90% of manufacturers of product C.

To date, with sales of new products to users (entrepreneurs) manufacturers of product C have taken back product C free of charge once disposed, then recycled it, and sold material B.

However, in recent years in addition to the market price of material B falling due to stagnant economic conditions, environmental concerns are increasing about the practice in which “other wastes” produced in the process of collecting material B from disposed product C have been used as landfill, and now an appropriate alternative method of disposal is being required instead of landfill. This leads to the situation in which the costs required for collection and recycling of waste (hereinafter referred to as “recycling costs”) have risen to three or four times the previous levels.

Because recycling costs to date have been able to be covered by profits on selling off material B from collected disposed product C, collection of disposed product C had been undertaken free of charge. However, due to the above-mentioned circumstances this policy is now in difficulty.

Association A is therefore looking into charging a recycling fee separate to the price of product C itself when collecting disposed product C.

Under law there is no obligation to recycle product C.

2. Views under the Antimonopoly Act

This example is one in which the sale of the product and the taking back of waste are being integrated and by covering recycling costs through profits of selling off of recycled material B, the costs have not been passed on to users.

However, in the case that, in accordance with changes in the environment surrounding product C, if it becomes a certainty that new costs pertaining to recycling will arise, in order to promote effective recycling, it is deemed inevitable that the costs of recycling will be passed on to the user, and there is a strong social expectation that recycling will be undertaken, even if Association A collects a recycling fee separate to the price of product C itself, unless its compliance is enforced, it would not present a problem under the Antimonopoly Act. However, deciding on a specific recycling fee would present a problem under the Antimonopoly Act (Section 8(1)(i) of the Antimonopoly Act).

Example 7 Development of a Deposit System by an Association

1. Overview

Association A is a trade association comprising manufacturers, distributors and retailers of product B, a consumable item, having a membership of the great majority of companies engaged in this business. From the perspective of promoting recycling and in order to increase the collection ratio for disposed products, Association A is considering developing the following deposit system.

- (i) To establish a management and operating Company B for a deposit system.
- (ii) To set a figure of 10 JPY as a deposit for product B to be levied by manufacturers, distributors and retailers. Consumers can receive their deposit back for product B at any retailer, not just where they purchased it.
- (iii) Retailers will pass the disposed products that have been taken back from consumers to Company B, and will receive the returned deposits and a commission that has been borne by the retailers from Company B. Company B will decide the amount of the commission.
- (iv) Company B will, once having paid the costs, pass the disposed products to a recycling contractor. The monies paid by Company B to the retailers and the costs of recycling, and management costs of the disposed products will be billed to each manufacturer, depending on the number of their products collected.

2. Views under the Antimonopoly Act

From the perspective of promoting recycling, in the case that Association A establishes Company B as a management and operating company for a deposit system, and develops a deposit system in itself, it is not considered to have an influence on competition in the market of product B. In addition, the setting of a deposit figure of 10 JPY would not generally restrict the competitive practices of entrepreneurs, to the extent that the figure returned is the same as that received as a deposit, and it would not generally present a problem under the Antimonopoly Act.

Example 8 Development of a Deposit System by an Association

1. Overview

Association A is a trade association of retailers of product B, a consumable item, in city X, having a membership of the great majority of retailers of product B in city X. In order to actively tackle recycling of the containers of product B, and to increase the collection ratio of these containers, Association A is considering introducing the following deposit system.

- (i) In addition to attaching labels to containers as stipulated by Association A, retailers add a deposit of 10 JPY and a commission of 5 JPY to the selling price of product B.
- (ii) Association A is responsible for management of the deposits paid by consumers.
- (iii) Within the limits of city X, consumers can receive a return on their deposit from any retailer, not just the one from which they bought product B, as long as the label is attached to the container.
- (iv) The retailers who pay the deposit to the consumer receive the equivalent sum from Association A.

2. Views under the Antimonopoly Act

Even if an association of retailers introduces a deposit system and decides to collect a fixed deposit sum, only when the sum returned is the same as that received as a deposit, it would not generally present a problem under the Antimonopoly Act.

However, the problem of degree to which consumers should bear the retailers' commissions (recycling costs) arising from the introduction of a deposit system should be left to the independent decision of retailers, and if Association A were to set a commission of 5 JPY, this could lead to an increase in the selling price of product B and would therefore present a problem under the Antimonopoly Act (Section 8(1)(i) of the Antimonopoly Act).