

Report of the Study Group on the Antimonopoly Act

October 28, 2003

Fair Trade Commission

1 Report of the Study Group on the Antimonopoly Act

The implementation of structural reforms to achieve a society and economy based on market principles and the principle of self-discipline has become an urgent topic in Japan. To realize such reforms, active enforcement of competition policy in conjunction with the pursuit of regulatory reform has taken on greater importance.

Furthermore, 25 years have passed since amendments to broadly strengthen the Antimonopoly Act were enacted in 1977. During this period, the structures of Japan's economy and society have undergone immense changes. Therefore calls have been made to perform a review to determine whether the new system introduced in 1977 is consistent with today's economic circumstances.

In order to conduct a study concerning review of the Antimonopoly Act enforcement systems and monopoly and oligopoly regulations from this perspective, the Japan Fair Trade Commission (JFTC) has convened meetings of the Study Group on the Antimonopoly Act (Chairperson: Kenichi Miyazawa, Honorary Professor, Hitotsubashi University) since October 2002.

The JFTC releases a report which the Study Group submitted today.

The main points of the Study Group's report are described in the attachment.

Inquiries	Japan Fair Trade Commission Planning Office, Economic Affairs Bureau, Secretariat
Telephone	03-3581-5485 (Direct)
Homepage	http://www.jftc.go.jp

2 Call for Opinions

Based on the Study Group 's report, the JFTC will prepare specific proposals concerning enforcement systems and monopoly and oligopoly regulations.

As a reference for its study, the JFTC requests opinions from every related party concerning the matters addressed in the Study Group 's report, as described below.

[Please submit opinions to the following address]

Planning Office, Economic Affairs Bureau, Secretariat, Japan Fair Trade Commission

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FAX 03-3581-1945

E-mail minaoshi@jftc.go.jp

[Deadline for submission of opinions]

Opinions must be received by the JFTC by Monday, December 1, 2003

[Please note the following when submitting an opinion]

Please submit opinions by regular mail, e-mail or fax, after verifying your name (or corporation name), address and contact telephone and/or fax number and/or e-mail address are legible.

The JFTC may release the contents of the opinions received after deleting addresses and contact numbers. The JFTC is not able to respond individually to each opinion submitted. Your understanding is appreciated.

Study Group on the Antimonopoly Act

(Titles omitted)

Chairperson	Kenichi Miyazawa	Honorary Professor, Hitotsubashi University
Vice-Chairperson	Akira Goto	Professor, Research Center for Advanced Economic Engineering of Tokyo University
Vice-Chairperson	Akira Negishi	Professor, Graduate school of Law, Kobe University
Members	Hiroji Ishi	President, Ishi Iron Works Co., Ltd.
	Hideki Ide	Professor, Faculty of Business and Commerce, Keio University
	Takaji Kanai	Professor, Faculty of Law, Chuo University
	Akira Kaneko	Honorary Professor, Faculty of Law, Keio University
	Hideki Kanda	Professor, Graduate school of Law, Tokyo University
	Masao Kobayashi	Chairman , Nippon Unipac Holding
	Michio Sato	Deputy Management Editor, The Yomiuri Shimbun
	Hachinari Shimazu	Executive Commentator, Japan Broadcasting Corporation
	Junji Tsumura	President, Toyobo Co., Ltd.
	Shigeru Morimoto	Professor, Graduate school of Law, Kyoto University
	Gentaro Yoshino	Editorial Writer, Nihon Keizai Shimbun, Inc.
	Masae Wada	Senior Counselor, House Wives ' association

Summary Points of the Report of the Study Group on the Antimonopoly Act

Part 1 Comprehensive Review of Enforcement Systems

Increase the surcharge calculation percentage and broaden the range of conduct subject to surcharges

Review the surcharge system in order to ensure the effectiveness of the Antimonopoly Act's prohibition provisions

Change the character of the surcharge system: "Deprivation of unreasonable profits" "Collection of surcharges based on the assessment that can construct an amount equivalent to losses accompanying conduct in violation of the Antimonopoly Act"

Increase the fixed surcharge calculation percentage and introduce a system of additional surcharges for use when entities commit repeated violations or in other situations

Expand the range of surcharge applications

Cartels that restrict market share and customers, purchasing cartels, private monopolization related to prices

Private monopolization to eliminate competitors, etc.

Introduce a leniency program

Introduce a leniency program into the surcharge system to provide an incentive for firms to quit cartel activities and quickly restore competition.

Reduction in or exemption from surcharge if a firm fulfills the legal requirements

- Self-reporting of information to the JFTC by a firm that committed violations
- A firm voluntarily quits unlawful conduct

Review criminal prosecution procedures and penal provisions

Introduce criminal investigation process from the standpoint of increasing use of criminal prosecutions and ensuring due process and review penal provisions, in order to strengthen the enforcement and deterrent powers of all the Antimonopoly Act enforcement systems

Introduce criminal investigation process

Penalties related to indirect investigation and non-observance of decisions should be increased referring to provisions of other statutes

Consider the introduction of penalties to unfair trade practices such as those unlawful conducts causing grievous injury and substantially obstructing competitive discipline from the standpoint of consumer protection, etc

Review hearing procedures, etc.

Review hearing and other procedures from the standpoint of assuring due process and increasing efficiency

Change procedures so that elimination measures and surcharge payment orders take effect simultaneously

Change recommendations to cease and desist orders, and provide opportunities for entities to submit opinions prior to issuance of orders

Establish a system to make entrepreneurs pay or place in escrow the full amount of surcharges that should be paid when a hearing procedure is initiated based on the complaint against surcharge payment order

Part 2 Comprehensive Review of Monopoly and Oligopoly Regulations

Prompt and effective action against conduct to prevent market entry when essential facilities exist

Monopoly and Oligopoly regulations should be focused on the elimination of conduct to prevent market entry
Highlighten "essential facilities" as a modern monopoly problem

(Definition of essential facilities)

- (1) Facilities possessing natural monopoly characteristics, de facto standards based on technology possessing network externalities*, or scarce resources for which an institution such as the central government exclusively allocates usage rights
 - (2) Facilities whose use is necessary and indispensable when providing goods and/or services
 - (3) Facilities that competitors or other entities will face extreme difficulty in constructing in order to compete with existing providers
- In addition to the above basic requirements, JFTC should take into consideration (i) the influence on long-term competition at a dynamic level, such as technology development or capital investment, and (ii) the size of the market concerning use of facilities

* A result in which use value rises as the number of participants in the network increases, also further increasing the number of participants.

Promptly and effectively eliminate conduct to prevent market entry by entrepreneurs having an overwhelmingly advantageous competitive position as a result of owning essential facilities

Define the following conduct to prevent market entry as unlawful when conducted without reasonable cause, and enact appropriate measures (injunction orders, supplementary measures to restore competition)

- (1) Conduct by entrepreneurs that monopolize and share essential facilities
 - Rejection of, discrimination in, or restrictions or obligations concerning the use of the facilities
 - Conduct to prevent the shift of customers to competitors (long-term agreements accompanied by large-sum penalties for breach of contract, etc.)
- (2) Conduct in parallel to prevent market entry by two or more entrepreneurs, which have been exclusively allocated usage rights for essential facilities by an institution such as the central government,

Direction of comprehensive review of the reporting system concerning parallel price increases

Abolish this system, taking into consideration changes in economic conditions, changes in corporate awareness and administration costs

- Aggressively implement investigation into conduct as well other than price increases in oligopoly-type business segments that have been legalized in advance
- Implement effective exposure of parallel price increases that have a cartel in the background by methods such as introduction of a leniency program