

Report of the Study Group on Introduction of the Group Litigation System (Summary)

July 12, 2007

1 The need for a Group Litigation System

(1) Need to strengthen deterrence of the Antimonopoly Act and the Premiums and Representations Act

Today, advancing structural reforms is an important issue in Japan in order to build an economic society based on the market mechanism and the principle of freedom and self-responsibility. For achieving such an objective, it is more important to deter and eliminate any act in violation of the Antimonopoly Act or the Premiums and Representations Act, which serve as rules for maintaining the order of fair and free competition and for protecting the interests of general consumers.

(2) Need to prevent occurrence and spread of consumer damages

Consumer damages are characterized in that similar damages affect a large number of consumers. Such damages may possibly arise from any act in violation of the Antimonopoly Act or the Premiums and Representations Act. In the process of studying the incorporation of the group litigation system into these two laws, it is possible to consider introducing a group litigation system that delegates to particular groups the right to seek an injunction aimed at preventing occurrence and spread of similar extensive damages arising from any act in violation of the Antimonopoly Act or the Premiums and Representations Act with the objective of protecting the interests of all consumers. This option shares the same concept with the idea of introducing the group litigation system to the Consumer Contract Act.

(3) Group litigation system for entrepreneur damages

For the reasons listed below, there is no urgent necessity to introduce the entrepreneur group litigation system.

? Use of existing systems and characteristics of damages to entrepreneurs

- The Antimonopoly Act provides for a right to seek an injunction and compensation for damages arising from any behavior in violation of the Act, in Articles 24 and 25 respectively. If any single violation causes damages to multiple entrepreneurs, the current litigation system allows them to use the system for appointed party litigation as stipulated in Article 30 of the Civil Proceedings Act for filing litigation.
- It is presumed that, in many cases, entrepreneurs need to continue or repeat their

transactions of the same product or service to maintain their business, even after they suffer minor damages. Entrepreneurs are thought to be more motivated than consumers to resort to legal actions in an individual or ex-post-facto manner to redress violations committed by their trade partners.

? Current circumstances surrounding entrepreneurs

- There are still a few trade associations hoping that a group litigation system would be introduced. A questionnaire sent to trade associations has revealed that a group litigation system is desired by 5.7% of all such entities.
- Even if the group litigation system is introduced, it would be unlikely to immediately satisfy the needs of those associations now in favor of introducing it. They refer to the anonymity of group litigation as one of the advantages of introducing the system. Given the nature of actual lawsuits in Japan against infringements of the Antimonopoly Act, however, it seems likely to be difficult to prove infringements without identifying victims.
- Trade associations are in a sense premature as entities playing a role in carrying out the group litigation system. According to the questionnaire, 14.6% of the trade associations surveyed answered that they or some of their members have received a recommendation or warning due to their infringements of the Antimonopoly Act.

(4) Rights to claim compensation for damages

Although it is difficult to reach any conclusion at this stage, it will be necessary in the future to consider incorporating the right to claim compensation for damages into the group litigation system, taking into account deterrence effects that the claims would have against violations.

2 A Desirable Form of the Consumer Group Litigation System under the Antimonopoly Act and the Premiums and Representations Act

(1) Types of violation of the Antimonopoly Act and the Premiums and Representations Act subject to injunction claims

To achieve the earliest possible establishment of a system for injunction claims by consumer groups, a consumer group litigation system should first be introduced to the Premiums and Representations Act, and ongoing study should be undertaken of the possibility of introducing it to the Antimonopoly Act as a challenge for the next stage.

a The Premiums and Representations Act

- Defined as a violation by Article 4, Paragraph 1 of the Premiums and Representations

Act, misleading representations have a potential to cause minor harms to a very large number of consumers. On the other hand, those consumers who are aware of the existence of the violation suffer no direct damages. To protect consumers who may be unaware of any such violation from damages and then to prevent spread of damages, it is recognized that there is a relatively strong need to authorize consumer groups to seek injunctions against misleading representations.

- Defined as a violation in Article 3 of the Act, offering of an excessive premium is likely to cause direct damages to competing entrepreneurs. Thus, the degree of necessity to add this to the list of violations subject to injunction claims by consumer groups is low.

b The Antimonopoly Act

- It is essential to review the relationship between the rights to seek injunctions given to consumer groups and those authorized to individuals in accordance with Article 24 of the Antimonopoly Act. After clarifying the significance and the position of this particular article, it is important to ensure consistency between them. There is another need to carefully discuss the legal structure, or whether the system should be provided for as an extension of Article 24 or as a new independent system. However, insufficient time has been spent on considerations on the appropriate status of the group litigation system in the Antimonopoly Act. This has made it difficult to reach any immediate conclusion at the current stage.

(2) Significance of the group litigation system (or the Japan Fair Trade Commission as its enforcement body)

- The current law enforcement of the Japan Fair Trade Commission (JFTC) is thought to fail to fully address all situations to prevent occurrence and spread of consumer damages. More closely related to consumer life, consumer groups are expected to be capable of appropriately complementing the enforcement of the JFTC.
- Consumer groups already play a certain role in protecting the public interests. If they are given the right to seek injunctions, deterrence against violations will be effectively strengthened to help secure the public interests.

(3) Eligibility requirements for consumer groups

In setting up the requirements that consumer groups must meet to hold the rights to claim injunctions against violation of the Premiums and Representations Act, it is desirable to consider in principle the requirements set out in the Consumer Contract Act because the

system under the Consumer Contract Act shows basically the same objectives.

3 Future Direction of Consideration for introducing the Group Litigation System

The designing processes for a specific system should be executed in consideration of the consumer group litigation system introduced to the Consumer Contract Act, in order to create a system empowering particular consumer groups to claim injunctions against acts in violation of the Premiums and Representations Act with a view to preventing occurrence and spread of consumer damages.

In addition, it is imperative to clarify the relationship between the JFTC and approved consumer groups when introducing the consumer group litigation system to the Premiums and Representations Act.