

Outline of the Bill to Amend the Antimonopoly Act

- The JFTC's hearing procedure for administrative appeal will be abolished, and appeals against administrative orders issued by the JFTC (cease and desist orders, etc.) will be heard at the Tokyo District Court as appeal suits.
- Prior to issuing an administrative order by the JFTC, procedures for hearings will be implemented based on procedural guarantee levels under the Administrative Procedure Act.

1. Abolition of Hearing Procedure and Preparation of Court Proceedings pertaining to Cease and Desist Orders, etc.

(1) Abolition of the Hearing Procedure

① The JFTC's hearing procedure for administrative appeal will be abolished. (Article 52 to Article 68 and other relevant provisions of the current act)

② The substantial evidence rule^(Note) will be abolished. (Article 80 of the current act)

(Note) Rule to the effect that findings of facts made by the JFTC shall, if established by substantial evidence_, be binding upon the court.

③ Restriction on offering new evidence^(Note) will be abolished. (Article 81 of the current act)

(Note) Rule to the effect that a party to the hearing procedure_ for administrative appeal may offer the court new evidence where the JFTC failed to adopt the evidence without justifiable grounds.

(2) Preparation of Court Proceedings pertaining to Cease and Desist Orders, etc.

① The first instance functions to be transferred to a district court (Article 85 of the amended act)

With the abolition of the hearing procedure for administrative appeal system, the first instance functions pertaining to appeals against administrative orders by the JFTC will be transferred to a district court.

② Ensuring the expertise of the court (concentration of jurisdiction in the Tokyo District Court) (Article 85 of the amended act)

Given that antitrust cases are complex economic issues requiring expertise in both law and economics, the Tokyo District Court will have exclusive jurisdiction over appeals against administrative orders issued by the JFTC_ to ensure consistency in judgment and accumulate specialized knowledge of antitrust cases at the court.

③ Ensuring careful examination at the court (Articles 86 and 87 of the amended act)

A. At the Tokyo District Court (the court of first instance), a trial and a judgment on a case relating to an appeal suit against a cease and desist order, etc. will be made by a panel of three judges. The trial and judgment may be made by a panel of five judges.

(Note) Trials and judgments at a district court are made by a single judge in principle.

B. At the Tokyo High Court (the court of second instance), the trial and judgment may be made by a panel of five judges.

(Note) Trials and judgments at a high court will be made by a panel of three judges, in principle.

2. Development of Procedures for Hearing pertaining to Cease and Desist Orders, etc.

(1) Development of procedures for hearing presided over by an officer designated by the JFTC (Article 49 and following articles of the amended act)

① Presiding officer of procedure for hearing (Article 53 of the amended act)

Procedure for hearings will be presided over by officers designated by the JFTC for each case .

② Explanations by investigators, etc (Article 54, Paragraph 1 of the amended act)

Designated officers will have investigators of the case provide explanations of the expected content of the cease and desist order, etc. (expected content of the cease and desist order, facts found by the JFTC and application of laws and regulations thereto, and the main evidence) to the party who attends the hearings (the expected recipient of the cease and desist order).

③ Appointment of representative (Article 51 of the amended act)

A party concerned (the expected recipient of the cease and desist order) may, for the purpose of presenting its opinions, appoint a representative.

④ Presentation of opinions, questions to investigators, etc., at _ hearings (Article 54, Paragraph 2 of the amended act)

A concerned party may attend the hearings, present its opinions and offer evidence as well as put questions to investigators, etc. (The party may submit written statements and offer evidence instead of attending the hearings.)

⑤ Preparation of records/reports by designated officers (Articles 58 and 60 of the amended act)

Designated officers will prepare a written record of the progress of the presentation of opinions by the party attending the hearings on the date of the hearing_ and a report that lists the point at the case pertaining to the hearings, for submission to the JFTC. The JFTC shall give due consideration to the record and report submitted by the designated officers, when making a resolution of a decision pertaining to a cease and desist order.

(2) Inspection and copy of evidence to facts found by the JFTC (Article 52 of the amended act)

① Inspection of evidence

A party concerned may request an inspection of evidence establishing the facts found by the JFTC with respect to the case in question during the period from the time the party received the notice of hearings until the end of the hearing_.

② Copy of evidence

A party concerned may request a copy of the material submitted by the party and records of statements of the party's employees among those subject to inspection.

(3) Mutatis mutandis application to surcharge payment order and order to restore competition (Article 62, Paragraph 4 and Article 64, Paragraph 4 of the amended act)

Procedures for a cease and desist order in (1) and (2) above shall apply similarly to surcharge payment orders and to orders to restore competition against monopolistic situations.

3. Supplementary Provisions

○ The amendment will come into force on the day specified by the Cabinet Order within a period not exceeding one and a half years from the date of promulgation of the amended act.

○ The investigation procedures of the JFTC will be considered from a point of view to ensure that a party concerned with a case defends itself, maintaining consistency with other administrative procedures in Japan. The government will aim at drawing the conclusion of the consideration within one year from the promulgation of the amended act and will take appropriate measures as necessary.