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Session 1: The Role of Competition Policy in Promoting Environmental Sustainability

1 Introduction

At this session, I would like to present Japan Fair Trade Commission's (JFTC's) recent initiatives in the green sector.

Climate change is a pressing issue for all countries and regions irrespective of whether they are developed or developing, threatening the security of human beings across borders. This issue urgently requires the international community to strengthen its concerted efforts.

The Japanese government declared goals of reducing greenhouse gas emission as of 2050. For achieving those goals, it is necessary to create a "Green Society," which realizes both the reduction of environmental burdens and the accomplishment of economic growth.

While it is environmental policies that play a central role in the realization of a green society by implementing direct actions, the Antimonopoly Act and competition policy also can be regarded as indirect contributors.

The role of competition policy to achieve a green society is to 'promote the efficient use of resources' and 'encourage innovation in new technologies' through competition.

For the JFTC, initiatives to achieve a green society are one of our recent priorities in addition to those in the digital sector, which will be presented at the next session.

2 Overview of the Recycle Guidelines and past consultation cases

The JFTC has long been involved in efforts for promoting the circular economy, including formulating the Recycle Guidelines in 2001. The Recycle Guidelines clarify, with specific examples, when joint activities, such as joint development and operation of recycling systems, do not pose problems under the Antimonopoly Act.

The JFTC has also given businesses consultation regarding circular economy or sustainability. For example, in a case published in June 2020, in line

with mandatory charge for plastic shopping bags, an organization whose members are retailers of a specific type of business established guidelines to ensure that the existing plastic bags will no longer be provided and that plastic bags with a smaller environmental impact will be provided at a unit price of 3 yen per bag. In this case, the JFTC responded that this initiative would not violate the Antimonopoly Act, considering this initiative was based on a legitimate purpose.

3 The Green Guidelines

(1) Background and Purpose

Given that the efforts of companies toward the realization of a green society are expected to be even more active and take shape in years to come. If it is not clear enough how to apply the Antimonopoly Act, it may possibly cause concerns for companies and trade associations that their various efforts toward the realization of a green society might pose problems under the Antimonopoly Act.

Therefore, the JFTC was among the first to tackle this issue and published the Green Guidelines at the end of March this year.

The Guidelines aims at further improving predictability and transparency for companies regarding green initiatives, and preventing anticompetitive conduct that stifles innovation such as the creation of new technologies.

(2) Basic Concept

The Green Guidelines do not change the JFTC's existing views on the Antimonopoly Act.

Based on the objectives I mentioned now, the Guidelines was made as a comprehensive one to explain our views on which acts pose problems under the Antimonopoly Act and which do not, with 76 hypothetical examples. The guidelines contain all types of conducts including not only joint activities but also vertical restraints, abuse of a superior bargaining position and mergers. We believe this feature of the Guidelines provides overall information to companies and enables them to easily understand and utilize the Guidelines.

The activities of companies toward the realization of a green society do not pose problems under the Antimonopoly Act in most cases.

On the other hand, if activities of companies have solely anti-competitive effects to restrain fair and free competition among companies, by imposing restraints on factors such as prices, quantities, customers, distributions, technologies and facilities of respective companies, and do not have pro-

competitive effects, such activities pose problems under the Antimonopoly Act, even if those are nominally aimed at contributing to the realization of a green society.

Furthermore, if specific activities of enterprises are considered to have pro-competitive effects as well as anti-competitive effects, whether those activities pose any problem under the Antimonopoly Act is found by comprehensively considering both types of effects generated by the activities, considering the rationality of the activity's purpose and the adequacy as the means to achieve it.

Given that companies in Japan currently focus on activities to reduce greenhouse gas emissions as their main efforts toward the realization of a green society, the Guidelines basically present viewpoints and supposed cases based on the Antimonopoly Act in connection with such activities.

(3) Introduction of the case in GL

Let me introduce one of the supposed cases in the Guidelines.

In the case, three companies competing one another jointly establish a clean team, which gathers and analyzes the necessary information for reducing greenhouse gas emission. Although the collected information is related to the companies' capacity and cost, the companies take the necessary measure for preventing collusion among them, for example, the team does not share the information with other departments of the companies in principle.

This supposed case is an example of “pose no problems” and was added to the Guidelines based on comments submitted when we published the draft and sought comments from the public before finalizing it.

(4) Continued efforts

In addition, the JFTC has set up specialized contact points to respond to specific consultation from companies, and indicated a policy of open-door and flexible approach such as providing proactive consultation in response to moves of the companies to decarbonize their businesses.

The contents of the Guidelines are expected to be continuously reviewed according to future changes in markets and business activities, specific cases of law enforcement and consultation.

The English translation of the Guidelines are available on the JFTC's website. Please check them later if you are interested.

4 Introduction of fact-finding surveys

In addition, the JFTC is also actively conducting market studies regarding the green sector. I would like to introduce two examples now.

From February this year, we are conducting a market study on the recycling of used plastic bottles. In Japan, the majority of transactions involving used plastic bottles, which were previously considered waste, are now being traded for a fee, which has led to a diversification of distribution methods and increased trading activities. However, the actual circumstances of such transactions and the state of recycling practices bottles are not necessarily clear, so we are conducting the survey to understand competitive conditions.

Regarding the survey on the recycling of used plastic bottles, we have not started it having any specific concerns in mind. However, if we find problems from competition policy viewpoints, we would like to present our views on competition policy to ensure a fair and free trading environment and also to make recommendations from the perspective of competition policy to support the SDGs efforts.

Next, in this April we launched a market study on electric vehicle (EV) charging services on expressways and published its report in this July. EV charging service market is expected to grow rapidly in the coming years, and the market environment is also expected to undergo significant changes. So, the JFTC believes it is important to make proactive recommendations to improve the competition environment, based on a prompt and accurate assessment of the competitive situation.

Through presenting our views on some issues from the standpoint of the Antimonopoly Act and competition policy in the report on EV charging services, we aim to promote fair and free competition by encouraging new entrants and promoting innovation in the development of charging infrastructure, and also to support the realization of a green society from the perspective of competition policy.

5 Closing Words

There are active discussions on sustainability in various countries and regions around the world, the JFTC would like to continue cooperation with global competition authorities to realize a green society.

Thank you very much.