

Submission of the Antimonopoly Act Amendment Bill to the Diet

March 11th, 2008

Japan Fair Trade Commission

Today, the Cabinet decided to submit the amendment bill of the Antimonopoly Act (AMA) to the Diet.

The major points of the bill are as follows:

1. Surcharge Payment Order / Cease and Desist Order

(1) Introduction of surcharge imposed on those entrepreneurs that engage in:

(a) Exclusionary type of private monopolization

(b) Unfair trade practices

- (i) concerted refusal to trade, (ii) discriminatory pricing, (iii) unjust low price sales, and (iv) resale price restriction (levied only on and after second offense as to the same type of infringement)

- abuse of dominant bargaining position

(c) Misleading representations (Amendment to the Act Against Unjustifiable Premiums and Misleading Representations)

<Surcharge Rate Table>

	Basic Rate (to Manufacturing Business, etc).	Retail Business	Wholesale Business
Exclusionary type of Private Monopolization	6%	2%	1%
Concerted Refusal to Trade, etc.	3%	2%	1%
Abuse of Superior Bargaining Position	1%		
Misleading Representations	3%		
Unreasonable Restraint of Trade, etc. (*)	10%	3%	2%

* provided by the present AMA.

(2) Increase in surcharge rates by 50% imposed on entrepreneurs that have played a leading role in cartels, bid-riggings, etc. (e.g. 10% → 15%)

(3) Review of the leniency program

(a) Increase in the number of leniency applicant from a maximum of 3 to a maximum of 5

(b) Introduction of joint application system by those entrepreneurs affiliated with each other and implicated in the same infringement

(4) Introduction of provisions that allow the JFTC to issue administrative orders against those entrepreneurs who succeed the offender's business by means of de-merger, business transfer, etc.

(5) Extension of the statute of limitations* for administrative orders from current three-year to five-year

* Maximum period between termination date of infringement and issuance of such order

2. Notification and Report to the JFTC as to Business Combination

(1) Introduction of pre-notification system on business combination by acquiring shares (currently ex-post reporting system), similar to the notification system on other types of business combination such as mergers

(2) Revision of notification standard

(a) Change of notification thresholds from "Total Assets" to "Total Sales Revenue"

(b) Simplification of notification thresholds from the current 3-step approach (10%+, 25%+, and 50%+) to 2-step approach (20%+ and 50%+)

3. Others

(1) Introduction of a provision which stipulates conditions to be satisfied when the JFTC exchanges information with foreign competition authorities

(2) Limitation of a scope of access to case records by interested persons if there is a justifiable reason for such limitation

(3) Introduction of special rules, similar to the ones in the Patent Act, etc., to allow litigants to ask the court to issue document production orders for a broader range of document in private injunction suits than in usual civil lawsuit cases

(4) Abolishment of the notification requirement imposed on trade associations

(5) Increase in criminal fine imposed on JFTC officials who infringe secrecy obligation