

Compliance Efforts of Japanese Companies for Foreign Competition Laws (Summary)

— Aiming at Compliance Efforts as Global Rules

Recently, there are many cases where Japanese companies have been charged with violations of foreign competition laws, as a result of which huge amounts of criminal fines and/or surcharges have been imposed on them and their executives and employees have been sentenced to imprisonment. ➔ **Vulnerabilities of the frameworks of Japanese companies for compliance with foreign competition laws (“FCL compliance”) are revealed**

With the aim of contributing to reinforcement of FCL compliance frameworks at Japanese companies, the Japan Fair Trade Commission (“JFTC”) conducted the questionnaire survey (September 2014, targeting 1,814 companies listed on the First Section of the Tokyo Stock Exchange) and interviews (December 2014 to February 2015, targeting 32 companies).

<Result of surveys>

Efforts toward FCL compliance at Japanese companies would not be sufficient.

For promotion of compliance with foreign competition laws

Viewpoints of risk management and avoidance

Key concept is to accurately identify and minimize risks based on characteristics of foreign competition laws, with the goal of promoting compliance with the Antimonopoly Act (“AMA compliance”).

Risks relating to characteristics of foreign competition laws

- Risks involving the legal systems for foreign competition laws and their enforcements
 - Strict sanctions over violations
 - Differences in the requirements for constituting cartel
 - Penalty on refusal to cooperate with or obstruction of the authority in carrying out investigations
- Risks that may be subject to competition law enforcement in several countries and/or regions
 - Possibility of being subject to enforcement of and sanction under competitive laws of multiple countries and/or regions

3 Pillars of Actions

1. Integrated actions by parent companies and overseas subsidiaries (integration)
2. Extensive actions with awareness of competition laws of all countries and/or regions where companies operate (extensiveness)
3. Flexible actions based on characteristics of the legal systems for foreign competition laws different from Japanese system (flexibility)

Concrete measures to promote FCL compliance program

3Ds

DETERRENCE Prevention through training and others

- ❑ Formulation of FCL compliance manuals
- ❑ Provision of internal training programs related to foreign competition laws
- ❑ Development of common legal consultation system for parent company and its foreign subsidiaries
- ❑ Improvement of various internal rules as global rules

DETECTION Verification and early discovery through audits and others

- ❑ Audits concerning foreign competition laws
- ❑ Development of common whistleblowing system for parent company and its foreign subsidiaries
- ❑ In-house leniency for foreign competition laws
※In-house leniency means considering mitigating punishments when employees who have involved in the violation voluntarily made reports on what they did or took other required actions.

DAMAGE CONTROL

- ❑ Prompt actions and accurate decision-making under initiatives of top management of parent company
- ❑ Utilization of leniency system for foreign competitive laws
- ❑ Development of contingency manuals underlying integrated actions
- ❑ Accurate internal investigations under initiatives of top management of parent company

Systems underlying promotion of FCL compliance program

- ❑ Commitment of top management of parent company and its worldwide announcement
- ❑ Development of a system including the appointment of personnel in charge of foreign competition laws
- ❑ Identification of company-specific risks and corresponding actions

Examples of Concrete Efforts for Promotion of FCL Compliance Program

System underlying promotion of FCL compliance program

❑ **Commitment of top management of parent company and its worldwide announcement**

Messages of top management of parent company are sent to overseas group companies in multiple languages.

❑ **Development of a system including the appointment of personnel in charge of foreign competition laws**

The legal department of parent company has dedicated personnel in charge of foreign competition laws to build up a system under which information is concentrated to them. As a result, the number of prior consultations on acts that may pose problems under competition laws has increased, contributing to prevention of violations.

❑ **Identification of company-specific risks and corresponding actions**

In the oligopolistic industry in which major commercial items are globally handled by several companies including the company, the company maintains a policy of basically prohibiting its employees from contacting their competitors as a global unified rule.

Prevention through training and others [DETERRENCE]

❑ **Formulation of FCL compliance manuals**

In the wake of auto parts cartel cases, the company reinforced the existing compliance manuals for European and the U.S. competition laws, and initially adopted compliance manuals for Chinese and other competition laws which have not existed yet.

❑ **Provision of internal training programs related to foreign competition laws**

In training programs for its group companies in the Asia region, the company gives explanations about very strict enforcement of and penalties under European and the U.S. competition laws and the possibility of extraterritorial application, in addition to briefings about local competition laws.

❑ **Development of common legal consultation system parent company and its foreign subsidiaries**

Based on the past experiences that only the relevant business divisions coped with the litigations and other disputes in which overseas local entities were involved and postponed escalation to parent company, because of the lack of defined rules, the company is building up a system under which information can be quickly shared with the legal department of the company when there occurs a significant incident, such as competition law violations and class actions.

❑ **Improvement of various internal rules as global rules**

The company adopts basic policies: "Let's refrain from doing any act that may be suspected to be a cartel," as well as "Do not enter into a cartel," by establishing a global rule for contacting competitors with an awareness of the competition laws of the European Union under which strict sanctions are adopted and exchange of information with competitors in the same industry may be held illegal.

Verification and early discovery through audits and others [DETECTION]

❑ **Audits concerning foreign competition laws**

Under the system in which internal audit global leader directly reporting to the Group CEO supervises regional leaders in Asia, Europe and North America, each regional audit section conducts audits of group companies in the region in charge, and common focused audit items are established globally to conduct audits.

❑ **Development of common whistleblowing system parent company and its foreign subsidiaries**

The company engages professional organizations and law firms to act as group's common whistleblowing contact offices that can serve in all languages used by employees and others of overseas subsidiaries.

❑ **In-house leniency for foreign competition laws**

Considering that foreign antitrust authorities have adopted discretionary surcharge and punishment systems, unlike Japan and the degree of cooperation with those authorities affects the amount of surcharge and others, the company could successfully obtain cooperation of employees on investigations through the in-house leniency.

Damage control [DAMAGE CONTROL]

❑ **Prompt actions and accurate decision-making under initiatives of top management of parent company**

When the possible violation of any foreign competition law is found, it is quickly escalated to the top management and the company promptly conducts internal investigations in cooperation with Japanese or foreign attorneys they retain. On the other hand, the company considers utilizing leniency applications to antitrust authorities in the jurisdictions concerned.

❑ **Utilization of leniency system for foreign competitive laws**

The company has a policy of proactively utilizing local leniency system when a violation is found. As a result of internal investigations led by the legal department of a parent company in Japan with cooperation of legal departments of overseas subsidiaries, they determined that the violation had affected several countries and/or regions, and leniency applications were concurrently submitted to the authorities in those countries under the leadership of the parent company.

❑ **Development of contingency manuals underlying integrated actions**

Considering that the act of destroying evidence or submitting false reports in case of emergency, even though it was done unknowingly, may be subject to heavy sanctions, the company prepared the manual that was described using easily understandable expressions so that employees might not destroy evidence or take other actions, and communicated the content of that manual to those concerned.

❑ **Accurate internal investigations under initiatives of top management of parent company**

When the company conducted internal investigations into the related products after the investigations by a foreign antitrust authority, it found the violations. The company submitted leniency applications to the authorities of all countries and/or regions where those related products were sold, and could get immunities from surcharge.

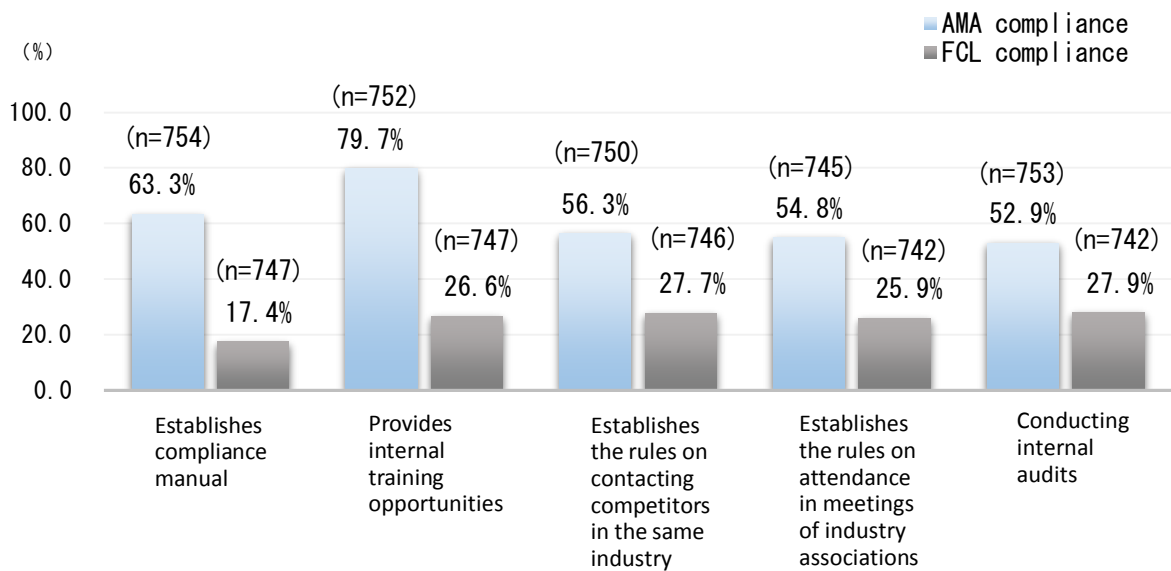
(Reference) Major Results of Questionnaire (1)

Outline of Questionnaire Survey

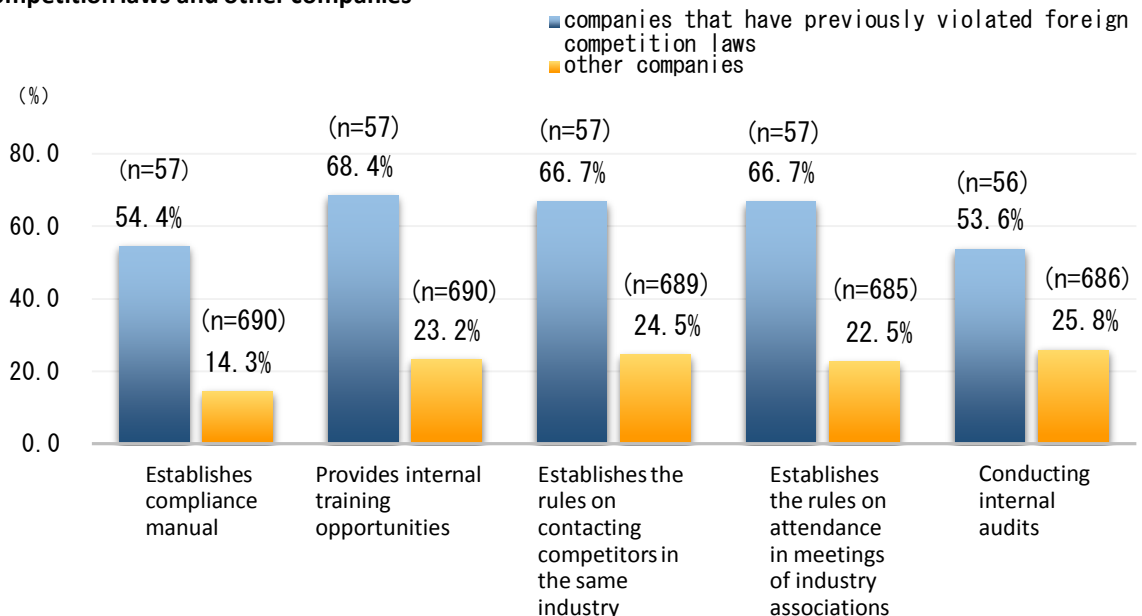
JFTC sent questionnaire on compliance efforts for competition laws mainly in the United States, European Union, China and South Korea to 1,814 companies listed on the First Section of the Tokyo Stock Exchange (September 2014).

- ➔ Replies from 963 companies (collection rate: 53.1%)
- ➔ Of 963 companies, 775 companies are doing business outside of Japan.

Comparisons between AMA compliance efforts and FCL compliance efforts

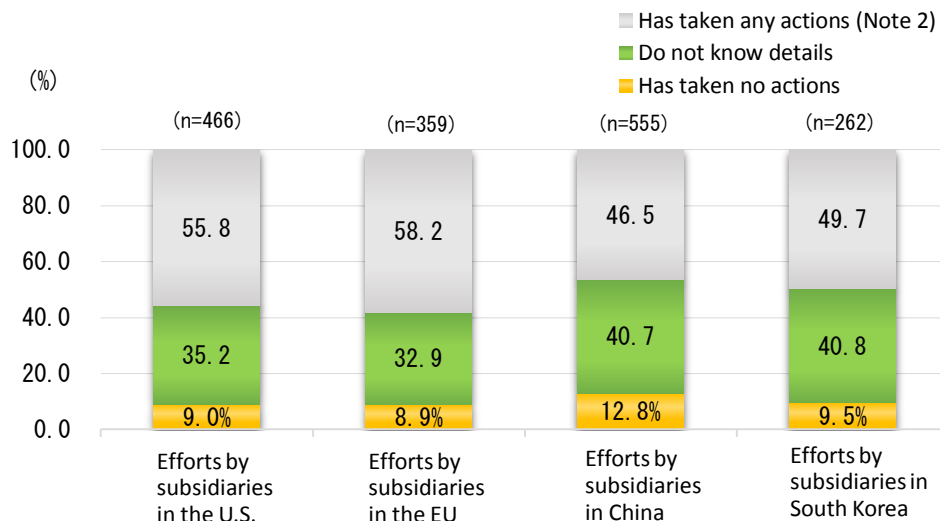


Comparisons of FCL compliance efforts between companies that have previously violated foreign competition laws and other companies



(Reference) Major Results of Questionnaire (2)

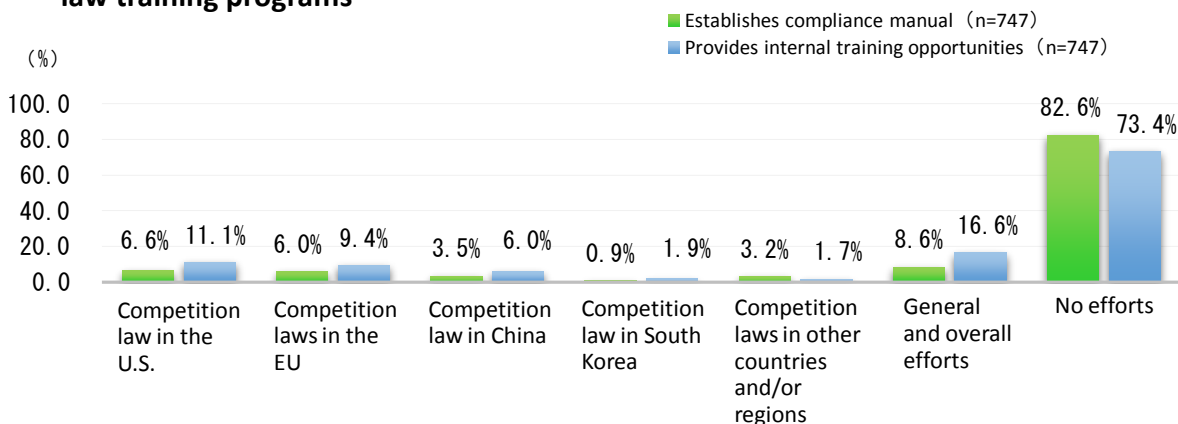
Compliance actions for competition laws in the countries and regions where subsidiaries are located (Note 1)



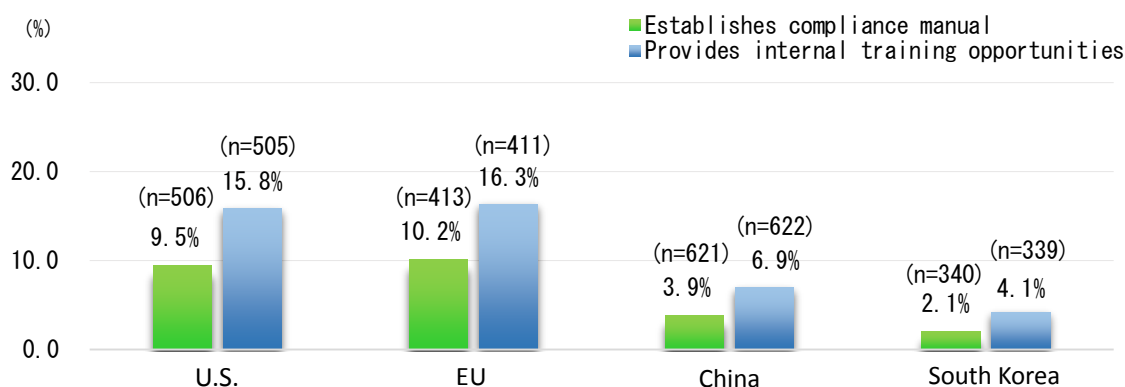
(Note 1) If the company has more than one subsidiaries in the U.S., EU, China and South Korea, JFTC has requested the Japanese parent company to give replies on the efforts of a company with largest sales in each country or region.

(Note 2) "Has taken any actions" represents the ratio of replies other than "Do not know details" or "Has taken no actions."

Formulation of FCL compliance manuals and provision of foreign competition law training programs



Efforts of companies that answered that they are doing business in the U.S., EU, China and South Korea by country/region



(Reference) Major Results of Questionnaire (3)

Contingency actions under foreign competition laws that companies recognized differences from Japanese legal system

