International Competition Network

ANTI-CARTEL ENFORCEMENT TEMPLATE

CARTELS WORKING GROUP

Subgroup 2: Enforcement Techniques

JAPAN

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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

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1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	The Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade, Act No. 54 of 1947 (hereinafter "the Antimonopoly Act") (last amended in June 2019) The Antimonopoly Act (now in enforce) is available at *https://www.jftc.go.jp/en/legislation_gls/AMA.pdf* Japan Fair Trade Commission (hereinafter "the JFTC") answers the following questions according to the Antimonopoly Act, and if necessary, clarifies articles of its implementing regulations, etc. for reference. Unless otherwise noted, "Article XX" means an article of the Antimonopoly Act.

B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	• Order for Enforcement of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, Cabinet Order No. 317 of 1977 (last amended in September 2020) • Rules on Investigations by the Fair Trade Commission (2005, last revised in 2020) • Rules on Hearing of Opinions (2015) • Rules on Compulsory Investigation of Criminal Cases by the Fair Trade Commission (2005) • Rules on Reporting the Facts and Submitting The Materials Regarding Immunity from or Reduction of Surcharges (2020) • Rules on Commitment Procedures by the Fair Trade Commission (2017) These are available at *https://www.jftc.go.jp/en/legislation_gls/index.html* (in English) (Revisions are uploaded when English translations are available.) *https://www.jftc.go.jp/dk/guideline/index.html* (in Japanese) (Only Japanese version is authentic.)
C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	The JFTC has issued several interpretative guidelines such as; • Guidelines Concerning the Activities of Trade Associations under the Antimonopoly Act (1995, last revised in 2020) • Guidelines Concerning Administrative Guidance under the Antimonopoly Act (1994, last revised in 2010) • Guidelines Concerning Distribution Systems and Business Practices (1991, last revised in 2017) • Guidelines Concerning the Activities of Associations Conducting of Qualified Professional under the Antimonopoly Act (2001, last revised in 2010) • Guidelines Concerning the Activities of Medical Association under the Antimonopoly Act (1981, last revised in 2010) • Guidelines Concerning the Activities of Firms and Trade Associations with Regard to Public Bids (1994, last revised in 2020) • Guidelines Concerning Joint Activities for Recycling under the Antimonopoly Act (2001, last revised in 2010) • Guidelines for the Use of Intellectual Property under the Antimonopoly Act (2007, last revised in 2016) • Guidelines Concerning Joint Research and Development under the Antimonopoly Act (1993, last revised in 2017) These guidelines are available at *https://www.jftc.go.jp/en/legislation_gls/index.html* (in English). (Revisions are uploaded when English translations are available.) *https://www.jftc.go.jp/dk/guideline/index.html* (in Japanese) (Only Japanese version is authentic.)
D. Other relevant	• The Fair Trade Commission's Policy on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Antimonopoly Violations (2005, revised in

materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]	2020) : *https://www.jftc.go.jp/en/legislation_gls/210312.pdf* (in English) • Guidelines to Reduction System for Cooperation in Investigation (2020) • Policies Concerning Commitment Procedures (2018, last revised in 2021) • Guidelines on treatment of objects recording confidential communications between an enterprise and an attorney (2020) These 3 guidelines/policies above are available at *https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines.html* (in English) • Database of the JFTC's Decisions and Others: *https://www.jftc.go.jp/shinketsu/index.html* (in Japanese)

2. Scope and nature of prohibition on cartels

A. Does your law or case law define the term "cartel"? [Please quote.] **If not, please indicate the term you use instead. [Please quote.]**	Article 2(6) provides the definition of "unreasonable restraint of trade", which includes cartel behavior: The term "unreasonable restraint of trade" as used in this Act means such business activities, by which any enterprise, by contract, agreement or any other means irrespective of its name, in concert with other enterprises, mutually restrict or conduct their business activities in such a manner as to fix, maintain, or increase prices, or to limit production, technology, products, facilities, or counterparties, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade.
B. Does your legislation or case law distinguish between very serious cartel behaviour ("hardcore cartels" – e.g.: price fixing, market sharing, bid rigging or production or sales quotas[1]) and other types of "cartels"? [Please describe how this differentiation is made and identify the most egregious types of conduct.]	No distinction between very serious cartel behavior and other types of cartels exists in the Antimonopoly Act.

[1] In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as "hardcore cartels". Hereinafter this terminology is used.

C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]	Certain conducts stipulated in Article 21 through 23(such as exercise of intellectual property rights) are exempted from the application of the Antimonopoly Act. In addition, certain conducts are exempted from the application of the Antimonopoly Act based on articles stipulated in other laws such as: • Insurance Business Law • Copyright Act • Agricultural Cooperative Law • Law on Small and Medium Sized Enterprise and Other Cooperative Associations • Aviation Law • Law on Organization of Small and Medium Sized Enterprise • Road Transportation Law • Marine Transportation Law • Coastal Shipping Association Law
D. Is participation in a hardcore cartel illegal *per se*[2]? [If the situation differs for civil, administrative and criminal liability, please clarify this.]	No distinction based on the description of cartels exists in the Antimonopoly Act. (See above **point 2/B**.) Thus, the general idea of hardcore cartels is not clarified in the Antimonopoly Act. Generally, the JFTC shall be required to prove that the cartel has caused a substantial restraint of competition in any particular field of trade.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	Those violations which substantially restrain competition in certain fields of trade such as price-fixing cartels, supply restraint cartels, market allocations, bid-riggings, group boycotts and other violation constitute administrative offences. In addition to that, the JFTC has announced that the JFTC will accuse vicious and serious cases which are considered to have widespread influence on people's life out of them. Also an enterprise committing an act in violation of the Antimonopoly Act will be liable for damages suffered by another party in accordance with the Civil Code or Article 25.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	• Japan Fair Trade Commission for administrative investigations and criminal investigations • Public Prosecutor's Office for criminal investigations and prosecutions

[2] For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Japan Fair Trade Commission (JFTC) Address: 1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8987, Japan Telephone: (+81)-3-3581-1998 (International Affairs Division) Facsimile: (+81)-3-3581-1944 (International Affairs Division) e-mail: intnldiv●jftc.go.jp (It is necessary to replace "●" with "@" when you actually send an email.) URL: *https://www.jftc.go.jp/en/index.html* (in English) URL: *https://www.jftc.go.jp* (in Japanese)
C. Information point for potential complainants:	• Information Analysis Office, Management and Planning Division, Investigation Bureau The JFTC provides the Electronic Reporting System which ensures superior information-security and anonymity for reporting, which is available at *https://www.jftc.go.jp/soudan/denshimadoguchi/cyuidokkin.html* (in Japanese) In any way, it is desirable that applicants report suspected facts in violation of the Antimonopoly Act through representatives who are proficient in Japanese.
D. Contact point where complaints can be lodged:	See above **point 3/C**.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	• Small and Medium Sized Enterprise Agency The Small and Medium Sized Enterprise Agency may research whether small and medium sized enterprises are impeded by the other enterprises' unreasonable restraint of trade and unfair trade practices, report the facts to the JFTC, and require it to take appropriate measures. (Article 4(7) of the Small and Medium Sized Enterprise Agency Establishment Law)

4. Decision-making institution(s)[3] [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	Not applicable.

[3] Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Not applicable.
C. Contact point for questions and consultations:	Not applicable.
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	Not applicable.
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	Not applicable.

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	Article 45(1): Report from any person Article 45(4): Detection by the JFTC's authority Article 7-4(1) through (4): Report from leniency applicants Article 4(7) of the Small and Medium Enterprise Agency Establishment Act: Report from the Small and Medium sized Enterprise Agency
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]	Legal requirements for filing a complaint do not exist. (Anonymous oral reporting is also available.) But reporting with concrete facts is desirable; there are requirements for a complainant in order to receive a notice as to whether the JFTC decides to take appropriate measures or take no measures. (See below **point 5/C**.) The electronic complaint form can be found in the following web-pages: *https://www.jftc.go.jp/soudan/denshimadoguchi/cyuidokkin.html* (in Japanese) In the case of applying leniency program, Article 7-4, 7-6 and "Rules on Reporting the Facts and Submitting The Materials Regarding Immunity from or Reduction of Surcharges" provide conditions for application. See below **point 6** as to details of the requirements of the leniency program.

C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]	No legal requirements for lodging a complaint exist. But when any report submitted specifies in writing any fact or facts in accordance with the Rules of the JFTC, and the JFTC decides to take, or not to take, appropriate measures with respect to the case referred to in the report, the JFTC shall promptly notify the result to the person who made such report. (Article 45(3)) There are following requirements in cases of notice to reporting persons. The notice from the JFTC shall be served where the report of violation was made with a document stating (1) name or title and address of a reporting person, (2) name or title of a person who commits or has committed an act considered a violation of the provisions of the Antimonopoly Act, and (3) details of the activity, time, place and other facts of an act considered a violation of the provisions of the Antimonopoly Act. (Article 29 (1) of Rules on Investigations by the Fair Trade Commission) In the cases of leniency applications, there are the requirements as provided for in Article 7-4. (See also below **point 6.**)
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]	The JFTC must make necessary investigations to all complaints. Article 45(2) provides: The JFTC, upon receipt of such report as provided for in the preceding subsection, shall make necessary investigation with respect to the case.
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	Under certain conditions, the JFTC shall promptly notify complainants that the JFTC decides to take no measures (See **5/C** above). Article 45(3) provides: If a report submitted to the JFTC includes a written allegation with regard to a specific fact, when the JFTC decides to take appropriate measures or to take no measures with respect to the case concerned with the report, the JFTC shall promptly notify the person who made the report to that effect.
F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?	No time limits exist. But the JFTC shall promptly notify the decision to take appropriate measures or to take no measures with respect to the case to the person who made such report. (Article 45(3))

6. Leniency policy[4]

[4] For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]	Program on Immunity from or Reduction of Surcharges The overview of the program is available at *https://www.jftc.go.jp/files/about_leniency.pdf* (in English). Rules on Reporting the Facts and Submitting The Materials Regarding Immunity from or Reduction of Surcharges (hereinafter "Rules on Leniency") are available at *https://www.jftc.go.jp/en/legislation_gls/201225001.pdf* (in English) or *https://www.jftc.go.jp/dk/guideline/shinsa/kachoukingenmen.html* (in Japanese).
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Our jurisdiction offers not only reduction of the surcharges, but full immunity from the surcharges by the provisions of the Antimonopoly Act.
C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?	The Antimonopoly Act grants full immunity from the surcharges to only one enterprise, when it meets the following requirements as provided for in Article 7-4(1): (i) The enterprise is the first among the enterprises that committed the violation to individually submit reports and materials regarding the facts of the said violation to the JFTC as provided in the JFTC's Rules (excluding cases where the said reports and materials are submitted on or after the investigation start date); (ii) The enterprise did not commit further acts on or after the investigation start date in connection with violation under investigation. The Antimonopoly Act also grants full immunity from the surcharges to a single company group, when it meets above requirements added to the requirements as provided for in Article 7-4(4). All the applicants will be assigned the same order of application. See also below **point 6/F (a) through (d)** and **point 6/I**. ***Note:*** *"[T]he investigation start date" in above requirements means the day on which the measure listed in Article 47 (1) (iv) [Entering and Inspecting] or the measure listed in Article 102(1) [Visiting, Searching, Seizure with a warrant] was first taken (or the date on which the enterprise received advance notification pertaining to the said violation in the case that the measures mentioned in Article 47(1)(iv) or provided for in Article 102(1) were not implemented; the same applies in the following answers.)*
D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to	In the case of fourth and thereafter applications before the investigation start date and all applications on / after the investigation start date, the eligibility for leniency may depend on the facts already ascertained by the JFTC, as it is indicated in below **point 6/G**.

initiate an investigation? **In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?**	
E. Who can be a beneficiary of the leniency program (individual / businesses)?	Only enterprises may apply for the immunity from or reduction of surcharges. As to criminal accusations, the JFTC has announced that it will not file accusations against the first enterprise that submitted reports and materials concerning the immunity from the surcharge before the investigation start date, as well as against the officers, employees and other persons of the enterprise who committed the violation of the Antimonopoly Act and should be deemed to be in a circumstance to be treated as same as the enterprise in considering the individuals' cooperation with internal surveys of the enterprise and the JFTC's investigation.
F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]	Full immunity from the surcharge will be granted to the enterprise if it meets the following requirements added to the requirements of point 6/C (See also below **point 6/I**): (a) The report or materials submitted by the applicant should not contain false information (Article 7-6(1)(i)) (b) The applicant shall submit the requested reports or materials or shall not submit false reports or false materials responding to the JFTC's additional requests. (Article 7-6(1)(ii)) (c) The applicant should not coerce other enterprises to commit the violation or block other enterprises from ceasing to commit the said violation in the same case. (Article 7-6(1)(iv)) (d) The applicant should not block other enterprises from submitting reports and materials regarding the fact and from applying for a conference with the JFTC. (Article 7-6(1)(v)) (e) The applicant shall not disclose the fact of application to third parties without justifiable reasons. (Article 7-6(1)(vi)) In the case that a single company group is to apply for the immunity from or reduction of surcharges, full immunity or reduction of surcharges will be granted to the group if it meets the requirements of (a) through (e) about any enterprise within the group.
G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable,	Reduction of the surcharge will be granted to the enterprise if it meets the following requirements of A or B: A. Requirements in the case of prior to the investigation start date (Article 7-4(2)): (a) The enterprise is the second (reduction of 20%), the third, the fourth or the fifth (reduction of 10%), or the sixth and thereafter (reduction of 5%) among the enterprises that committed the violation to individually submit reports and materials regarding the facts of said

potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]	violation to the JFTC as provided in the JFTC's Rules (excluding cases where the said reports and materials are submitted on or after the investigation start date in relation to the said violation) (b) The enterprise is not the one that committed the said violation on or after the investigation start date in regard to the said violation. (c) The fourth and thereafter applicants should submit reports and materials including the facts other than those already ascertained by the JFTC. B. Requirements in the case of on / after the investigation start date (Article 7-4(3)): (a) The enterprise (reduction of 10% for up to three enterprises (limited to a maximum of five enterprises together with enterprises that meet the requirements of A above), reduction of 5% for others), in accordance to the JFTC's Rules, individually submitted reports and materials of the facts regarding the violation (excluding materials related to the facts already ascertained by the JFTC) to the JFTC by the deadline set in the JFTC's Rules after the investigation start date for the case of the said violation. (b) The enterprise is not one of the enterprises that committed the said violation on or after the day when the reports and materials were submitted. (c) The applicants on / after the investigation start date should submit reports and materials including the facts other than those already ascertained by the JFTC. The Antimonopoly Act also grants reduction of the surcharges to a single company group, when it meets requirements of above A and B added to the requirements as provided for in Article 7-4(4). All the applicants will be assigned the same order of application. See also above **point 6/F (a) through (e)** and below **point 6/I**. ***Note:*** *The Antimonopoly Act was amended to introduce the Reduction System for Cooperation in Investigation (the reduction system) which adds reduction rates according to the degree of enterprises' cooperation. The amendment came into effect on December 25th, 2020. Outline of the reduction system is as follows.* *(a) A system to add reduction rates according to the degree of enterprises' cooperation to reveal the case to the reduction rates according to the order of the application for the Leniency Program* *(b) The content of an enterprise's cooperation and the corresponding reduction rate are decided through a conference and an agreement between the enterprise and the JFTC.* *The outline of the reduction system is available at* *https://www.jftc.go.jp/en/policy_enforcement/210630003.pdf* (in English)

H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]	A leniency applicant of immunity or reduction has to end their involvement in the cartel activity. In a case of leniency application prior to the investigation start date, it is required that they did not commit the said violation on or after the investigation start date. (Article 7-4(1), (2)) In addition, the fourth and thereafter applicants should submit reports and materials including the facts other than those already ascertained by the JFTC. In the case of leniency application on / after the investigation start date, it is required that they did not commit the said violation on or after the day when the reports and materials were submitted. (Article 7-4(3)) In addition, the applicants on / after the investigation start date should submit reports and materials including the facts other than those already ascertained by the JFTC. Moreover, prior to issuing a surcharge payment order or a notification of no payment order to the enterprise, when the JFTC additionally requests the said enterprise to submit reports or materials related to the facts of the said violation, the said enterprise will be required to obey the request to apply immunity from or reduction of the surcharges, excluding cases of agreements on the reduction system. (Article 7-4(6)) See also above **point 6/F** and **6/G**.
I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]	An enterprise, who is about to report and submit materials related to the facts of the violation prior to the investigation start date, shall submit a written report using the Form No. 1 to the JFTC via email. *Form 1, 2 and 3 are specified by the Rules on Reporting the Facts and Submitting the Materials Regarding Immunity from or Reduction of Surcharges. The enterprise shall submit the original written report to the JFTC without delay. The enterprise shall submit a written report using the Form No. 2 and materials to the JFTC by the deadline for submission which the JFTC notified. An enterprise, who is going to report and submit materials related to the facts of the violation on / after the investigation start date, shall submit a written report using the Form No. 3 via email and materials to the JFTC within the day that is twenty days (the number of holidays of Administrative Organizations shall not be included in the calculation) reckoned from the investigation start date. And the enterprise shall submit the original written report to the JFTC without delay. Where the JFTC deems the exceptional circumstances to be necessary for it with regard to substituting an oral report for the entries on the part of matters of the Form No. 2 and No. 3, the enterprise may substitute the oral report or oral statement for the entries on the matters or submission of the materials. However it is limited to the case where the enterprise, who is about to make the oral report or oral statement, appears before the Senior Officer for Leniency Program and makes the oral report or oral statement by the deadline for submission.

J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]	The JFTC's leniency program will apply to an applicant through two-step notification pursuant to the provisions of the Antimonopoly Act. First, the applicant receives a written notification pursuant to Article 7-4(5) regarding the eligibility for applying to the provision on the leniency. However in the case of dissatisfying the requirements indicated in Article 7-6, the provision on the leniency shall not apply to the applicant. Thus the provision on the leniency will finally apply to the applicant by a notification as provided for in Article 7-4(7) in the case of immunity from the surcharge or service by the surcharge payment order in the case of reduction of the surcharge. Features of the leniency program in Japan are as follows; (1) An applicant shall submit an initial summary report (Form No. 1 or Form No. 3) to the JFTC via email. (2) An applicant can substitute an oral report for a written report with regard to particular items required to submit to the JFTC if the JFTC acknowledges exceptional circumstances that necessitate it.
K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?	See above **point 6/J**.
L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?	In the case of not satisfying the requirements indicated in Article 7-6, the provision of leniency shall not apply to the applicant. (See above **point 6/F** and **6/G**) As stated in point 6/G, Reduction System for Cooperation in Investigation was introduced by the amendment of Antimonopoly Act. The "Guidelines to Reduction System for Cooperation in Investigation" is available at the following URL: *https://www.jftc.go.jp/en/policy_enforcement/21041304.pdf* (in English)

M. Do you have a marker[5] system? If yes, please describe it.	Yes. In the case of leniency application prior to the investigation start date, an enterprise, who is going to report and submit materials, shall submit a written report using the Form No. 1 to the JFTC via email, which indicates summary of the violation. The order of submission is decided according to the time when the JFTC receives the Form No. 1 via email, and the Form No. 2 which indicates details of the violation and materials concerned with the act shall be submitted by the notified deadline.
N. Does the system provide for any extra credit[6] for disclosing additional violations? [e.g. a hardcore cartel in another market]	No. The JFTC's leniency program does not provide any extra credit for disclosing additional violations. The applicant needs to send another application to get immunity from or reduction of the surcharge for those violations.
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	Yes. The JFTC will keep the identity of the applicants confidential. The chair, the commissioners and the staff members of the JFTC's general secretariat shall not divulge or make surreptitious use of secrets of enterprises which came to their knowledge in the course of their duties. (See also below **point 10/B**) On the other hand, in terms of transparency of law enforcement, the JFTC will announces the names of enterprises to which the leniency program has been applied when the JFTC issues surcharge payment orders on the case.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	No particular provisions in this regard exist. But appealing the JFTC's decision on leniency is possible in the suit to quash the JFTC's decision on the JFTC's orders.
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	Senior Officer for Leniency program Address: Japan Fair Trade Commission 1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8987, Japan Email address for Reporting by using the Forms: genmen-2020●jftc.go.jp (It is necessary to replace "●" with "@" when you actually send an email.) Telephone Number for Prior Consultation on Leniency: (+81)-3-3581-2100

5 A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

6 Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?	Leniency is revoked, if a fact falling under any of the following items exists, (a) The reports or materials submitted by the applicant contained false information. (b) The applicant failed to submit the requested reports or materials or submitted false reports or materials responding to the JFTC's additional requests. (c) The applicant coerced another enterprise to commit the violation or blocked another enterprise from discontinuing said violation. (d) The applicant blocked other enterprises from submitting reports and materials regarding the fact and from applying for a conference with the JFTC (e) The applicant disclosed the fact of application to third parties without justifiable reasons. (f) The applicant failed to conduct the acts relevant to the agreement with the JFTC Appealing the JFTC's decision on the leniency is possible in the suit to quash a decision on the JFTC's order.
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	It allows the JFTC to consult with potential leniency applicants on applying the provisions. But the JFTC does not induce enterprises to make a leniency application as positively as it affects their voluntary report.
T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.	Article 220 of the Code of Civil Procedure provides that a holder of a document can refuse to submit the document to the court if the document contains a secret in relation to a public officer's duties, which is, if submitted, likely to harm the public interest or substantially hinder the performance of its public duties. Leniency materials are considered to fall under the document which the JFTC can refuse to submit to the court under the above Code. The JFTC has the policy of not providing leniency materials to the court, etc. in order to avoid disincentives for leniency application.

7. Settlement

A. Does your competition regime allow settlement? **If yes, please indicate its public availability (link to the**	Not applicable.

relevant rules, guidelines, etc.].	
B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only …]?	Not applicable.
C. What is the reward of the settlement for the parties?	Not applicable.
D. May a reduction for settling be cumulated with a leniency reward?	Not applicable.
E. List the criteria (if there is any) determining the cases which are suitable for settlement.	Not applicable.
F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].	Not applicable.
F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].	Not applicable.
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	Not applicable.
H. Is there a possibility for settled parties to appeal a settlement decision at court?	Not applicable.

8. Commitment

A. Does your competition regime allow the possibility of commitment? **If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].**	The commitment procedure is stipulated in the provisions of Article 48-2 to Article 48-9. In addition, the JFTC has established the " Rules on Commitment Procedures by the Fair Trade Commission". *https://www.jftc.go.jp/en/legislation_gls/kakuyakukisoku.pdf* (in English) Furthermore, the JFTC stipulates the "Policies Concerning Commitment Procedures" (hereinafter referred to as the "PCCP") to ensure the transparency and the predictability regarding the enforcement of the law related to the commitment procedures. *https://www.jftc.go.jp/en/legislation_gls/antimonopoly_rules_files/policies_concerning_commitment_procedures.pdf* (in English)
B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only …]? **Are there violations which are excluded from the commitment possibility?**	Unreasonable restraint of trade (Article 2(6). See above **point 2/A**) is possibly subject to the commitment procedures; however, unreasonable restraint of trade which is subject to a surcharge payment order (so-called hardcore cartel) is excluded from the scope of the commitment procedures due to the need for strict enforcement by taking legal measures. (Section 5 of the PCCP)
C. List the criteria (if there are any) determining the cases which are suitable for commitment.	The commitment procedures will be commenced when the JFTC believes that there to be a fact in violation of the provisions of the Antimonopoly Act and finds it appropriate to apply the commitment procedures to the activities leading to such suspicion (hereinafter referred to as the "suspected violation"). (Section 2 of the PCCP)
D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]	The PCCP listed the following commitments ((A) to (G)) as typical commitment measures, but commitment measures are not limited to those: (A) Cessation of the suspected violation, confirmation that it has already ceased to exist, etc. (B) Notification of the said (A) to trade partners and others or publicizing information to users and others (C) Development of a compliance program (D) Amendments of contracts (E) Transfer of businesses etc. (F) Recovery of monetary value provided by trade partners and others (G) Reporting on the state of implementation of commitment measures (Section 6(3) of the PCCP)

E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]	The JFTC may commence the commitment procedures by issuing Notice of commitment procedures to the enterprise which is conducting or has conducted the suspected violation. The JFTC will describe in the Notice of commitment procedures an overview of the suspected violation based on the facts that have been ascertained as of the time of issuing the notice. When the party that has received a Notice of commitment procedures (hereinafter referred to as the "Notified Enterprise") makes an application for the approval of a commitment plan that includes commitment measures, Notified Enterprise needs to make the application within 60 days from the date when it received the Notice of commitment procedures pursuant to Article 48-3(1) or Article 48-7(1) . After Notified Enterprise has made an application for the approval of a commitment plan, the JFTC makes a judgment as to whether or not the commitment plan conforms to the requirements for approval provided in Article 48-3(3) or in Article 48-7(3) . The JFTC approves the commitment plan when it recognizes that the plan conforms to the requirements. (Section 2 and 4 of the PCCP)
I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?	The approval of a commitment plan by the JFTC does not represent a determination that the applicant's suspected violation constitutes a violation of the Antimonopoly Act. (Section 8 of the PCCP)
J. Describe how your authority monitors the parties' compliance to the commitments.	The PCCP provides that the reporting of the state of implementation of each commitment measure to the JFTC by Notified Enterprise or an independent third party to whom Notified Enterprise has entrusted with monitoring its implementation of the commitment measures (the third party needs to be approved by the JFTC) is one measure necessary to ensure the implementation of the measures. (Section 6 of the PCCP)
K. Is there a possibility for parties to appeal a commitment decision at court?	As a general rule, an action for the revocation of an administrative disposition may be filed based on the Administrative Case Litigation Act, which also applies to the commitment procedures.

9. Investigative powers of the enforcing institution(s)[7]

A. Briefly describe the investigative measures available to the enforcing agency such as requests for	The JFTC may; 1. order government agencies, juridical persons established by a special law or an order, enterprises, or organizations of enterprises, or their personnel to appear before the JFTC, or may require them

[7] "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

information, searches/raids[8], electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.	to submit necessary reports, information, or materials. (Article 40) The person who violates this measure and the enterprise (the trade association) which administrates the person, etc. shall be subject to criminal fine of not more than three million yen. (Article 94-2, Article95(1)(iv), Article95(2)(iv)) 2. entrust government agencies, juridical persons established by a special law or an order, schools, enterprises, organizations of enterprises, experts, or others to carry out necessary research and surveys. (Article 41) 3. order persons concerned with a case, or witnesses to appear for interrogating, hearing their views or collecting reports from them. (Article 47(1)(i)) The person who violates this measure and the enterprise (the trade association) which administrates the person, etc. shall be subject to imprisonment with work for not more than one year or criminal fine of not more than three million yen for the person (Article 94(i)) and criminal fine of not more than two hundred million yen for the enterprise (Article 95(1)(iii)) and the trade association (Article 95(2)(iii)). 4. order experts to appear to have them give expert testimony. (Article 47(1)(ii)) The person who violates this measure and the enterprise (the trade association) which administrates the person, etc. shall be subject to imprisonment with work for not more than one year or a criminal fine of not more than three million yen for the person (Article 94(ii)) and criminal fine of not more than two hundred million yen for the enterprise (Article 95(1)(iii)) and the trade association (Article95(2)(iii)). 5. order persons holding accounting books, documents and other matters to submit the same, or retain such submitted matters at the JFTC. (Article 47(1)(iii)) The person who violates this measure and the enterprise (the trade association) which administrates the person, etc. shall be subject to imprisonment with work for not more than one year or a criminal fine of not more than three million yen for the person (Article 94(iii)) and criminal fine of not more than two hundred million yen for the enterprise (Article 95(1)(iii)) and the trade association (Article95(2)(iii)). 6. enter any place of business of the persons concerned with a case, or other necessary sites and inspect conditions of business operation and property, accounting books, documents and other matters. (Article 47(1)(iv)) The person who violates this measure and the enterprise (the trade association) which administrates the person, etc. shall be subject to imprisonment with work for not more than one year or a criminal fine of not more than three million yen for the person (Article 94(iv)) and criminal fine of not more than two hundred million yen for the enterprise (Article 95(1)(iii)) and the trade association (Article 95(2)(iii)). The staff members designated by the JFTC may; 7. when necessary to investigate a criminal case, request criminal case suspects or witnesses to appear in the JFTC, may question criminal case suspects and others, may inspect matters held or abandoned by offence suspects and others, or may retain matters voluntarily submitted or abandoned by criminal case suspects and others. (Article 101(1))

8 “Searches/raids” means all types of search, raid or inspection measures.

	8. in their investigation of a criminal case, inquire at national and local government offices or public or private organizations and request them to submit a report regarding the necessary matters. (Article 101(2)) 9. when necessary to investigate a criminal case, visit, search, seize, or seize records created under a record copying order with a warrant issued in advance by a judge of the district court or the summary court having jurisdiction over the location of the JFTC. (Article 102(1))
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	In the case of administrative investigation, private locations such as residences, automobiles can be inspected by the JFTC, but the bodies of persons cannot be inspected. The investigation does not require a warrant issued by a judge. In the case of criminal investigation, private locations such as residences, automobiles can be visited and searched with a warrant issued by a judge by staff members designated by the JFTC. The bodies of persons can be also searched as the same.
C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!	As for electronic data stored on a server located outside the territory, (including data such as emails), the investigator can order companies to submit those that are copied and stored on recording media.
D. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?	No. In the case where the JFTC found evidence not falling under the scope of the case, the evidence cannot be retained without new designation of a case. However where the evidence is concerned with the case, the admissibility of the said evidence remains in the case of retaining it.
E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.	No. Any person, who was subject to the measures for administrative investigation, may make a motion for objection to the JFTC within one week from the day subject to the measure by a document stating the grounds, when being dissatisfied with the said measure. (Article 22(1) of Rules on Investigations)

10. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.	In investigation and hearing of opinions, the following rights and others are provided by the Antimonopoly Act: Article 22 of the Rules on Investigations provides: (1) Any person, who was subject to the administrative investigations (Article 47(1)), which was taken by the investigator, may make a motion for objection to the JTFC within one week from the day subject to the measure by a document stating the grounds, when being dissatisfied with the said measure. (2) The JFTC shall, when recognizing that there are grounds for the motion for objection, order the investigator to withdraw, cancel, or change the measure against which the motion for objection was made, and notify thereof to the petitioner. (3) The JFTC shall, when having rejected the motion for objection, notify thereof to the petitioner. In this case, the reasons for the rejection shall be given. Article 49 provides: The JFTC shall, when it intends to issue an order to take elimination measures (including surcharge payment order. (Article 62(4)), conduct a hearing of opinions with the would-be addressee for the said order. Article 50 provides: The JFTC shall notify the expected contents of the order to be issued and other matters, including the facts found by the JFTC, the application of laws and regulations, and principal evidence etc. to the would-be addressee by a reasonable period of time prior to the date of hearing and the would-be addressee may express his/her opinion and produce evidence etc. on the date of hearing of opinions. Article 52 provides: The party concerned may request to the JFTC to inspect or copy the evidence proving the facts found by the JFTC with respect to the case for hearing of opinions.
B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.	The chair, the commissioners and the staff members of the JFTC's general secretariats, or any person who once held such position, shall not divulge or make surreptitious use of secrets of enterprises which came to their knowledge in the course of their duties. (Article 39) Any person who violated the provision shall be punished by penal servitude of not more than one year or by a fine of not more than one million yen. (Article 93) The confidentiality does not depend on any procedures or measures used for getting secrets of enterprises. In the judicial precedent, secrets of enterprises mean "non-public facts which the enterprise wants to keep secret and which have objective and reasonable grounds for keeping secret" (Judgment of Tokyo District Court, July 28, 1978).

11. Limitation periods and deadlines

A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!	Elimination measures may not be ordered where seven years have elapsed since the date of discontinuation of the violation. (Article 7(2)) The limitation period of surcharge payment orders is the same. (Article 7-8(6)) The period of prescription for prosecution is five years. (Article 250(2)(v) of the Criminal Procedure Act) When the JFTC has rescinded the approval of an approved commitment plan pursuant to Article 48-5, paragraphs (3) or (4) or Article 48-9, paragraphs (3) or (4), notwithstanding the period of limitation, the JFTC may take legal measure within the period of two years from the date of the decision on such rescission. (Section 10[2] of the PCCP).
B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!	The Antimonopoly Act and the JFTC's Rules indicate no deadline for an investigation or a decision on the merits. See above **point 11/A**.
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)	No action for the revocation of elimination measures may be filed when a period of six months has elapsed from the day on which the person who seeks revocation became aware of the fact that the original elimination measures were ordered; provided, however, that this shall not apply if there are justifiable grounds for failing to meet such time limit. (Article14(1) of Administrative Case Litigation Act)

12. Types of decisions

A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]	By its decision, the JFTC may order the following (not limited to those); a) may establish that the conduct is unlawful, b) may order a situation violating the Antimonopoly Act to be eliminated, c) may prohibit the continuation of the conduct which violates the provisions of the Antimonopoly Act in the future, d) may establish a compliance program, etc. not to repeat the said illegal conducts, e) may impose particular amount of surcharge: ordering to pay a surcharge equivalent to an amount calculated by the way in point **14/B**.
B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).	The same decisions - see above **point 12/A.**
C. Can interim measures[9] be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both[10].) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?	When the JFTC considers urgent injunction is needed, the JFTC files petition to the Tokyo District Court. Upon petition of the JFTC, if the court finds there to be an urgent necessity of doing so, the court may order the person engaging in an act suspected of violation of the Antimonopoly Act to temporarily stop engaging in the act, stop exercising voting rights, or stop executing business as an officer of a company, or may rescind or modify such order. (Article 70-4(1)) The execution of an urgent injunction may be stayed by depositing such bond or securities as the court may fix. (Article 70-5(1))

13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

9 In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

10 Only for agencies which answered “yes” to question 2.B. above

A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:	In the case of administrative investigation, any person who falls under any one of the following paragraphs and the enterprise (the trade association) which administrates the person, etc. shall be punished by imprisonment with work for of not more than one year or by a fine of not more than three million yen for the person (Article 94) and by a fine of not more than two hundred million yen for the enterprise and the trade association(Article 95): (i) Any person concerned with a case or any witness who, in violation of the order issued to him or her, fails to appear or to give a statement, or gives a false statement, or fails to submit a report, or submits a false report; (ii) Any expert witness who, in violation of the measures issued to him or her, fails to appear or to give expert testimony, or gives a false expert testimony; (iii) Any holder of the matters who, in violation of the measures issued to him or her, fails to submit the same; or (iv) Any person who refuses, obstructs, or evades the inspection. Any person who fails to appear or to submit a report, information, or materials, or submits a false report, information, or materials and the enterprise (the trade association) which administrates the person, etc. shall be punished by a fine of not more than three million yen. (Article 94-2, Artcle95. See above **point 9/A)** Any person, who fails to comply with a cease and desist order, after it has become final and conclusive, and the enterprise (the trade association) which administrates the person, etc. shall be punished by imprisonment with work for not more than two years or by a fine of not more than three million yen. (Article 90(iii), Article95(1)(iv), Article95(2)(iv))
B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):	The type of the procedural sanctions is criminal except the following examples: 1. Any person who has violated an order to take elimination measures shall be liable to an administrative fine of not more than five hundred thousand yen. (Article 97) 2. Any person who has violated an order of urgent injunction shall be liable to an administrative fine of not more than three hundred thousand yen. (Article 98)
C. On whom can procedural sanctions be imposed?	On the individual and the enterprise (the trade association) which administrates the person, etc. (Article 94, 95)
D. Criteria for determining the sanction / fine:	The court determines the sentencing, but the criteria for determining the sanction are not clarified. See also above **point 13/A** on the upper limit of the penalties.
E. Are there maximum and / or minimum sanctions / fines?	See above **point 13/A**.

14. Sanctions on the merits of the case

A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined): **On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]**	Though cartels which substantially restrain competition in certain fields of trade will be coped with by administrative measures, vicious and serious cases which are considered to have widespread influence on people's life will be impeached by filing an accusation to the Public Prosecutor General. The civil liability of person committing the violation of the Antimonopoly Act will be brought in accordance with the Civil Code or Article 25. In the case that an enterprise committed the violation of the Antimonopoly Act: Administrative Measure: enterprise (Article7, Article7-2) Criminal Sanction: enterprise, representative, individual (Article 89, Article 95(1), Article 95-2) Civil Restitution: enterprise, individual (Article 25, etc.) In the case that a trade association committed the violation of the Antimonopoly Act : Administrative Measure: trade association, constituent enterprise (Article 8-2, Article 8-3) Criminal Sanction: trade association, representative, constituent enterprise, individual (Article 89, Article 95(2), Article 95-3) Civil Restitution: trade association, individual (Article 25, etc.)
B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]	(a) Criminal Sanctions The choice of sanctions and the extent of them within the range as provided for in the penal provisions will be decided by the judge's own decision. (See below **point 14/C** with regard to maximum penalty.) (b) Surcharges The outline of the latest revision on the surcharge system is available at the following URL: *https://www.jftc.go.jp/en/policy_enforcement/210630002.pdf* (in English)
C. Are there maximum and / or minimum sanctions / fines?	(a) Criminal sanctions Any individual shall be punished by imprisonment with work for not more than five years or by a fine of not more than five million yen. (Article 89) Any enterprise shall be punished by a fine of not more than five hundred million yen. (Article 95) However, fine shall be not less than ten thousand yen. (b) Surcharges The maximum amount of surcharges is not regulated, but the amount of surcharge is calculated according to the provisions of Article 7-2 through 7-8 (See above **point 14/B**). The JFTC shall not order the payment of such a surcharge in case the amount thus

	computed falls below one million yen. (Article 7-2(1)) However, in the case of reducing the amount of the surcharge pursuant to the leniency policy, the amount of the surcharge payment may fall below one million yen.
D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	Article 7-2 and 7-3 Article 4 through 9 of the Order for Enforcement of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, Cabinet Order No. 317 of 1977 (last amended in September 2020)) The legislation is available at *https://www.jftc.go.jp/en/legislation_gls/200902.pdf* (in English)
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	No it does not have an automatic suspensory effect on the JFTC's orders. When the JFTC has issued an order to take elimination measures, the respondent may file a suit with the court in order to seek an order for stay of execution in accordance with article 25(2) of Administrative Case Litigation Act.

15. Possibilities of appeal

A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	In the case of protesting orders made by the JFTC, any parties may file a protest suit directly with the Tokyo District Court. (Article 85) The Tokyo District Court shall conduct a proceeding and make a judicial decision by a panel of judges consisting of three or five judges. (Article 86) The grounds of appeal to the Tokyo District Court are the illegality of the orders, including mistake of factual findings, mistake of applications of laws and breaches of procedural requirements. If any party is dissatisfied with the judgment made by the Tokyo District Court, it may appeal to the Tokyo High Court. (Article 87) In the case of challenging the judgement of the Tokyo High Court, the party may appeal to the Supreme Court with ground reasons.
B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]	See above **point 15/A**.

16. Private enforcement

A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?	In our jurisdiction, it is possible to file an injunction request under Article 24 of the Antimonopoly Act and a claim for damages under Article 25. It is also possible to make a claim for damages under Article 709 of the Civil Code.
B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]	Article 24 and 25 *https://www.jftc.go.jp/en/legislation_gls/AMA.pdf* (in English) Article 709 of the Civil Code *https://www.japaneselawtranslation.go.jp/en/laws/view/3494/en* (in English) Private enforcement of the Antimonopoly Act is treated under the procedure stipulated in the Code of Civil Procedure and its implementing regulations.
C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	See above **point 16/B**.
D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?	An act subject to a request for injunction under Article 24 is an act that violates the provisions of Article 8, item (v) or Article 19, as required by law. An act subject of a claim for damages under Article 25 is an act that violates the provisions of Articles 3, 6, 8, or 19. The acts subject to claims for damages under Article 709 of the Civil Code are all acts that violate the Antimonopoly Act.
E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim? • **is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What**	1. Request for injunction under Article 24 A person whose interests are infringed upon or likely to be infringed upon, due to unfair trade practices, and who is thereby suffering or likely to suffer extreme damages as a result, is entitled to seek the suspension or prevention of such infringements from the enterprise, etc. who infringed or is likely to infringe the interests. 2. Claim for damages under Article 25 To allege the right of claim for damages in a court based on Article 25, the cease and desist order (Article 61(1) t) or the surcharge payment order (Article 62(1)) shall be required to be firmly determined (Article 26(1)).

is the effect of a finding of infringement by a competition agency on national courts/tribunals? • **if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised?**	
F. Are private actions available where there has been a criminal conviction in respect of the same matter?	Yes. The Antimonopoly Act does not prohibit initiating private actions by victims, even if an enterprise is convicted.
G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?	No. The Antimonopoly Act does indicate no beneficial treatment for immunity / leniency applicants in follow-on private damages cases.
H. Name and address of specialised court (if any) where private enforcement claims may be submitted to	1. Request for injunction under Article 24 In addition to the district court that has jurisdiction over the location of the general venue under the Code of Civil Procedure (paragraph 1 of Article 4 of the Code of Civil Procedure), a plaintiff may file lawsuits with a district court that is located in the location of a high court, that corresponds to the higher court of the abovementioned district court, and the Tokyo District Court. (Article 84-2). 2. Claim for damages under Article 25 and the Civil Code The jurisdiction of the first instance over any actions concerning compensation for damages pursuant to the provisions of Article 25 shall lie with the Tokyo District Court. (Article 85-2).
I. Information about class action opportunities	Not applicable.

J. Role of your competition agency in private enforcement actions (if at all)	The Antimonopoly Act prescribes in Article 79 that if a suit to suspend or prevent an infringement under the provisions of Article 24 has been filed, the court may ask for the opinion of the JFTC with respect to the application of this Act in the case concerned or with respect to other necessary matters. The Antimonopoly Act also prescribes in Article 84 that if a suit for damages under the provisions of Article 25 has been filed, the court may ask for an opinion of the JFTC with respect to the amount of damages caused by the violation. This system helps to ease the burden on the plaintiff to present evidence. However, the opinion of the JFTC is not binding on courts. If requested by a court or by parties to a lawsuit, the JFTC will provide some materials to make effective use of the damage suit system based on Article 25 and serve for a suit for damages based on Article 709 of the Civil Code (see below **point 16/L**).
K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible? • **Role of your competition agency in the damage calculation (if at all)**	Theoretically, those three approaches described below may be used by claimants and/or the JFTC (when asked by a court for its opinion regarding the methodology for calculation). Among those three approaches, approach (i) is the most likely to be chosen by claimants and the JFTC. i. "The before-after approach" analyzes prices before, during, and/or after an infringement. ii. "The cross-section (also called yardstick) approach" compares different geographic or product market. iii. "The market share approach" contrasts plaintiff's market share in the affected market with its market share in unaffected markets However, a court would estimate the amount of damage, on its own, based on Article 248 of the Code of Civil Procedure, which allows courts to determine a reasonable amount of damage when it is extremely difficult to prove the amount of damage based on the oral argument and evidence presented before courts.
L. Discovery / disclosure issues: • **can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations?** • **is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)?** • **summary of the rules regulating the disclosure of confidential information by the**	The Antimonopoly Act does not allow plaintiff to obtain access to the JFTC's files of investigations. If requested by a court or by parties to a lawsuit, the JFTC will provide the material as shown below to make effective use of the damage suit system based on Article 25 and serve for a suit for damages based on Article 709 of the Civil Code. 1.Provision of material after orders have become final i. Procedure before a damage suit is brought to court When the order of the JFTC has become final and binding and if the provision of material relating to the final and binding order is requested by the plaintiff or a lawyer representing the plaintiff, the JFTC shall provide the authenticated transcript or extract of the written cease and desist order or the written surcharge payment order related to the violation. ii. Procedure after a damage suit is brought to court When a damage suit is brought to court with respect to a violation for which the final and binding orders exist, and the court in charge of the case requests the sending of documents based on Article 226 of the Code of Civil Procedure, (i) material relating to the proof of existence of a violation and (ii) material

competition agency to the court • **summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court**	relating to the proof of a relation or a causal relationship between a violation and damages as well as the amount of damages shall be submitted to the court. However, divulging any of the "secrets of enterprises" that come to the knowledge in the course of duties is prohibited under Article 39. When material, including "secrets of enterprises," is submitted to a court, the JFTC shall pay attention to their confidentiality. This will similarly apply to cases in which, if the source of provision of material is made clear, the provider of the material will receive disadvantageous treatment, thereby hinder the handling of the case, or cases in which matters infringing upon individual persons' privacy are included. In addition, the JFTC does not provide documents related to leniency application. 2.Provision of material before the orders have become final and binding Under the condition where the orders have not yet become final and binding, such as the cases in which a suit to rescind the decision is being brought, etc., if the provision of material is requested by the victims, etc. of the violation as necessary for filing a suit for damages or by the plaintiff or lawyer representing the plaintiff after a lawsuit is brought to court, the authenticated transcription or extract of the written cease and desist order or the written surcharge payment order shall be provided.
M. Passing-on issues: • **how is passing-on regulated / treated in your jurisdiction?** • **is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims?**	Indirect purchasers can claim damages of the passing on price. The Antimonopoly Act prescribes in Article 25 that an enterprise that commit an act such as a price cartel is liable for damages of victims. According to a Supreme Court precedent, the victims referred to here include "indirect" purchasers, as long as there is a causal relationship between the act and the damages (Judgment of Supreme Court, December 8, 1989).