

# The Bill to Amend the Antimonopoly Act Approved

April 20th, 2005  
Fair Trade Commission

It is significant policy challenge for Japan to promote structural reform and to realize economic society based on market mechanism and principle of self-discipline. The Bill to amend the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Antimonopoly Act) which aims to depart from bid rigging and collusive practices and to establish competition policy appropriate for 21<sup>st</sup> century passed the House of Councilors and was approved today. The amended act is scheduled to be promulgated on April 27<sup>th</sup>, 2005.

## I. Deliberation of the act at the Diet

### The 161<sup>st</sup> Diet Session

#### The deliberation at the House of Representatives

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| Nov. 4 <sup>th</sup> , 2004                                   | Explanation of the bill and discussion at the plenary meeting of the House of Representatives            |
| Nov. 12 <sup>th</sup>   | Explanation of a reason of submission of the bill at the Committee on Economy, Trade and Industry (CETI) |
| Nov. 17 <sup>th</sup> , 19 <sup>th</sup> and 24 <sup>th</sup> | Discussions at the CETI  |
| Nov. 26 <sup>th</sup>   | Hearing from academics and interested parties at the CETI  |
| Dec. 1 <sup>st</sup>  | Discussion at the CETI   |

### The 162<sup>nd</sup> Diet Session

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| Mar. 9 <sup>th</sup>  | Discussions at the CETI, the House of Representatives       |
| Mar. 11 <sup>th</sup> | Discussions and vote at the CETI                            |
| Mar. 15 <sup>th</sup> | Vote at the plenary meeting of the House of Representatives |

#### The deliberation at the House of Councilors

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| Apr. 6 <sup>th</sup> | Explanation of the bill and discussion at the plenary meeting of the House of Councilors |
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- Apr. 7<sup>th</sup> Explanation of a reason of submission of the bill at the Committee on Economy, Trade and Industry (CETI)
- Apr. 14<sup>th</sup> Discussions at the CETI
- Apr. 18<sup>th</sup> Hearing from academics and interested parties at the CETI
- Apr. 19<sup>th</sup> Discussions and vote at the CETI
- Apr. 20<sup>th</sup> Vote at the plenary meeting of the House of Councilors

**II. Main Features of the Amendment to the Antimonopoly Act**

1. Revision of the surcharge system

(1) Increase the surcharge rate

Manufacturers, etc.:	Large-sized enterprises:	6%	10%
	Small and Medium-sized enterprises (SMEs):	3%	4%
Wholesalers:	Large-sized enterprises:	1%	2%
	SMEs:	1% (no change)	
Retailers:	Large-sized enterprises:	2%	3%
	SMEs:	1%	1.2%

(2) Impose a surcharge rate of 150% of the normal respective surcharge rate on those enterprises that repeat violations that were responsible for the surcharge payment order within 10 years.

(3) Reduce a surcharge rate of 20% of the normal respective surcharge rate on those enterprises whose duration of violation is less than 2 years and who have ceased the unlawful conduct more than one month before the JFTC initiates an investigation (except for the case falling under above (2)).

(4) Expand and clarify the scope of conduct subject to the surcharge system  
 Current provision: Unreasonable restraints of trade (cartels) restraining the price of goods or services and those affecting the price of goods or services by substantially restraining the volume of supply

Amendment: Unreasonable restraints of trade (cartels) restraining the price of goods or services and those which may affect the price of goods or services by substantially restraining the volume of supply or purchase, market share, or customers or suppliers; and  
Private monopolization through controlling the business activities of other enterprises which restrains the price of their goods or services or which may affect the price of their goods or services by substantially restraining the volume of their supply, market share or customers.

(5) Introduce an adjustment clause in situations where criminal fines are also imposed (Half the amount of the criminal fine shall be deducted from the surcharge in cases where both surcharge and criminal fines are imposed on a corporation.).

### 2. Introduction of a leniency program

Immunity from or reduction in surcharge payment is applied to enterprises that meet statutory conditions (e.g. enterprises committing unreasonable restraints of trade shall voluntarily disclose the existence of violations and provide related information to the JFTC and cease the violation before initiation of an investigation.).

1st applicant before initiation of investigation:	Total immunity
2nd applicant before initiation of investigation:	50% deducted
3rd applicant before initiation of investigation:	30% deducted
An applicant after initiation of investigation:	30% deducted

Note: The total number of enterprises that may be applied to the leniency program is no more than 3.

### 3. Introduction of compulsory measures for criminal investigations, etc.

(1) Compulsory measures for criminal investigations are introduced where a criminal accusation is being pursued.

(2) Penalties against corporations that are in contravention of elimination orders are strengthened (a fine of not more than 300 million yen).

(3) Penalties against interference with inspection, etc. are strengthened (a fine of not more than 200 thousand yen penal servitude for not more than one year or a fine of not more than 3 million yen) and double punishment for corporations (in addition to their responsible employees) is introduced.

(4) The provision stipulating that the Tokyo High Court has original jurisdiction over a criminal case for unreasonable restraints of trade, etc. is abolished. And district courts have jurisdiction of a criminal case for unreasonable restraints of trade, etc.

#### 4. Revision of hearing procedures, etc.

(1) A system is introduced by which the JFTC issues elimination orders after having provided the respondent an opportunity to submit its opinions, etc. and initiates hearings when the elimination orders are objected to (Recommendation system is abolished.).

(2) Extend the statute of limitations from 1 year to 3 years for the JFTC to issue elimination orders to ensure elimination of the violation after termination of the unlawful conduct.

(3) A system is introduced so that the surcharge payment order does not lose effect in cases where hearing procedures have been initiated. And the JFTC may collect a surcharge by adding arrears of the interest rate provided for by the Cabinet order if any person fails to pay a surcharge by the designated deadline and the surcharge payment order is sustained by a decision after hearing procedures.

(4) Improve provisions on hearing procedures by hearing examiners.

#### 5. Others

(1) The provision that requires a report on parallel price increases is abolished.

(2) The provision is prescribed in the supplementary clause that the revised Antimonopoly Act shall be reviewed within two years after the amendment takes effect.

### **III. Date to become effective**

The amendment shall be put into force on the day provided by the Cabinet order within one year after the date of promulgation. However, the abolishment mentioned in II. 5 (1) above shall be put into force on the day of one month after the date of promulgation.