

Closing the Investigation on the Case of Violation of the Antimonopoly Act by the Companies Dealing U.S.Dollar-Denominated Supranational Bonds

March 29, 2018
Japan Fair Trade Commission

The Japan Fair Trade Commission (JFTC) has investigated the alledged designations of successful bidder of the bonds which international institutions, etc. issue in U.S. dollar (hereinafter referred to as “U.S.dollar-denominated supranational bonds”) among several foreign based companies, in accordance with the provisions of the Antimonopoly Act (AMA). The JFTC has found that relevant conduct committed by the two companies described below, which was related to the trade with a financial institution located in Japan, is in violation of the Article 3 (Unreasonable Restraint of Trade) of the AMA.

However, because the relevant violation has already ceased to exist since May 31, 2012, and the period which is prescribed in proviso to Article 7, paragraph (2) and Article 7-2, paragraph (27) has already passed, the JFTC has decided to close the investigation on the case. In addition, the JFTC has decided to make it public, aiming for ensuring the transparency of the application of the AMA, and for preventing similar conduct which would be in violation of the AMA by other financial institutions.

1. Overview of the Companies

No	Name of Company	Address	Representative
1	Deutsche Bank Aktiengesellschaft	Taunusanlage 12, Frankfurt am Main, the Federal Republic of Germany	John Cryan
2	Merrill Lynch International	2 King Edward Street, London, EC1A 1HQ, United Kingdom	Alexander Wilmot-Sitwell

2. Conduct in Violation

(1) Request for Quotation

On May 30, 2012, a financial institution located in Japan (hereinafter referred to as “the customer”) intended to purchase U.S. dollar-denominated supranational bonds which were newly issued by an international institution (hereinafter referred to as “newly issued bonds”) with a face value of 300 million dollars total and to sell its own U.S. dollar-denominated supranational bonds which had already been issued by this international institution

(hereinafter referred to as “outstanding bonds”) with a face value of 250 million dollars total from and to the same financial institution (this switch trade hereinafter referred to as “the trade”).

The customer asked for quotes of the trade to the three financial institutions, including Deutsche Bank Aktiengesellschaft (Deutsche Bank) and Merrill Lynch International (Merrill Lynch), whose head office or sales office is located in London, United Kingdom and which were main underwriters of newly issued bonds.

The customer intended to make a deal with the one out of the three financial institutions who was capable of selling newly issued bonds to the customer and presented most favorable trade terms of outstanding bonds for the customer, and the three financial institutions recognized this intention.

(2) Agreement

On May 30, 2012, upon receiving a request for quotes for the trade separately, Deutsche Bank and Merrill Lynch exchanged information about purchase of outstanding bonds through each of the traders who were in charge of pricing of U.S.dollar-denominated supranational bonds in their head office or sales office located in London, United Kingdom, by using the chat function provided by an information vender.

Then, Deutsche Bank and Merrill Lynch agreed that concerning outstanding bonds, Merrill Lynch was going to show the larger spread to the customer than the spread which Deutsche Bank mentioned that it had showed to the customer, and that by doing so, Deutsche Bank would receive the trade.

On this occasion, Deutsche Bank and Merrill Lynch shared their understandings that the stance to the trade of the other financial institution was negative.

(note 1) “Spread” in this context means the gap between the yields on U.S. dollar-denominated supranational bonds and U.S. treasury bonds with the same maturity period.

(note 2) As a positive value of spreads becomes large, a price of U.S. dollar-denominated supranational bonds declines.

(3) Implementation of the Agreement

On May 30, 2012, Deutsche Bank and Merrill Lynch responded to the customer separately that they were capable of selling newly issued bonds. And concerning outstanding bonds, Merrill Lynch showed the larger spread to the customer than the spread which Deutsche Bank mentioned that it had showed to the customer, based on the agreement in (2) above.

Accordingly, after negotiating trade terms with Deutsche Bank who had bid the best spread concerning outstanding bonds, the customer decided to make a deal with Deutsche Bank. As a result, Deutsche Bank received the trade on the same day.

3. Closing the Investigation

(1) Application of the AMA

Judging from the fact described above, Deutsche Bank and Merrill Lynch substantially restrained competition concertedly in the field of the trade, contrary to the public interest, by agreeing that they designated a successful bidder and enabled the bidder to win the bidding of this trade, and this conduct falls under unreasonable restraint of trade which is prescribed in Article 2, paragraph (6) and is in violation of the Article 3 (Unreasonable Restraint of Trade) of the AMA.

(2) Closing the Investigation

The trade ended on May 30, 2012, and the violation described above has already ceased to exist since May 31 of the same year.

As the five-year period which is prescribed in proviso to Article 7, paragraph (2) and Article 7-2, paragraph (27) of the AMA has passed, the JFTC shall not issue cease and desist order, and surcharge payment order against them on the case.

And the JFTC has confirmed that Deutsche Bank and Merrill Lynch are engaged in efforts to prevent future violation of the AMA regarding the trade of U.S. dollar-denominated supranational bonds and compliance with the AMA.

Thus the JFTC has decided to close the investigation on the case.

*Every announcement is tentative translation. Please refer to the original text written in Japanese for more details.