

Outlines of the amendment of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Antimonopoly Act)

December 24, 2003
Fair Trade Commission of Japan

1. Review on the surcharge system

(1) Raising of the rate of calculating surcharge amount

- a. In order to achieve the administrative purpose of preventing violations of cartels, bid riggings, etc., as an administrative measure, the surcharge system shall be revised from that of collecting the amount equivalent to the economic benefits into that of collecting the amount more than such profits. In other words, the rate of calculating surcharge amount (currently 6% for large-sized enterprises and 3% for small- and medium-sized enterprises in principle) shall be raised.
- b. The system shall be introduced that extra amount of surcharge will be imposed on the enterprises which violated repeatedly the Antimonopoly Act.
- c. The relationship between the surcharge system and punishment against juridical persons shall be examined thoroughly.

(2) Enlargement of conduct subject to the surcharge payment

The definition of conduct subject to the surcharge payment shall be revised into the followings:

- a. Private monopolization and restraint of trade, restraining price of goods or services, volume of supply, market share or customers.
- b. Private monopolization and restraint of trade, eliminating competitors.
- c. Purchasing cartels

2. Introduction of a leniency program

Immunity from or reduction in surcharge payment shall be applied to entrepreneurs in the following statutory conditions:

- (1) Entrepreneurs committing violations shall provide necessary information and documents to the JFTC before the JFTC initiates investigations.
- (2) Entrepreneurs shall voluntarily quit unlawful conduct.

Note: The JFTC will announce clearly that the entrepreneur who provided necessary information and documents to the JFTC first shall not be subject to criminal accusation.

3. Introduction of compulsory measures for criminal investigations and review on penal regulations

- (1) In addition to the administrative measures, compulsory measures for criminal accusation shall be introduced.
- (2) The review on procedures concerning criminal accusations shall be conducted, including abolishment of exclusive jurisdictions of the Tokyo High Court.
- (3) Penalties for administrative measures and for violations of elimination measures shall be strengthened.

4. Review on hearing procedures

Necessary revision of regulations shall be implemented from the viewpoint of due process of law and efficiency.

5. Review on the Monopoly and Oligopoly Regulations

- (1) Review on provisions concerning measures against a monopolistic situation
Current regulations concerning measures against a monopolistic situations (Order of the transfer of a part of a business, etc. will be rendered in case price rigidity in downward direction or extremely high profit margins are observed.) shall be revised into those for eliminating promptly and effectively conduct by “Specific Entrepreneurs” preventing business activities of new entrants on the occasion of their using “Essential Facilities.”
 - a. The term “Specific Entrepreneurs” shall mean the entrepreneurs who have large and dominant market share and own “Essential Facility” (including the specific technology) in an important market (a market whose scale is significantly large).
 - b. Denial of access to “Essential Facilities” and discrimination against competitors by the “Specific Entrepreneurs” shall be prohibited where they are without proper justification.
 - c. The JFTC will designate each “Essential Facility” where it meets the requirements

below:

- (a) It shall be essential to provide goods or services in the important market in which the “Specific Entrepreneur” carries its business.
 - (b) It shall be almost impossible for other entrepreneurs to establish a similar facility competitive against the existing facility.
 - d. The JFTC will consider coordinating the new regulation with public utility regulations through consulting with regulatory agencies on the designation of “Essential Facility.”
- (2) Review on provisions concerning parallel price increases
- The provisions concerning parallel price increases shall be abolished.