

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

Revitalization of Japan's economy based on market principles and the principle of self-discipline



Move entrepreneurs away from "follow-the-pack" and "dango" consultation habits
• Stimulate new market entry



Strengthen Antimonopoly Act enforcement and deterrence capabilities

※ A supplemental resolution of the bill to reposition the JFTC to an external organ of the Cabinet Office asked to "strengthen enforcement" of the Antimonopoly Act

Required responses

Strengthen deterrence against conduct such as cartels, bid rigging, etc.

Strengthen measures against complicated or sophisticated schemes (highly secretive cartels, etc.)

More aggressive criminal prosecution against malicious and serious violations

More efficient and appropriate hearing procedures

Prompt and effect enforcement of the Antimonopoly Act in the IT and public utilities sectors

Comprehensive review points

○ Review the surcharge system from the perspective of effectiveness

• Shift from collection of unreasonable profits to measures that make guilty parties responsible for losses including social losses from unlawful conduct, and increase the surcharge calculation percentage

• Expand the range of surcharge applications (to cover private monopolization to eliminate competitors, etc.)

○ Introduce a leniency program to the surcharge system

• Reduction in or exemption from surcharges if firm fulfills the legal requirements (Entrepreneurs that committed violations report voluntarily on their violations to the JFTC, etc.)

○ Review the JFTC's investigation authority and hearing procedures

• Introduce criminal investigation process from the standpoint of increasing use of criminal prosecutions

• Review hearing procedure provisions from the standpoint of ensuring due process and increasing efficiency

○ Review monopoly and oligopoly regulations

• Prompt and effective action against conduct to prevent market entry by incumbents that possess essential facilities*

※Facilities whose use is necessary and indispensable when providing goods and/or services in sectors such as the public utilities sector (installed capital such as transmission networks and subscriber line networks, de facto standards in technology sectors, airport take-off and landing slots, etc.)

Reference

●Zero tolerance for entrepreneurs that repeatedly commit violations

One entrepreneur has been assessed surcharges totaling in excess of ¥300 million for four violations since the surcharge calculation rate was increased in 1991

●The U.S. and the EU levy large fines

U.S.	Penalty of not more than \$10.0 million or an amount not more than two times the amount of profit and losses (The specific penalty amount is decided within a range of 15%-80% of sales of the goods in question during the violation period)
EU	Monetary sanction of not more than 1.0 million euros or not more than 10% of the total sales (Allowance of 20.0 million euros as a standard in cases of especially serious violations)
Japan	6% (in principle) of sales of the goods in question during the violation period (3% for small and medium-size entrepreneurs)

●The U.S. and the EU have used a leniency programme to expose numerous cartels. the OECD also recommends introduction of a leniency program to each country. (Note: US\$1.00 = 1 euro, ¥120)

• Over the past five years (1998 - 2002), the U.S. has levied penalties equaling approximately ¥180.0 billion and the EU has levied monetary sanctions equaling approximately ¥370.0 billion by exposing violations such as cartels through use of the leniency system
• Japanese firms also has applied leniency program in the U.S. and the EU

●Three-Year Program for Promoting Regulatory Reform (Second Revision) (Cabinet decision of March 2003)

Noted with regard to the public utilities sectors that "The Fair Trade Commission should strengthen the investigation capacities and functions, and ensure speedy handling concerning suspected instances of violations of the Antimonopoly Act, from the perspective of ensuring fair competition in the sectors concerned where the government is proceeding to open markets."