



***Japan Fair Trade Commission***

**Japan's Endeavour for  
Establishing Rigorous Anti-Cartel Enforcement**

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## **Japan's Endeavour for Establishing Rigorous Anti-cartel Enforcement**

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### **1. Introduction**

More than four years since I took office as Chairman of the Japan Fair Trade Commission (hereinafter referred to as "JFTC"), I have always been advocating "there is no growth without competition." For these years, I have been fully committed not only to the application of the Antimonopoly Act (AMA) to various types of anticompetitive conduct, but also to strengthening the AMA out of my firm recognition that the Japanese enforcement level against anticompetitive conducts such as cartels and bid-riggings is not sufficient enough to effectively deter them.

In April 2005, with the Japanese government's strong commitment to the structural reform and promotion of competition for economic revitalization, the AMA underwent its first comprehensive amendment in the last quarter century, and the amendment took effect on January 4, 2006. The primary goal of this amendment is to eradicate anticompetitive conducts such as cartels and bid-riggings in a more active and stricter manner so as to contribute to realizing a vital, energetic and robust economy and society. Since its strict enforcement for prompt elimination of cartels and bid-riggings serves to achieve sound competition and consumer benefits, I am sure that challenge for ensuring rigorous anti-cartel enforcement based on the latest amended AMA is our high priority task.

Today, I wish to take this opportunity given to me at this session to explain briefly the content of the latest amendment to the AMA. And I will introduce recent developments of our anti-cartel enforcement, including specific cases where the amended AMA was applied, in order to show how the JFTC has engaged in its enforcement against cartel activities recently.

### **2. The latest amendment to the AMA**

The AMA was enacted in 1947 and it will mark the 60th anniversary next year. Since its birth, the AMA has experienced two significant and comprehensive

amendments: one is the 1977's amendment where the AMA was extensively reinforced mainly by introducing monetary surcharge system against cartel participants, and another is the latest amendment in 2005 that I will explain this time.

Among the specific provisions that were amended in 2005 are an increase in surcharge rates imposed on violators of the AMA, from 6% to 10% of the related turnover for the large-sized enterprises and application of 50% higher rates to repeated offenders. In addition, the amendments introduced criminal investigation power in order for the JFTC to treat with violation in a more strict and effective manner, which is expected to enable the JFTC to file criminal accusations much more aggressively.

On the other hand, the amendment provides a motivation for terminating cartel activities at the earliest opportunity by an introduction of a leniency program, where 100 % immunity from surcharge for the first applicant, 50 % reduction of surcharge to the second applicant, and 30 % reduction to the third applicant are afforded as long as they provide necessary information before the start of the JFTC investigation. Even after the initiation of investigation, 30 % reduction is equally available up to the third applicant. Moreover, the JFTC has made clear that it will not file a criminal accusation against the first enterprise that files an application before the initiation of the investigation as well as officers and employees of the applicant.

Following the amendment, especially the increase in the surcharge rates and the introduction of criminal investigation power, a stronger incentive to avoid the surcharge or criminal prosecution to be imposed seems to have grown up among Japanese business society. Contrary to some concerns prior to the enactment, the JFTC received 26 applications during the first three months from the enforcement of the amendment in January to March, 2006, and around 4 or 5 applications per month on average after April, 2006.

I believe that the leniency program backed by the increase in surcharge rates and the JFTC's criminal investigation power would increase mutual suspicions among cartel participants, and thus, it is expected to result in destabilization of cartel as well as bid-rigging.

### **3. Recent enforcement of the AMA**

Needless to say, whether the newly introduced system works as expected or not is mostly dependent on the JFTC's efforts to make a vigorous enforcement of the amended AMA. Therefore, the first priority of the JFTC is to properly utilize the new tools for its investigation.

To show the current challenge of the JFTC against cartel activities, I would like to introduce three important recent bid-rigging cases, which would make clear how vigorously the JFTC is engaging in anti-cartel enforcement in Japan.

### **(1) Bid-rigging case concerning steel bridge construction**

The first is a bid-rigging case concerning steel bridge construction procured in FY 2004 by the Japan Highway Public Corporation (hereinafter "the JH"), where around 50 bridge building enterprises, including big name firms such as Mitsubishi Heavy Industries, Ltd. and JFE Engineering Co., jointly and through involvement of officials of the JH, decided on the bid winners in advance, in order to prevent declining of bridge construction price and to secure stable profits from the public procurement ordered by the JH.

This case is distinguished from normal bid-riggings in that an executive official of the JH facilitated for concerned enterprises to jointly rig a series of bids by approving a "bid winner allocation chart" submitted by a concerned enterprise's employee who was once an executive official of the JH. One of the main reasons why those current and former executives involved in bid-rigging among concerned enterprises is that they wanted to secure jobs for retirees of the JH with concerned enterprises through distributing profits of procurement for those enterprises that employed the retirees, by means of organizing such bid-riggings. In Japan, by the way, such bid-riggings are called "*Kansei Dango*", where public officials assist or facilitate bid-riggings.

Based on the aggressive investigation, the JFTC found a criminal violation of the AMA and, on June 29, August 9, and August 15, 2005, filed accusations with the Public Prosecutor General against 6 companies and 7 individuals that had played a critical role for the violation. Included were two executives of the JH who allegedly committed the crime.

Besides the accusation, since officials of the JH were found to have permitted tacitly the bid-riggings and facilitated selection of bid winners among bid participants, the JFTC, based on the relevant law<sup>2</sup>, ordered the President of the JH to implement corrective measures to eliminate and prevent involvement of its officials.

## **(2) Bid-rigging case concerning human waste disposal facilities construction**

The next is the first case that the JFTC has used criminal investigation power introduced by the latest amendment and accused 11 individuals and their companies with the Public Prosecutor General. In this case, 11 companies, in December 2004, agreed to prearrange bid winners among bid participants for construction of human waste disposal facilities ordered by municipalities etc. and to cooperate with each other for prearranged winners to win bids at their seeking price.

The JFTC originally started the case using administrative investigation power. In the process of investigation, however, it was revealed that the violation had wide spread influence on people's living, and the JFTC, therefore, decided to use the criminal investigation power and engaged in raids with search warrant in order to seek criminal accusation. The effect of the power was found to be quite useful in gathering relevant evidence, and as a result, the JFTC successfully brought this hard core cartel into daylight.

## **(3) Bid-rigging case concerning tunnel ventilation construction**

The last case is also bid rigging, which occurred over tunnel ventilation construction procured by the Metropolitan Expressway Public Corporation in 2004. On September 8, 2006, the JFTC revealed that three companies successfully enjoyed immunity from or reduction of surcharge by applying the new leniency program, where the first applicant, Mitsubishi Heavy Industries, Ltd., had been afforded 100% immunity and the other two applicants, Ishikawajima-Harima Heavy Industries Co., Ltd. and Kawasaki Heavy Industries, Ltd., had enjoyed 30% reduction of surcharge respectively. This is the first case that newly introduced leniency program has been applied in the history of the AMA.

The reason why the JFTC revealed the specific names of the successful leniency applicants on this case is as follows. With the introduction of the leniency program, public entities, including the Ministry of Land Infrastructure and Transport, made it clear that successful leniency applicants could have an advantage that a period of debarment from participation in bids for public works would be significantly shortened. In such a situation, since these three companies offered to be publicized as successful leniency applicants, the JFTC decided to make their names public.

#### **4. To the future**

As I mentioned, the JFTC has received around 4 or 5 leniency applications per month on average, and the cases where new tools were utilized have been successfully concluded. Moreover, our investigation staffs have felt that a leniency program is powerful investigation tool in gathering evidence. Thus, seeing the current development of our anti-cartel enforcement, it can be said that the JFTC has done well so far in terms of enforcement of new tools introduced by the latest amendment, and I would like to maintain our progress and ensure that the amendment continue to yield tangible results as expected in the future.

Another future challenge I would like to mention here is to enhance cooperation and coordination on enforcement of competition law with foreign competition authorities. Looking at the international market, we can recognize that the economic development and globalization have been deepening ties among countries and expanding various forms of international transactions. In such an environment, realization and enhancement of cooperation for sound competition in a market should be mutual interest for each country. Therefore, I believe that the JFTC should challenge strengthening cooperation with other competition authorities in order to more effectively fight against international cartels.

Thank you very much for your kind attention.

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<sup>1</sup> Chairman, the Japan Fair Trade Commission. The views expressed in this statement are strictly my own, and not those of the Japan Fair Trade Commission.

<sup>2</sup> The Act concerning Elimination and Prevention of Involvement in Bid Rigging etc. (Law No. 101 of 2002).