

ABA Advanced International Cartel Workshop
February 15-16, 2001, Plaza Hotel, New York
Second Day Luncheon: Enforcement Round Table: Cartel Enforcement:

"WHERE DO WE GO FROM HERE ?"

A Speech by HOMMA Tadayoshi, Commissioner, Japan Fair Trade Commission

Thank you, Ky, Don and Gary, for giving me an opportunity to speak, before such a celebrated audience, about Japan's current and future challenges in its fight against international cartels.

Japan enacted its first Anti-Monopoly Act in 1947 after U.S. model. During its history of more than half a century, it has been amended several times generally towards stronger law-enforcement.

The administrative agency responsible for its enforcement is the Japan Fair Trade Commission -- the JFTC -- consisting of five commissioners including myself. Its General Secretariat consists of about 560 staff, nearly one half of which being investigation officers. They are all national public officers with very high morale and skill, mostly selected for lifetime service from university graduates with law or economics degree through one of the most prestigious national examinations in Japan.

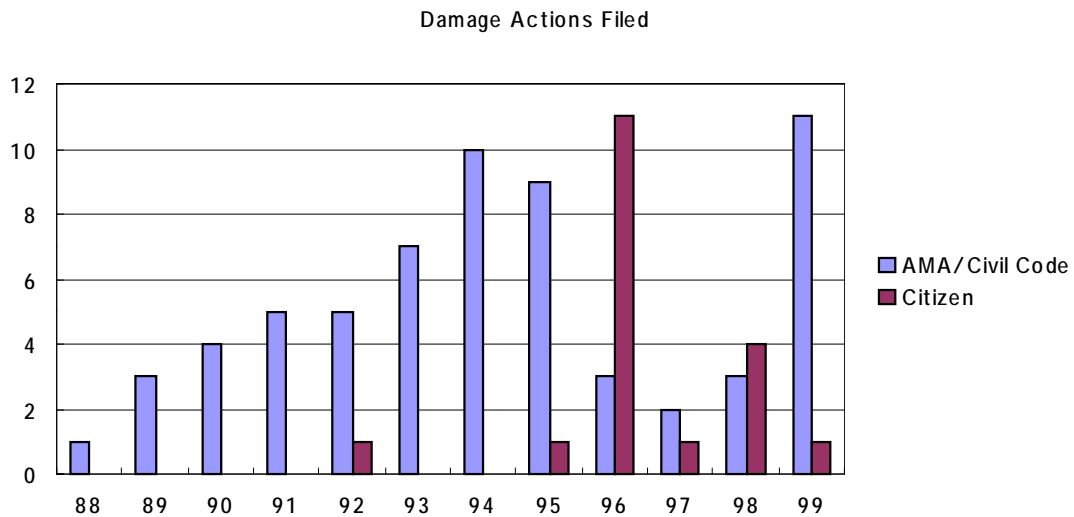
In 1999, the JFTC finalized 111 investigations, issued 31 cease-and-desist orders, out of which 25 being against cartels including bid-rigging schemes, collected administrative surcharges amounting to \$167 million from 713 respondents, and filed a criminal accusation with the Prosecutor General.

From these numbers, you may find some uniqueness of the Japanese system compared with its U.S. counterpart.

The JFTC is much closer in nature to the U.S. Federal Trade Commission than to the Department of Justice. Although both criminal and civil relief are available in Japan as to be discussed later, JFTC's law-enforcement system is currently more administrative than criminal or civil.

The administrative surcharge to be levied by the JFTC is different from the criminal fines in the U.S. In principle, a 6% surcharge is levied upon the turnover of the violating goods or services for three years. This procedure is automatic and there is no discretion on the part of the JFTC as to whether or in what amount surcharge is to be levied.

The number of respondents in a bid-rigging case is very large especially in the local construction sector, making JFTC's law-enforcement very burdensome. Partly thanks to the heavy press coverage on the JFTC's fight against the bid-rigging schemes involving hundreds of parties, however, Japanese people are now fully convinced that the cartel is not a business game but a moral evil. I believe that this moral conviction against cartels is the prerequisite for any legal institutions.



Damage actions already available under the Anti-Monopoly Act or the Civil Code are being used more and more frequently by affected purchasers such as local governments injured by bid-rigging schemes. Citizen groups are filing a rapidly growing number of damage actions on behalf of their local governments.

The JFTC has decided to regard such citizen groups as the interested parties eligible for an access to the non-confidential evidences obtained during its administrative investigation. Although one of such decisions is being challenged by the defendants before a district court, I believe the court will support JFTC's interpretation in the end.

In this connection, here is an encouraging development in favor of the stronger

enforcement of the Anti-Monopoly Act. Under an amendment to the Anti-Monopoly Act taking effect as of April 1, 2001, any party can file an injunction action before a district court against unfair trade practices, actual or threatened, including certain types of cartels.

Now, let me turn to Japan's future challenges in its fight against international cartels. Please understand that this is my personal view as an independent commissioner.

As you may be aware, Japan has been suffering from an economic stagnation for the last decade that also may adversely affect world economy. One of the top-most policies the Japanese government is pursuing currently for the re-vitalization of its economy is the promotion of the so-called "Information Revolution".

It is clear from the U.S. experience for the last half decade, that information technology promotes competition, stimulates consumer demand through lower prices and better services, and at the same time improves business efficiency.

As a close watcher of the U. S. new economy, however, I have found a preposterous -- or missing -- statement in the above observation. It is true that information technology promotes competition, but it is also true that competition promotes information technology or, in other words, that competition precedes the information revolution. This is the reason why the information revolution started in the U.S. but not in Japan.

In order for Japan to keep up with the global information revolution in the 21st century, we have to take a very urgent -- even a radical -- set of measures to promote competition instead of just sitting and waiting for the information revolution to come. International cartels especially in the information sector are enemies of the global information revolution. I personally feel obligated, as one of the commissioners, to lead the JFTC to be a spearhead of Japan's information revolution through its strenuous fight against such cartels.

Lastly, before concluding my remarks, I may have to touch upon the subject of the leniency program. As I told you earlier, JFTC's administrative surcharge is too rigid a system to be useful as the basis of a leniency program. A more promising alternative seems to be first of all to strengthen our current criminal enforcement and then to design a leniency program acceptable to our society. Although I anticipate various

legal as well as social problems ahead, I am not very pessimistic because the Japanese people are becoming more and more independent in their way of thinking. Thank you.