Announcement of
"Consultation Cases Related to the Antimonopoly Act" (2008)
(Tentative Translation)

June 23, 2009
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC) provides consultation services to provide advice regarding whether a specific action planned by an entrepreneur or trade association would constitute a problem under the Antimonopoly Act. Out of the cases the commission gave advice on, it selects some examples that would be helpful for the reference of other entrepreneurs and announces them as cases studies from the viewpoint of prevention of violation of the Antimonopoly Act.

The commission has prepared new case studies on the basis of the cases it provided consultation on during the fiscal year 2008 and released them today.

Among the cases listed this time, the following cases are considered to reflect the recent economic and social situations:

(1) Consultation to check for any problem under the Antimonopoly Act in establishing standards by a trade association on the terms used in the transaction agreements executed between its members and general consumers in order for easier understanding by general consumers

(2) Consultation to check for any problem under the Antimonopoly Act in conducts including distribution of documents requesting the promotion of adequate transactions by a trade association to its members' customers from the viewpoint of promoting adequate subcontract transactions

(3) Consultation to check for any problem under the Antimonopoly Act with regard to providing a discount in the subscription fee by a newspaper publisher under the condition which includes that the subscriber pays the fee a year in advance.

<Reference> Consultation Cases by Contents (except business combination cases)

Content	Number of Cases	
	FY2007	FY2008
Consultation on activities of entrepreneur	1,897	2,272
Consultation on distribution and business practices	(1,593)	(1,936)
Consultation on technology transactions	(87)	(73)
Consultation on joint R&D	(14)	(16)
Consultation on concerted actions	(93)	(150)
Others	(110)	(97)
Consultation on activities of trade association	433	419
Total	2,330	2,691

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Consultation Cases
Related to the Antimonopoly Act (FY2008)

June 2009

General Secretariat, Japan Fair Trade Commission

Contents

The intensive management and centralized processing of music copyright information by a trade association itself does not immediately constitute a problem under the Antimonopoly Act.

By an association of manufacturers of parts and components for automobiles and industrial machinery, distribution of documents requesting the promotion of adequate transactions to the customers of its members and preparation of a model memorandum for clearer transaction conditions do not immediately constitute a problem under the Antimonopoly Act.

【Cases Related to the Designation of Specific Unfair Trade Practices in the Newspaper Business】

Discount of the subscription fee (set price) by the newspaper publisher under the condition which includes that the subscriber should pay the subscription fee for one year in advance does not immediately constitute a problem under the Antimonopoly Act.

Introduction

1. Consultation Cases Related to the Antimonopoly Act

To prevent actions in violation of the Antimonopoly Act (AMA) and to help appropriate activities of entrepreneurs and trade associations (hereinafter, referred to as "Entrepreneurs"), the Japan Fair Trade Commission (JFTC) announces various guidelines which clarify the kinds of action that are in violation of the Antimonopoly Act and offers consultation services for individual cases.

In order to deepen understanding of the Antimonopoly Act by Entrepreneurs, the commission summarizes and publishes some major cases selected from the consultation service, which would be helpful for reference purposes. This year, the commission picked up recent consultation cases (from April 2008 to March 2009) related to the activities of Entrepreneurs. Entitled "Consultation Cases Related to the Antimonopoly Act (FY2008)," this leaflet would show how the AMA is to be interpreted in actual practice and to facilitate understanding.

Note that the major guidelines related to the activities of the Entrepreneurs are as follows:

- Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act (Distribution and Business Practices Guidelines) (July 1991)
- Guidelines Concerning Joint Research and Development under the Antimonopoly Act (Joint R&D Guidelines) (April 1993)
- Guidelines Concerning the Activities of Trade Associations under the Antimonopoly Act (Trade Association Guidelines) (October 1995)
- Guidelines Concerning Joint Activities for Recycling under the Antimonopoly Act (Recycling Guidelines) (June 2001)
- Guidelines for the Use of Intellectual Property under the Antimonopoly Act (Intellectual Property Guidelines) (September 2007)

2. Outline of Consultation System

The Japan Fair Trade Commission started "Prior Consultation System for Activities of Businesses, etc." (See page 30) in October 2001.

In addition, the JFTC accepts consultations over the phone or by receiving visits from Entrepreneurs to check for any problem under the Antimonopoly Act with respect to the specific planned activities, and provides answers and advice to solve any problems.

3. Number of consultation cases related to the Antimonopoly Act

From April 2008 to the end of March 2009, with respect to entrepreneurs' activities, the number of consultation cases over the phone or by visit amounted to 2,272 cases and with respect to trade associations' activities, 419 cases. These can be classified by the contents of the consultation as

presented below.

<Consultations by content> (Except consultation on M&A)

	FY2007	FY2008
Consultations on activities of entrepreneurs	1,897	2,272
- Consultations on distribution and business practices	（1,593）	（1,936）
- Consultations on technology transaction	（87）	（73）
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- Others	（110）	（97）
Consultations on activities of trade associations	433	419
Total	2,330	2,691

(Note) The number of consultation cases based on the Prior Consultation System (See page 30) (posted on the JFTC website) is one, zero, and zero in 2006, 2007, and 2008.

(Posted on) JFTC website
http://www.jftc.go.jp/jizen/soudan.html

4. Contents and characteristics of this leaflet on consultation cases

(1) This leaflet presents consultation cases that would be helpful for the reference of other Entrepreneurs. These cases have been selected from cases related to the Antimonopoly Act excluding those related to M&A (which are separately published every year).

(2) When describing the contents of the consultation, the identity of the entrepreneurs involved is protected and the circumstances are modified for ease of understanding so that they will be helpful as a reference for business activities. Therefore, these are not always identical to the actual cases.

(3) Advice provided in the consultation corresponds to the contents presented by the consulting party and throws light on the interpretation of the Antimonopoly Act within the scope of the specific consultation contents. It is not always applicable to cases of other entrepreneurs.

5. Consultation Cases in the Past

The major consultation cases handled by the JFTC from January 2000 to the end of March 2008 are posted on the JFTC website.

(Posted on) JFTC website

http://www.jftc.go.jp/soudanjirei/jireiindex.html

[Business Alliance]

1. Mutual OEM between Competitive Metal-Product Manufacturers

Mutual OEM of a product and its accessories between two metal-product manufacturers for the effective utilization of manufacturing facilities does not immediately constitute a problem under the Antimonopoly Act.

1. Consulting Parties: Company X and Company Y (Both metal-product manufacturers)

2. Highlights of the Consultation

(1) Company X and Company Y are manufacturers and distributors of Product A.
With respect to the production quantity of Product A in Japan, Company X has a share of about 25%; and Company Y, about 20%. In addition to Companies X and Y, there are two competitors: Company Z with a share of about 35%; and Company W, about 20%.

(2) Company X and Company Y, both manufacture and sell Product A (main unit) and its accessories, respectively. In principle, they negotiate on the price of a set comprising the product and its accessories with their customer manufacturers and distribute such sets at a fixed price throughout Japan.

(3) Product A has two applications. For application α, the products of customer manufacturers actively compete in the sale market of them and the customer manufacturers have strong negotiation powers with respect to the prices of Product A. In the case of application β, there is a strong competitive product: Product B. However, Product A is not manufactured with different manufacturing facilities or by different manufacturing methods for different applications. Products of the OEM business in this case are not distinguished for different applications.

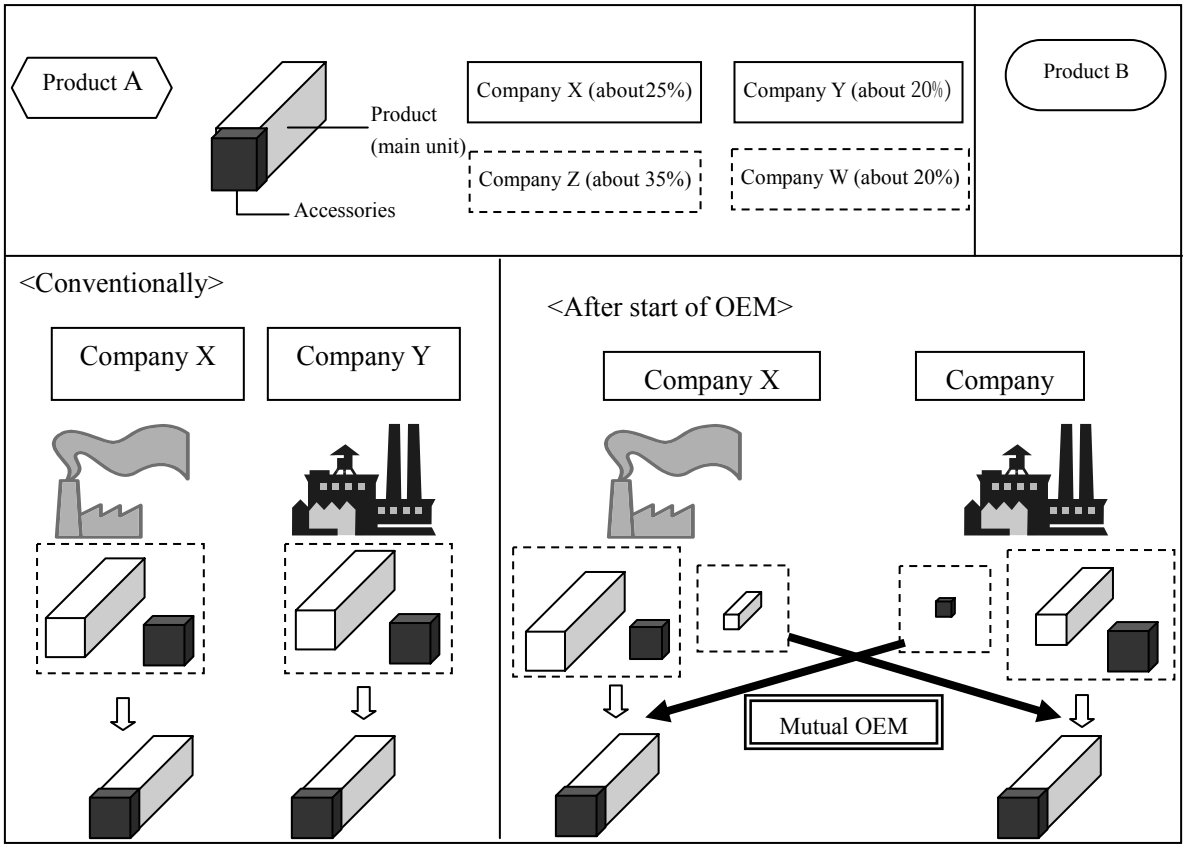
(4) The manufacturing facilities for accessories at Company X and the manufacturing facilities for main unit at Company Y have partially become obsolete and have deteriorated production efficiencies. They are planning to stop using these manufacturing facilities so that Company X will have some accessories OEMed by Company Y and Company Y will have a part of the product OEMed by Company X.

(5) The quantity of OEM products is not determined in advance. Considering the production capacity of the manufacturing facilities, however, it is expected that Company X has about 13% of its sale quantity, and Company Y, about 14% of its sale quantity supplied by the OEM. Mutual

OEM of the expected amounts are feasible for the Companies X and Y.

In addition, Company X and Company Y will sell their products independently as they have done so far, and they will not be involved in any way with the other company's sale prices or customers.

Note that the manufacturing cost of Product A represents the most of its total cost.



Under the Antimonopoly Act, is such an approach by Company X and Company Y a problem?

3. Interpretation of the Antimonopoly Act

(1) In this case, competing entrepreneurs involved in the manufacture and sale of Product A are planning to have the OEM business mutually under an agreement. It is necessary to examine the plan as mutual constraint between competitors. If this approach substantially restrains competition in a particular field of trade, it would be a problem of unreasonable restraint of trade (Article 3 of the Antimonopoly Act).

(2) The total share of Company X and Company Y is about 45%. By this approach, information about production quantity etc. will be shared between the parties to the agreement for the OEMed

portion of Product A, and the manufacturing cost, which represents a substantial ratio in the total costs, will be common between them for main unit of Product A. However,

A. As before, Company X and Company Y will sell their products independently and will not be involved in any way with the others sale prices or customers.

B. The quantity supplied by the mutual OEM between Company X and Company X represents about 13% or 14% of their total production quantity, respectively. The cost sharing on main unit of Product A is considered to have an insignificant influence on the sale market.

C. Apart from Company X and Company Y, there are several strong competitors with respect to the manufacture and sale of Product A.

D. With regard to application α, customers are considered to have strong negotiation powers; with regard to application β, it is recognized that there is a strong competitive product.

On the basis of these conditions, this approach will not substantially restrain competition in the field of manufacture and sale of Product A in Japan.

4. Points of the Advice

The mutual OEM supply of Product A and its accessories between Company X and Company Y for the effective utilization of their manufacturing facilities does not immediately constitute a problem under the Antimonopoly Act when judged with respect to the current situations. However, if any action to avoid competition between these companies is taken with this approach, then it will be problematic under the Antimonopoly Act. Thus, it is necessary to treat such an undertaking carefully.

[Concerted Action]

2. Joint Collection of Uncollected Pallets

The joint collection of uncollected pallets with gathering collection data by alcoholic beverage manufacturers does not immediately constitute a problem under the Antimonopoly Act.

1. Consulting parties: Four alcoholic beverage manufacturers

2. Highlights of the Consultation

(1) These four alcoholic beverage manufacturers (hereinafter, referred to as "Four Companies") manufacture and sell various goods. The total share of the Four Companies in the sale market represents about 90% for some goods.

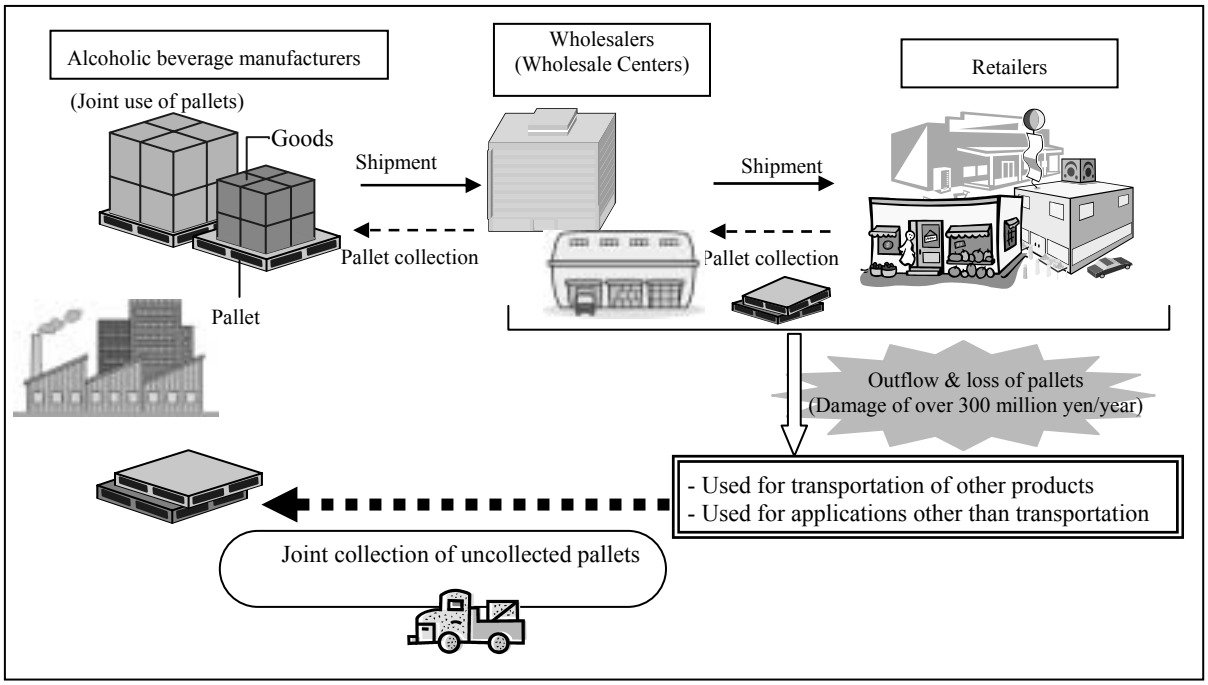
These companies use plastic pallets as the base for the transportation and storage of most of the goods they manufacture and sell, and collect such pallets for reuse. The Four Companies have common pallet sizes and utilize the pallets jointly for efficient physical distribution.

(2) Each company owns pallets, which are leased free of charge to distributors such as wholesalers. The companies collect their respective pallets using individual routes, that is, through wholesale centers of their customer wholesalers. However, about 50,000 pallets in all are left uncollected and flow out or are lost every year, causing an annual damage of over 300 million yen. Flow-out or lost pallets are used for transportation of other products, or used for applications other than transportation. It is difficult for these companies to find and collect these.

(3) The Four Companies have appealed to the distribution entrepreneurs to return the pallets to achieve a higher collection rate of pallets, but the situation has not improved. Accordingly, the Four Companies are planning to jointly entrust the collection of uncollected pallets to an entrepreneur with the know-how on pallet collection.

The pallets subject to collection jointly entrusted by the Four Companies are limited to those that cannot be collected via their individual routes. The uncollected pallets represent about 0.6% of the pallets currently in use.

(4) For the efficient collection and prevention of flowing out or loss, the Four Companies are further planning to gather their data with respect to the number of shipped pallets and collected pallets for wholesale centers who are considered to have particularly poor collection rates and to request the entrusted entrepreneur to investigate the cause for the poor collection rates at such centers.



Does such an approach by these Four Companies constitute any problem under the Antimonopoly Act?

3. Interpretation of the Antimonopoly Act

(1) In this case, four competing companies jointly collect uncollected pallets and collate the relevant data. This approach should be studied with respect to its influence on the competition regarding the sale of alcoholic beverages among these Four Companies.

(2) The situations pertaining to this case are as follows:

A. This is a joint project for transportation and storage activities that are incidental to the manufacture and sale of goods. The joint collection by the Four Companies is limited to the uncollected pallets, and the collection of pallets through individual routes will continue. Considering that the uncollected pallets represent about 0.6% of the pallets currently in use, the pallet collection cost borne jointly by these Four Companies is quite small. Therefore, this approach has only a minuscule influence on the prices of goods.

B. The wholesale center data jointly scrutinized by the Four Companies are limited to the number of shipped and collected pallets. Considering that the Four Companies use pallets for the transportation and storage of various products, it is impossible to learn about the specific transaction details such as the quantity of respective goods shipped from each company. There is little concern with regard to the exchange of information among the Four Companies on sale prices, quantity, and other transaction contents.

Therefore, the JFTC judges that this approach has little influence on the competition with respect to the sale of the alcoholic beverages of the Four Companies.

4. Points of the Advice

Joint collection of uncollected pallets and the joint scrutiny of the collection data by the Four Companies do not immediately constitute a problem under the Antimonopoly Act.

［Trade of Technology］

3. Restriction on Research and Development Activities

Restricting the licensor's research and development on the licensed technology by the licensee would possibly constitute a problem under the Antimonopoly Act.

1. Consulting Party: Company X (Chemical industry manufacturer)

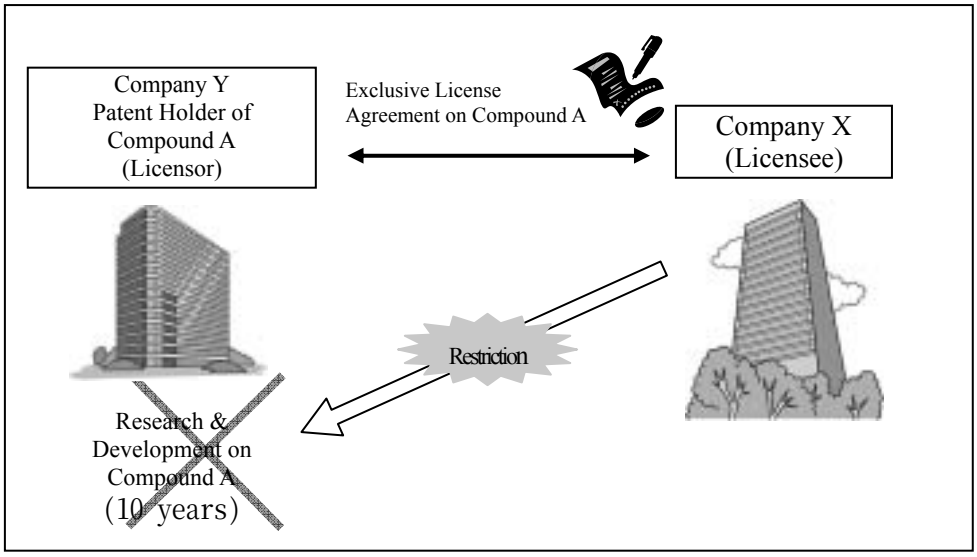
2. Highlights of the Consultation

Company Y, a food manufacturer, has developed Compound A and holds its patent right.

Company X, a chemical manufacturer, considers Compound A to be marketable and plans to execute an exclusive license agreement on Compound A with Company Y specifying that Company Y itself will not use its right within the territory of licenses.

Company X is further planning to request Company Y to insert a provision which makes Company Y abandon any research and development related to Compound A for ten years so that Company X will be the only company involved in the research and development related to Compound A.

It is not known whether Company Y will accept such a request from Company X to restrict its research and development scope.



Under the Antimonopoly Act, is such a restriction by the licensee (Company X) to make the licensor (Company Y) abandon its research and development with respect to the licensed technology a problem?

3. Interpretation of the Antimonopoly Act

(1) Restriction by the licensor with respect to freedom in research and development activities by a licensees, such as a provision set forth by the licensor to prohibit licensees from independently or jointly with any third party conducting research and development activities concerning the licensed technology or any technology that competes with it, generally affects research and development competition and ultimately reduces future competition in the technology or product market. Such restrictions have the tendency to impede fair competition and, in principle, are recognized as unfair trade practices. (Paragraph 13 of the "Designation of Unfair Trade Practices, Fair Trade Commission Notification No.15 of 1982" (hereinafter, referred as "General Designation"), dealing on Restrictive Terms)

[Guidelines for the Use of Intellectual Property under the Antimonopoly Act, Part 4-5(5)]

Whether or not restriction pertaining to the use of technology reduces competition in the market is determined by fully considering the following elements: the contents of the restrictions, how they are imposed, applications and usefulness of the technology, whether or not the parties pertaining to the restriction are competitors in the market, their market positions, the overall competitive conditions that prevail in the markets, whether or not there are any reasonable grounds for imposing the restriction, as well as the effects on incentives of research, development and licensing.

[Part 2-3 of above]

In case of the restriction of research and development activities, the so-called safe harbor rule, under which it is in principle judged that there is a minor effect in reducing competition when the entrepreneurs using the technology subject to the restriction in the business activity have a share in the product market of 20% or less in total, is not applicable.

[Part 2-5 of above]

(2) In this case, it is not the licensor which restricts research and development activities on the licensed technology by the licensee. The licensee (Company X), which is going to be granted with an exclusive license from the licensor (Company Y), plans to make Company Y abandon research and development in relation to Compound A for ten years under the agreement.

Even if Company Y accepts the request from Company X and consents to abandon its research and development activities at present, the situation where restriction is imposed on the research and development activities for ten years from now is concerned to reduce future competition in the technology or product market through affecting the research and development competition as in the case where the licensor restricts the research and development activities by the licensee ((1)

above).

Therefore, if Company X has transactions with Company Y under the condition that Company Y will abandon research and development activities on the Compound A for ten years, it is concerned to be a problem under the Antimonopoly Act (Paragraph 13 of the General Designation, dealing on Restrictive Terms).

4. Points of the Advice

Transactions of Company X with Company Y under the condition that Company Y will abandon research and development activities on Compound A for ten years would possibly constitute a problem under the Antimonopoly Act.

[Restriction on Sales Method]

4. Agreement on Bearing Costs of Product Analysis by the Trade Association

If a trade association has an agreement to exempt its members from bearing the product analysis costs and, even when a member has to bear the analysis costs, to omit analysis of every material constituting the product, it would possibly constitute a problem under the Antimonopoly Act.

1. Consulting Party: Association X (Association of Product A manufacturers)

2. Highlights of the Consultation

(1) Association X is an association of Product A manufacturers. About 70% of the Product A quantities manufactured and sold in Japan is supplied by members of Association X.

(2) To facilitate recycling and to avoid the adverse effects of incineration on people and environment, many countries have recently established restrictions on various devices to prohibit the sale of devices containing hazardous substances over a permissible density limit in the applicable countries. Product A is used as a component of Device B, which is under such a restriction.

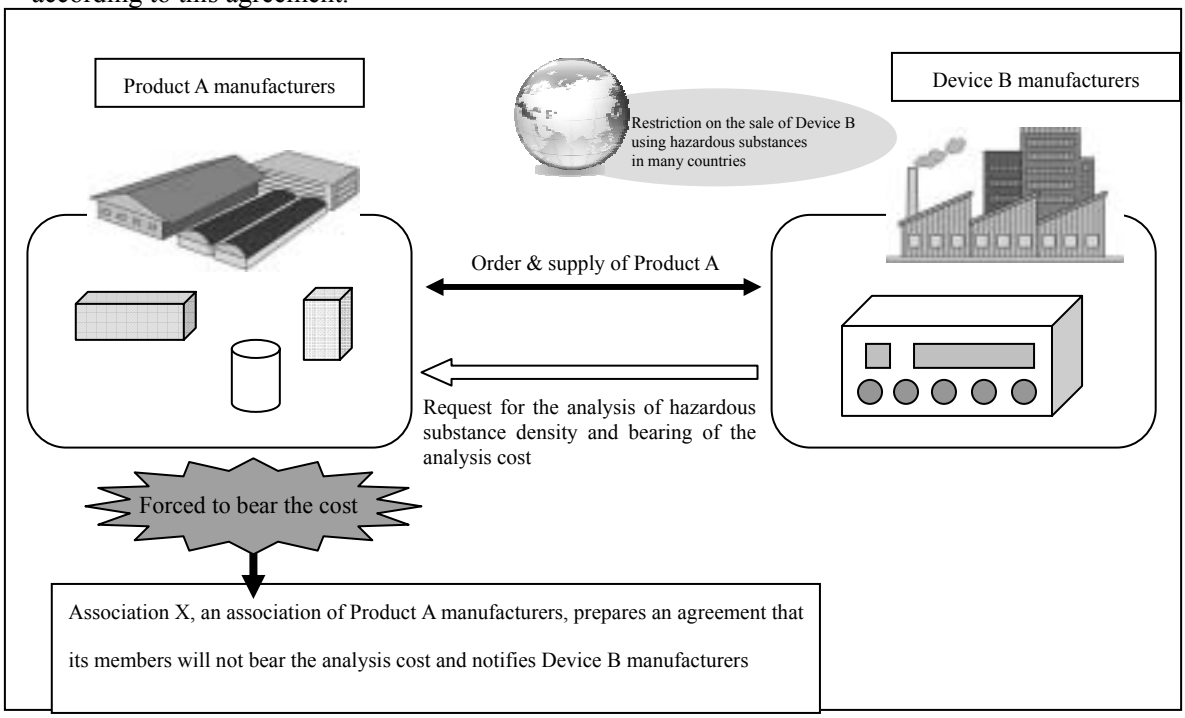
(3) More and more Device B manufacturers have recently requested Product A manufacturers to have their products analyzed by a third party analysis organization to ascertain the density of hazardous substances contained in Product A, and to submit a certificate showing that the density is below the permissible limit. In many cases, if such a certificate is not submitted, then the Product A is not purchased from the errant manufacturer. Such an analysis involves a considerable expenditure and there are many variations of Product A. Under these circumstances, many Device B manufacturers request for the analysis of each type once a year at the cost of the Product A manufacturers.

Product A is a general-purpose product and the difference among the products of different manufacturers is insignificant; and switching manufacuturers is easy for users. Accordingly, Product A manufacturers often have to accept such requests from Device B manufacturers in order to acquire new users or maintain existing ones. Therefore, the analysis cost is becoming burdensome.

In addition, Device B manufacturers have recently requested the analysis of the materials constituting Product A instead of the analysis of Product A as a whole. This further increases the burden of the analysis cost.

(4) In these situations, Association X plans, in order to reduce the burden of its members, to have an

agreement that its members do not bear the analysis cost and that, even when its members have to bear the analysis cost, analysis is not conducted for every material constituting Product A and to give a notice to Device B manufacturers stating that all the members of Association X will act according to this agreement.



Does such an approach by Association X constitute a problem under the Antimonopoly Act?

3. Interpretation of the Antimonopoly Act

(1) In general, the type, contents, and method of sales can be a means for competition among entrepreneurs. Restriction on these by a trade association in such a manner as to impede competition is recognized as a problem under the Antimonopoly Act (Antimonopoly Act, Article 8, Paragraph 1, Item 1, 3, 4, or 5).

(2) Product A manufacturers bear the analysis costs in order to acquire new users or have continuing transactions, and accept any request for the analysis of every material constituting Product A. Whether to bear the analysis costs and whether to accept the analysis of every material is determined by individual discretion in negotiations between an individual Product A manufacturer and a Device B manufacturer taking into account the transaction price, transaction quantity, and competition with other Product A manufacturers. It is a business condition and can be considered as a means of competition among Product A manufacturers in customer acquisition.
Therefore, if Association X has an agreement providing that Product A manufacturers who are its members do not bear the analysis cost and that, even if they have to bear the analysis costs, they

do not analyze every material of Product A and notifies the users of its members that all of its members should follow this agreement, it restricts a means of competition among members to acquire customers, and would possibly impede competition among members.

4. Points of the Advice

This approach by Association X would possibly constitute a problem under the Antimonopoly Act.

[Voluntary Standards]

5. Activities for Clearer Trade Conditions

It does not constitute a problem under the Antimonopoly Act that establishment of terminology standards by a trade association for the terms used in transaction agreements executed between its members and general consumers to aid the understanding of general consumers.

1. Consulting Party: Association X (association of entrepreneurs which provide Service A)

2. Highlights of the Consultation

(1) Association X is an association of most of the entrepreneurs rendering Service A to general consumers.

(2) When providing Service A to general consumers, transaction agreements are executed between the entrepreneurs rendering Service A and general consumers. The entrepreneurs prepare manuals and leaflets for the explanation of Service A contents to general consumers.

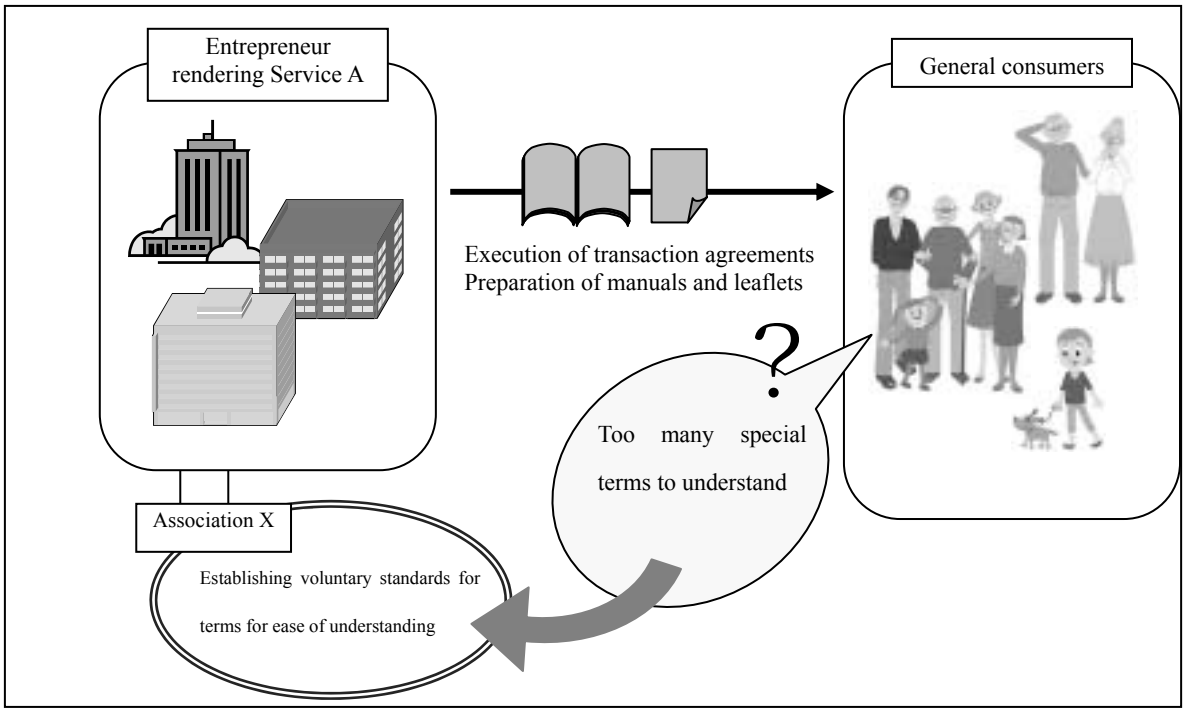
Terms which are peculiar to the industry have been used in the agreements resulting from conventional practices, and this has become a problem where general consumers do not sufficiently understand the contents of Service A and the agreement.

Therefore, Association X is planning to set voluntary standards for terms to be used by its members in the agreements or the like in order to improve understandability and to prompt an adequate understanding among general consumers. For making the standards, a working group consisting of literates, representatives of consumers, and other experts will be established so that the opinion of these people is reflected in the voluntary standards.

(3) Contents of the voluntary standards studied by Association X are as follows: Association X will select specialized terms that are difficult to understand. Such terms will be classified into three categories: (i) Terms that should not be used in principle and should be replaced with the terms proposed by Association X, (ii) Terms that should not be used in principle and the members should explain the contents carefully, and (iii) Terms that can be used, but the members should give supplementary explanation and illustrations when using them. At the same time, specific and easily understandable terms to replace the terms falling on (i) shall be proposed.

To avoid the integration of Service A contents provided by its members, Association X does not propose substitutes for terms with different meanings even when two or more members use the same term. In such a case, the association will have the applicable members explain the contents by text or other means.

Further, Association X explains that these voluntary standards are prepared just to replace the terms in agreements or the like which are difficult to understand with other terms that are easy to understand. The contents of the standards do not discriminate against certain entrepreneurs and do not force the members to observe them.



Does this approach by Association X constitute a problem under the Antimonopoly Act?

3. Interpretation of the Antimonopoly Act

(1) Generally speaking, establishing voluntary standards by a trade association on the information to be indicated or advertised in relation to the type, contents and method of the members' business so as to facilitate the consumers' selection of goods or doing activities including voluntary restrictions required for environment conservation, protection of minors, or other social public purposes does not cause any particular problem under the Antimonopoly Act in many cases. However, depending on the contents and style of such activities, such standards may impede competition with respect to providing various types, contents, and methods of business to those who demand so, in which case it is considered problematic under the Antimonopoly Act (Article 8, Paragraph 1, Items 3, 4 and 5 of the Antimonopoly Act).

In addition, the utilization and observation of voluntary restrictions should be left to the discretion of the applicable member. If a trade association forces its members to use or observe voluntary restrictions or the like, it would possibly constitute a problem under the Antimonopoly Act in general (Article 8, Paragraph 1, Item 4 under the Antimonopoly Act).

(2) Establishing voluntary standards in such a case is as follows:

A. It will prompt general consumers to properly understand Service A.

B. If some members are using the same term for different meanings, the association will not propose a substituting term so as to avoid unification of Service A contents given by members. The standards are not considered to restrict the contents of Service A itself as rendered by the members.

C. The standards are not considered to have contents discriminating against certain entrepreneurs.

D. Observation of the voluntary standards is not forcible.

If these points are adhered to, then these standards will not be considered to impede competition among members, and such establishing of standards is not a problem under the Antimonopoly Act.

4. Points of the Advice

Establishment of voluntary standards by Association X on the terms used in the transaction agreements or the like by its members does not constitute a problem under the Antimonopoly Act.

[Joint Undertakings]

6. Sharing of Information System Constructed, Operated, and Managed by a Trade Association

Construction, operation, and management of a dynamic management system by a trade association to collect information on locations etc. of the containers of highly hazardous products manufactured and sold by its members and sharing of this system by the members do not immediately constitute a problem under the Antimonopoly Act.

1. Consulting Party: Association X (Association of Product A manufacturers)

2. Highlights of the Consultation

(1) Association X is an association of Product A manufacturers. Almost 100% of the Products A that are manufactured and sold in Japan are supplied by the members of Association X.

(2) Since Product A contains a substance that is harmful to humans etc., and is extremely hazardous, it is always enclosed in closed containers when sold to users via distributors. Users store such containers and use Product A as required and, after use, return the containers to the manufacturers via the distributors. Product A containers are owned by the manufacturers, and they are inscribed with a peculiar symbol, a number, and the owner's name.

The manufacturers specify the expiration date for Product A. At present, however, many users continue to use the product even after the expiration date, and the containers remain with the users for a long time. In some cases, containers with some Product A left in them or the empty containers remain uncollected and are left on banks of rivers. It is a concern that the prolonged use of containers without any check could damage the containers, thus leading to an accident.

(3) The manufacturers did not sufficiently grasp the users of Product A, delivery dates to users or periods elapsed from the delivery dates so far and it was one of the reasons that manufacturers have been unable to collect all the containers of Product A after the expiration date and the empty containers. Accordingly, Association X decides to construct, operate, and manage a dynamic management system so that its members can have information about their users, dates of delivery, and periods elapsed after delivery dates of Product A. The association plans to, via the sharing of this system among its members, reduce the costs that would have to be incurred by the members to construct a similar system individually and to support its members in the collection of these containers.

With the necessary data input to this shared system and retrieval from it by the association

members and their customer distributors, it is expected that members will be able to properly collect the containers, for example, by directly requesting users holding Product A containers for long to return these.

(4) The dynamic management system constructed by Association X will have barriers that would segregate the data by each member as well as by each distributor so that the user data etc., would not be accessible by other companies. At the same time, Association X itself will undertake strict information control, for example, by minimizing the number of staffs who can access to user data stored in the system.

In addition, the information required to input to this system by members shall be limited to the minimum required for dynamic management of Procuct A (types of Product A, peculiar symbol and number on the container, manufacturer, user, delivery date to user, and the return date of the container to the manufacturer etc.). Prices and other unnecessary data shall be excluded.

Whether or not to use this system is at the discretion for each member.

Does such an approach by Association X constitute a problem under the Antimonopoly Act?

3. Interpretation of the Antimonopoly Act

(1) Joint undertakings relating to transport or storage, where such activities are incidental to a firm's main business, are in themselves expected not to affect the intrinsic price or quantity of goods, or the choice of customers, and are therefore less likely than the type of joint sales and so forth described above to pose a problem in light of the Antimonopoly Act. However, care must be taken to ensure that such undertakings do not result in restrictions on competition-related factors such as price, quantity, customers, or sales channels in relation to goods associated with constituent firms.

[GUIDELINES CONCERNING THE ACTIVITIES OF TRADE ASSOCIATIONS UNDER THE ANTIMONOPOLY ACT, Part II, 11 (2) A (The Content of Joint Undertakings)]

(2) In order to preclude the possibility of long-time stay or leaving Product A at high risk in the containers, it is considered necessary ,from a standpoint of safety assurance, for the association members as the manufacturers to grasp the location and the expiry date etc. of containers containing the highly hazardous Product A and to promote the collection of the containers containing Product A after the expiration date.

A dynamic management system to grasp the location, period of use of the containers etc. is expected to have similar contents with regard to all members. Therefore, the construction, operation, and management of such a system by Association X to share among its members are considered to be an efficient and rational approach.

(3) The system will be constructed, operated, and managed by Association X and shared among the members as follows:

A. Whether or not to use this system is at the discretion for each member;

B. The system is provided with information barrier measures to prevent user data from being divulged to other companies. User data or the like are not shared among competitors.

C. Even within Association X, which constructs, operates, and manages the system, user data or the like will be accessed by the minimum necessary staff.

D. The information input to this system is the minimum data required for proper container collection by members.

Therefore, the means of competition such as price, quantity, customers, and market channels of the members are not considered as being restricted through the sharing of the system. Hence, it is not immediately considered to be a problem under the Antimonopoly Act.

(4) However, members that use this system will obtain the sale information including that of customers and the sales quantity of their customer distributors. If they take advantage of such information to unjustly restrict sale prices, sales area, customers etc., of distributors, then it would possibly constitute a problem as an unfair trade practice—under the Antimonopoly Act (Paragraph 12 (Resale Price Restriction) and Paragraph 13 (Dealing on Restrictive Terms) of the General Designation).

In addition, if Association X uses the information related to members in the system to substantially restrict competition among them or to unjustly restrict their business activities, it would possibly constitute a problem under the Antimonopoly Act (Article 8, Paragraph 1, Item 1 and 4 under the Antimonopoly Act).

4. Points of the Advice

The construction, operation, and management of a dynamic management system for Product A containers by Association X as well as the sharing of such a system by its members do not immediately constitute a problem under the Antimonopoly Act.

However, if a member takes advantage of the sale prices, customers, sales quantity, and other sales information of customer distributors to unjustly restrict the sales area, customers etc., of distributors or Association X uses the information related to members in the system to unjustly restrict their business activities, it would possibly constitute a problem under the Antimonopoly Act.

[Joint Undertakings]

7. Intensive Management and Centralized Processing of Music Copyright Information by a Trade Association

The intensive management and centralized processing of music copyright information by a trade association itself does not immediately constitute a problem under the Antimonopoly Act.

1. Consulting Party: Organization X (Organization for the intensive management and centralized processing of music copyright information)

2. Highlights of the Consultation

(1) In the interactive music distribution (this means distribution via Internet or the like), the number of distributors, in recent times, has been on the rise and the number of pieces handled by them has been sharply increasing.

Distributors have executed agreements on the use of music pieces in the interactive distribution with the applicable entrepreneurs controlling the copyrights of music pieces (hereinafter, referred to as the "Copyright Managers") and have specified the fee etc.

(2) Since the Act on Management Business of Copyright and Neighboring Rights enforced in 2001 admits new entries to the music copyright management business, and hence, there are several Copyright Managers at present.

As the case stands, distributors access the database constructed by the respective Copyright Managers to obtain copyright information, including the ID and the copyright manager of the piece to be used and validates the information for each piece. In addition, a report on the pieces used is required to be periodically sent to all of the Copyright Managers concerned.

With the sharply increasing number of pieces handled by distributors, the copyright information processing as described above is a huge burden, and is a factor contributing to increased cost for the distributor. In addition, since the number of handled pieces has sharply increased and the copyright information processing has also increased, the validation is insufficient and it causes such problems as fee payment troubles and right infringement problems in some cases. Further, the cost to construct and operate the database is a burden for the Copyright Manager also.

(3) Considering these situations, it has been decided to establish an organization for the centralized processing of copyright information for interactive distribution. It is called Organization X, which has distributors and Copyright Managers etc., as members. Organization X is planning to conduct the following undertakings:

A. With cooperation from Copyright Managers, Organization X will integrate the copyright information databases constructed by the respective Copyright Managers to construct and operate a unified database, which can be shared by the distributors.

B. Organization X will, on obtaining the data on the used pieces submitted from distributors, centralize the clerical works for reporting the pieces used. Specifically, it will conduct the clerical work, on behalf of the applicable distributors, required for reporting the pieces used, and prepare reports on the used pieces for the concerned Copyright Managers.

Thus, the clerical tasks of the distributors and Copyright Managers can be made efficient, and the associated costs reduced. Further, the fee payment troubles and right infringement risks are expected to reduce by capturing accurate copyright information and reporting on the pieces used.

Since Organization X will have the distribution information, which is a trade secret of the distributors, it will strictly control the information so as to avoid any information leakage or use of the information for purposes other than specified.

(4) Organization X implements this undertaking primarily in order to make the distribution business more efficient. It does not intend to earn any profit from this undertaking.

Whether to utilize these services offered by Organization X is left to the discretion of the distributors and Copyright Managers. Those who wish use these services can become members of Organization X and bear the corresponding costs required for the operations.

In addition, Organization X will not be involved in any way in the contents of individual transactions between distributors and Copyright Managers.

Does this undertaking by Organization X constitute a problem under the Antimonopoly Act?

3. Interpretation of the Antimonopoly Act

(1) Joint undertakings relating to transport or storage, where such activities are incidental to a firm's main business, are in themselves expected not to affect the intrinsic price or quantity of goods, or the choice of customers, and are therefore less likely than the type of joint sales and so forth described above to pose a problem in light of the Antimonopoly Act. However, care must be taken to ensure that such undertakings do not result in restrictions on competition-related factors such as price, quantity, customers, or sales channels in relation to goods associated with constituent firms.

[GUIDELINES CONCERNING THE ACTIVITIES OF TRADE ASSOCIATIONS UNDER THE ANTIMONOPOLY ACT, Part II, 11 (2) A (The Content of Joint Undertakings)]

(2) This undertaking by Organization X is as follows:

A. The undertaking is limited to the intensive management of copyright information and the

centralized processing of reporting on the pieces used by distributors. Organization X does not grant any license for used pieces nor collect fees for such use.

B. It does not collect information with the contents specifically related to important means of competition such as prices. Considering the information subject to intensive management and scope, this undertaking will not affect competition.

C. Whether to participate in this undertaking is left to the discretion of distributors and copyright managers.

Therefore, prices or quantity, customers, market channel, and other means of competition for the service rendered by distributors and Copyright Managers are not considered as being restricted by this undertaking of Organization X. Hence, it does not immediately constitute a problem under the Antimonopoly Act.

In addition, it is considered that this undertaking by Organization X promote competition in the music distribution business and music copyright management business because participation in it reduces the business cost for distributors and copyright managers and facilitates new entrants into the businesses.

(3) However, if Organization X restricts the use of this undertaking without any justifiable ground, discriminates against some entrepreneurs in its use without any justifiable ground, to restrict the number of distributors or copyright managers, and to unjustly restrict free business activities of distributors or copyright managers, then it would possibly consist a problem under the Antimonopoly Act (Article 8, Paragraph 1, Item 3 or 4 of the Antimonopoly Act).

In addition, note that the information of distribution etc., which is trade secret, will be centralized at Organization X. If Organization X takes advantage of such information to unjustly restrict free business activities by distributors or copyright managers, then it would possibly consist a problem under the Antimonopoly Act (Article 8, Paragraph 1, Item 4 of the Antimonopoly Act).

4. Points of the Advice

This undertaking by Organization X itself does not immediately constitute a problem under the Antimonopoly Act.

When this undertaking is implemented in the future, Organization X should note that it would possibly consist a problem under the Antimonopoly Act to restrict the use of this undertaking without any justifiable ground, to discriminate against some entrepreneurs in its use without any justifiable ground to restrict the number of distributors or copyright managers, to unfairly restrain free business activities by distributors or Copyright Managers, and to unfairly restrict free business activities of distributors or copyright managers by taking advantage of the information of the distribution from the distributors affiliated to Organization X.

[Request Documents]

8. Issuance of Documents by a Trade Association to Request for Adequate Transactions from Customers

By an association of manufacturers of parts and components for automobiles and industrial machinery, distribution of documents requesting the promotion of adequate transactions to the customers of its members and preparation of a model memorandum for clearer transaction conditions do not immediately constitute a problem under the Antimonopoly Act.

1. Consulting Party: Association X (Association of manufacturers of parts and components for automobiles and industrial machinery)

2. Highlights of the Consultation

(1) Association X is an association of entrepreneurs who manufacture parts and components for automobile and industial machinery in accordance with orders from automobile and industrial machinery manufacturers. About 70% of entrepreneurs who supply such parts and components to automobile and industrial machinery manufacturers are participating in this association.
About 90% of the members of Association X are small or medium sized enterprises.

(2) The transaction amounts of the parts and components for automobile industry represent about 70% of the total transaction amounts of the parts and components. In the rapid decline of world economy in the recent times, orders from automobile manufactures etc. have decreased and price reduction has also been requested. Members are facing very severe situation with regard to their business management.
Since members serving as subcontractors are in weak positions and tend to be affected largely by such a gloomy economy, Association X considers it is necessary to appeal for the necessity of adequate subcontract transactions. It plans to prepare documents requesting the promotion of adequate transactions and distribute them to automobile manufacturers etc. through its members.
Whether to use such request documents is at the discretion of the members.

(3) Further, these parts and components are generally manufactured based on the mock-ups of parts/components leased from the automobile manufacturers etc. that place orders. In principle, these mock-ups are to be returned to the order placing parties upon the completion of manufacturing. In the case of long-term transactions, however, many members as subcontractors are storing the mock-ups that are not in use at the moment and the end-of-life mock-ups, without receiving storage fee. Because there are so many kinds and pieces of mock-ups of such parts and

components, the costs to store such mock-ups are a huge burden for the members.

Therefore, Association X plans to prepare documents to appeal that the storage of mock-ups is a burden for members and to request understanding from automobile manufacturers etc. on such situation so as to distribute such documents to automobile manufacturers etc. through its members.

In addition, Association X also plans to prepare a model memorandum for the proper handling of mock-ups between its members and automobile manufacturers etc. so that it can distribute the memorandum along with the said request documents to automobile manufacturers etc. through its members.

Whether to use the model memorandum is at the discretion of the members.

Do such approaches by Association X constitute a problem under the Antimonopoly Act?

3. Interpretation of the Antimonopoly Act

(1) The documents requesting the promotion of adequate transactions convey the difficulties of the members serving as subcontractors and requests understanding in terms of adequate subcontract transactions. As far as such documents are distributed to the customers at the discretion of the members, it does not immediately constitute a problem under the Antimonopoly Act.

(2) The documents on the handling of mock-ups convey that storage of mock-up is a burden for the members and requests understanding in terms of the improvement of trade practices in which members as subcontractors store the mock-ups without receiving storage fee. As far as such documents are distributed to customers at the discretion of the members, it does not immediately constitute a problem under the Antimonopoly Act.

(3) In the case of a model memorandum on the handling of mock-ups to clarify transaction conditions, as far as it does not involve contents of the transaction conditions themselves (specific prices, payment conditions, delivery date etc.) and does not discriminate against specific entrepreneurs and its use is at the discretion of the members, it does not immediately constitute a problem under the Antimonopoly Act.

[Guidelines concerning the Activities of Trade Associations under the Antimonopoly Act 8-7 (Activities that clarify transaction conditions)]

As far as the distribution to customers is at the discretion of the members, such distribution does not immediately constitute a problem under the Antimonopoly Act.

4. Points of the Advice

These approaches by Association X do not immediately constitute a problem under the Antimonopoly Act.

[Designation of Specific Unfair Trade Practices in the Newspaper Business]

9. Discount for Long-term Subscribers by Newspaper Publisher

Discount of the subscription fee (set price) by the newspaper publisher under the condition which includes that the subscriber should pay the subscription fee for one year in advance does not immediately constitute a problem under the Antimonopoly Act.

1. Consulting Party: Company X (Newspaper Publisher)

2. Highlights of the Consultation

(1) Company X is in the business of publishing daily newspapers.

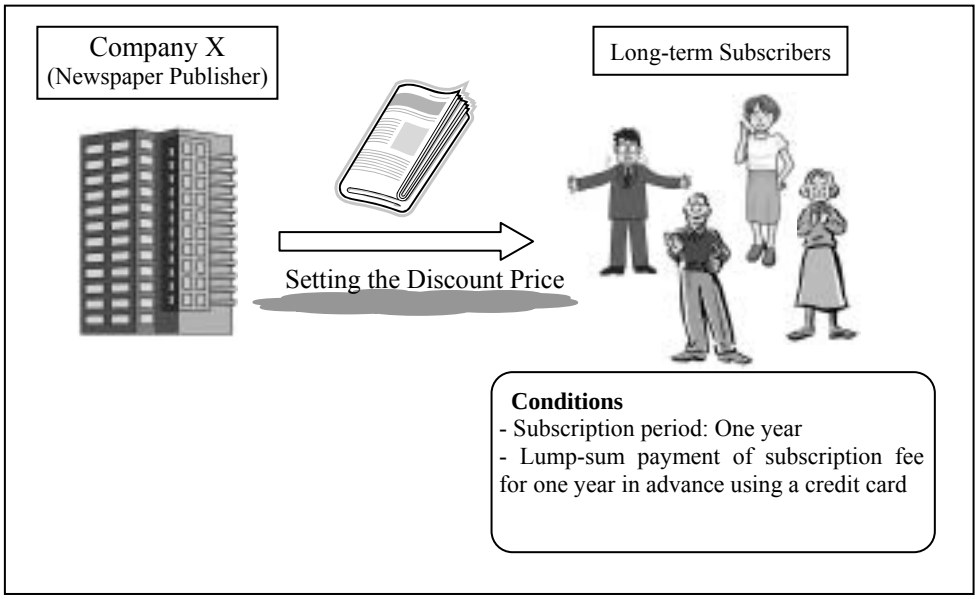
(2) Company X plans to discount the set price of the daily newspaper it publishes for the long-term subscribers satisfying the following conditions:

A. The subscription period shall be one year;

B. The subscription fee for one year shall be paid as a lump sum in advance; and

C. The subscription fee shall be paid via credit card.

Note that the discount amount is within the range that assures profits to Company X and newspaper retailers.



Does such a method of sale by Company X constitute a problem under the Antimonopoly Act?

3. Interpretation of the Antimonopoly Act

(1) Sale of newspapers at a discount price depending on the subscriber by a newspaper publisher

constitute a problem under the Antimonopoly Act, unless such a discount is carried out on legitimate and reasonable grounds (Paragraph 1 of "Designation of Specific Unfair Trade Practices in the Newspaper Business").

(2) When generally considering the contents described in 2 (2) above, including the purpose of limitations of coverage to long-term subscribers, discount conditions, and discount level in this case, it is considered as a discount based on legitimate and reasonable grounds. Hence, it does not immediately constitute a problem under the Antimonopoly Act.

4. Points of the Advice

Discount by Company X of the set price for the daily newspaper it publishes to long-term subscribers satisfying the conditions described in 2 (2) above does not immediately constitute a problem under the Antimonopoly Act.

<Provisions for Reference>

[Antimonopoly Act]

Article 3

No entrepreneur shall effect private monopolization or unreasonable restraint of trade.

Article 8

(1) No trade association shall engage in any act which falls under any of the following items:

(i) Substantially restraining competition in any particular field of trade;

(iii) Limiting the present or future number of entrepreneurs in any particular field of business;

(iv) Unjustly restricting the functions or activities of the constituent entrepreneurs (meaning an entrepreneur who is a member of the trade association; the same shall apply hereinafter);

(v) Inducing entrepreneurs to employ such act as falls under unfair trade practices.

Article 19

No entrepreneur shall employ unfair trade practices.

[Designation of Unfair Trade Practices]

(Resale Price Restriction)

Paragraph 12

Supplying goods to another party who purchases the said goods from oneself while imposing, without justifiable grounds, one of the restrictive terms listed in the following items:

(i) Causing the said party to maintain the selling price of the goods that one has determined, or otherwise restricting the said party's free decision on selling price of the goods; or

(ii) Having the said party cause an entrepreneur who purchases the goods from the said party to maintain the selling price of the goods that one has determined, or otherwise causing the said party to restrict the said entrepreneur's free decision on selling price of the goods.

(Dealing on Restrictive Terms)

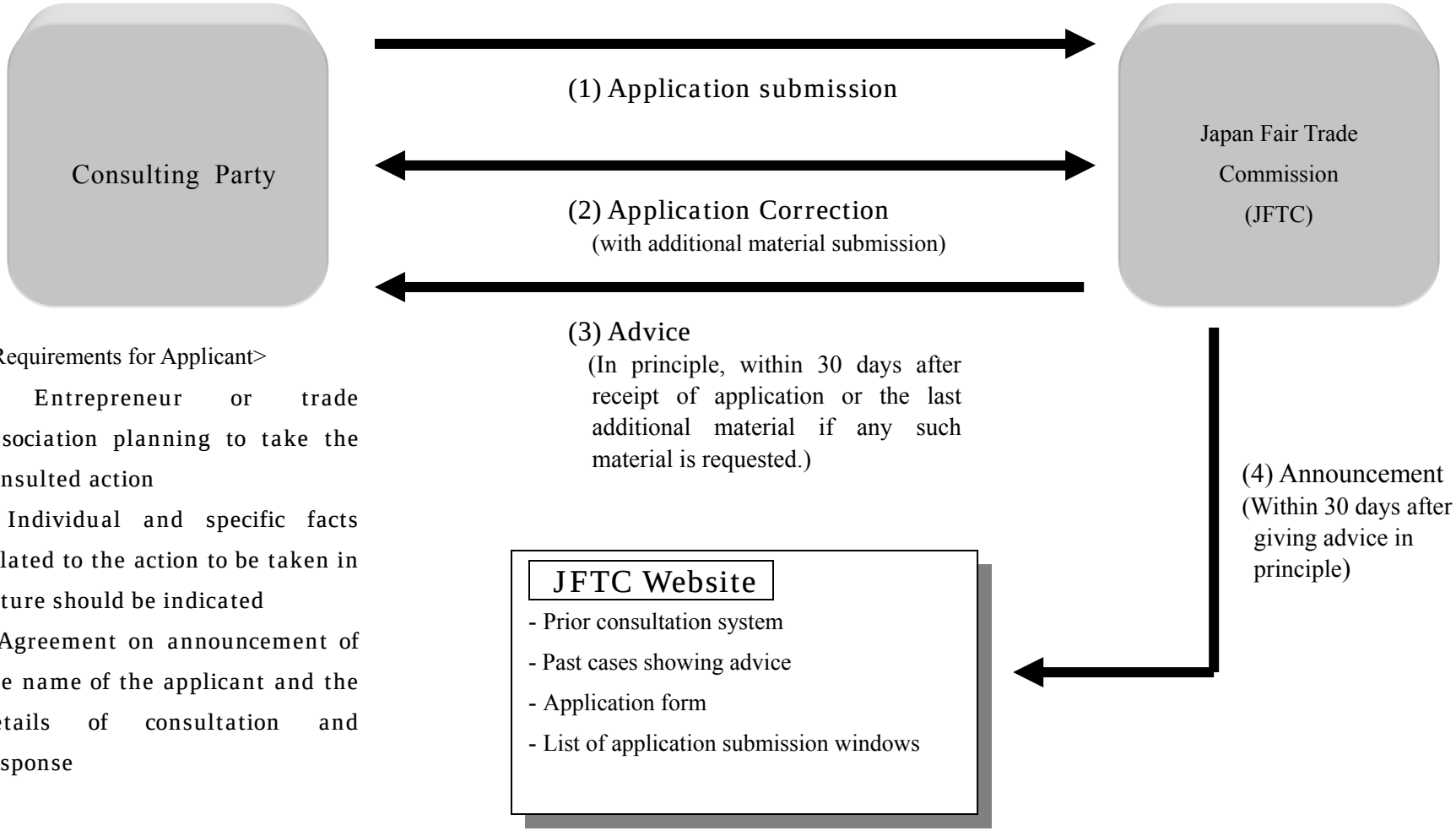
Paragraph 13

Other than any act falling under the preceding two paragraphs, trading with another party on conditions which unjustly restrict any trade between the said party and its other transacting party or other business activities of the said party.

[Designation of Specific Unfair Trade Practices in the Newspaper Business]

(1) Any person who operates the business of publishing (hereinafter referred to as "the Publisher") a daily newspaper (hereinafter referred to as "Newspaper") who, directly or indirectly, sells Newspapers by assigning different set prices or discounting the set price depending on area or target person, except for the case that such acts are carried out on legitimate and reasonable grounds including that the Newspaper is used as an educational material at schools, that the subscriber is a bulk bloc buyer or the like.

Outline of Prior Consultation System by JFTC



* As for details, see <http://www.jftc.go.jp/e-page/legislation/ama/priorconsultationsystem.pdf>.