

Annual Report of the Japan Fair Trade Commission for FY2002

October 7, 2003

Japan Fair Trade Commission

The Japan Fair Trade Commission (“JFTC”) is required under the provision of Paragraph 1 of Article 44 of the Antimonopoly Act (“AMA”) to report to the Diet via the Prime Minister details of enforcement of the AMA each year (including details of enforcement of the Subcontract Act and the Premiums and Representations Act).

The JFTC submitted its annual report for FY2002 today. The annual report for FY2002 is summarized below.

1. Movements of antimonopoly legislation

(1) Act concerning the establishment of relevant laws for changing the JFTC into an extra-ministerial body of the Prime Minister’s Office (approved April 2, 2003, promulgated April 9)

(2) Act partially amending the Premium and Representations Act (approved May 16, 2003, promulgated May 23)

- Introduction of effective methods for regulating improper representations indicating marked superiority without any reasonable grounds, etc.

(3) Act partially amending the Subcontract Act (approved June 12, 2003, promulgated June 18)

- Addition covering subcontract transactions relating to services

(4) Act concerning the elimination and prevention of involvement in bid rigging, etc. (approved July 24, 2002, promulgated July 31)

- provision of administrative measures, etc. to eliminate involvement of procuring officials in bid rigging, etc.

2. Investigation and dealing with cases of AMA violation

(1) The JFTC deals strictly with violations of the AMA during FY2002, and in the course of 2002 took legal measures in 37 cases against a total of 805 businesses.

A breakdown of these 37 cases by type of violation gives two cases of price cartel, three cases of bid rigging, three cases of unfair trade practices and two cases of other.

In July 2003 the JFTC filed accusations with the Prosecutor-General against four companies and five persons in connection with a case of bid rigging over water meters ordered by the Tokyo Metropolitan Government.

In addition, in January 2003, the JFTC made a request for improvement measures to the Mayor of Iwamizawa City under the Act concerning the Elimination and Prevention of Involvement in Bid rigging, etc.

Main recommendations in FY2002

- Case of bid rigging by contractors taking part in bid for construction work ordered by Chiba City, etc.
- Case of bid rigging by contractors taking part in construction work ordered by Iwamizawa City
- Case of bid rigging by contractors taking part in bid for road maintenance civil engineering and construction work ordered by the Shikoku Branch of the Japan Highway Public Corporation
- Case of price cartel by two manufacturers and sellers of extrusion-molded cement boards
- Case of elevator maintenance contractor obstructing trade of competitors
- Case of cooperative association for lightweight aerated concrete products in the Tokyo metropolitan area obstructing trade of non-member sellers and construction contractors, etc.

(2) As regards surcharges in FY2002, the JFTC ordered payment in a total of 561 cases totaling 4.334 billion yen for bid rigging, etc.

3. Hearings, etc.

The number of cases that came to hearing in fiscal year 2002 was 91 (record high number of cases), including 61 cases carried on from the previous fiscal year and the JFTC rendered decisions on eight of these cases in the course of FY2002.

4. Investigation, proposals, etc. on regulatory reform

(1) The JFTC held a meeting for the study of government regulations and competition policy to study the creation of an environment for promoting competition in the fields of electric enterprises and telecommunication business and in socially regulated areas such care, medicine and labor, and published reports on each.

(2) Taking into consideration subsequent cases of application, etc., the JFTC reviewed its *Guidelines Concerning Appropriate Electric Power Dealing* and its *Guidelines for Promotion of Competition Policy in the Telecommunications Business Field* enacted and published in collaboration with the competent authorities with a view to promoting competition in fields undergoing progressive regulatory reforms, and amended and published them in July and December 2002 respectively.

5. Fact-finding studies of economic and business activities

(1) To contribute to the management of competition policy, the JFTC conducted studies such as a study of monopolistic conditions, a study of innovation competition and competition policy, a study of the progress of globalization and market structure and a fact-finding study of trade between large-scale retailers and suppliers.

(2) The JFTC held study meetings and published reports to study competition policy-related problems in connection with trade on the digital contents market and patents in new fields,.

6. Collection of reports on concerted price hikes

As regards the collection of reports on concerted price hikes under the provision of Article 18-2 of the AMA, the JFTC collected reports on reasons for price hikes from 4 leading companies in the field of effervescent sake.

7. Operations related to the regulation of corporate consolidation

(1) In FY2002, the JFTC approved 131 cases concerning voting shareholdings of finance companies, received 23 reports and notifications of establishment, etc. of holding companies, etc., 899 reports on the share ownership of service companies and 330 notifications of corporate merger, split, business transfer, etc. and conducted the necessary investigations.

Main cases of corporate consolidation in FY2002

- Integration of the hard-disk drive business of International Business Machines Corporation by Hitachi Ltd.
- Integration of stainless steel business by Nippon Steel Corporation and Sumitomo Metal Industries, Ltd.

(2) With a view to further enhancing the speed and transparency of investigations into corporate consolidation plans, in December 2002 the JFTC enacted and published guidelines for responding to prior consultations on corporate consolidation plans, clarifying aspects such as the procedures for prior consultations and the processing period.

8. Securing transparency of law operation and prevention of violations of the AMA

In FY2002, the JFTC received 1,199 enquiries about the activities of businesses and 383 enquiries about the activities of business groups.

9. Operations related to the Subcontracting Act

- (1) In FY2002 the JFTC conducted documentary investigations of 17,385 parent businesses and 99,481 subcontractors.
- (2) With respect to 1,366 cases that as a result of documentary investigation were deemed to be violations of the Subcontracting Law, the JFTC made recommendation in 4 cases and took warning measures in 1,362 cases.

Violations of the Subcontracting Act dealt with (Unit: case)

1. Recommendation
2. Warning
3. Type of violation
4. Refusal to accept
5. Abatement
6. Returned goods
7. Beating down of price
8. Compulsory purchase
9. Delayed payment
10. Early settlement
11. Long-term bill
12. Documentation not issued
13. Documentation not saved

(NOTE) The sum total of the number of cases by type and the sum total of the number of recommendations and the number of warnings are not equal since there are some parties constituting one case that perpetrate more than one violation.

10. Operations related to the premium designation act

(1) In FY2002, in relation to improper designation, the violation of providing excessive premiums, etc., the JFTC issued 22 elimination orders (22 relating to improper designation, the most since FY1976) and 402 warnings (105 relating to excessive premiums and 297 relating to improper designation).

Main cases of elimination orders in FY2002

- Case of improper designation concerning the country of origin of meat, processed meat and grilled eel
- Case of improper designation concerning the effects of a so-called health food that professes a remarkable weight-reducing effect
- Case of improper designation concerning the performance and effect of an appliance that professes to be effective in getting rid of rats

(2) To seek to promote proper provision of information to consumers, the JFTC held fact-finding studies on designation in advertising, etc. and also established problems and points to note in relation to the premium designation act in relation to designation in electronic commerce for consumers, clarifying problematic designation, etc. under the premium designation act (June 2002), and also partially amended its approach under the premium designation act to improper price designation (December 2002).

11. International-affairs-related operations

(1) Besides the bilateral meetings on issues common to each country relating to competition policy with the competition authorities of each country, the JFTC actively participated in meetings at international organizations, etc.

(2) To seek to strengthen systems of cooperation in terms of the enforcement of competition laws, in July 2003, the JFTC concluded Japan/EC Agreement to cooperate in prohibiting monopolies.

(3) From the standpoint that it is important to further strengthen cooperation in terms of competition laws and policies in relation to East Asian countries, etc., the JFTC promoted technical support for these countries.