

**Major Opinions Expressed at the Meetings between Local Experts
and the Japan Fair Trade Commission
(Tentative translation)**

November 22, 2007
Japan Fair Trade Commission

Since 1972, the Japan Fair Trade Commission (JFTC) has been soliciting opinions and requests on its applicable laws, such as the Antimonopoly Act (AMA), and on the administration of the JFTC through holding meetings with local experts with knowledge of economic conditions in their regions.

In Fiscal Year 2007, meetings with representatives and members of economic organizations, such as the Chamber of Commerce in each region, were held on October 2, 22, 23 and 24, as detailed in Appendix 1.

An overview of the major opinions expressed by the experts at the meetings between local experts and the JFTC is provided in Appendix 2. Paying attention to these opinions, the JFTC intends to make efforts to appropriately implement the competition policy.

The following is a summary of the major opinions expressed at the above-mentioned meetings.

1. Regarding the amendment to the Antimonopoly Act

- Further measures need to be incorporated into the upcoming amendments to the AMA to make it possible for small- and medium-size enterprises to sufficiently compete with large corporations. (Sapporo)
- According to “Prospective Amendments to AMA” (October 16, 2007), exclusionary type of private monopolization is subject to surcharge, but not to unjust low price sales. Accordingly, it is not sufficient to deter unjust low price sales. The amendments are needed to allow taking measures against such violation before small- and medium-size enterprises are forced into bankruptcy. (Kofu)
- According to current deliberations on the amendment to the AMA, abuse of superior bargaining position would be subject to surcharge. The direction is highly appreciated by small- and medium size enterprises. (Ohtsu)
- With respect to collective lawsuits filed by consumers’ associations, eligibility requirements for organizations to become legally qualified organization are too strict under the Consumer Contract Act. Thus, it would be easier to form organizations if the Act against Unjustifiable Premiums and Misleading Representations provides the eligibility requirements little less stringent. (Kofu)
- The Act against Unjustifiable Premiums and Misleading Representations will be amended to approve the consumer associations’ right to take legal action against

misleading representations. This is a bold move and is to be applauded. (Ohtsu)

- The rate of surcharge was increased by the 2005 amendments, but a further increase may be necessary to deter violation. (Miyazaki)

2. Regarding the AMA

- It is necessary to discuss sufficiently on the issue of how to ensure free competition in the society as a whole. There are doubts about the viewpoint that major companies and local small- and medium-size enterprises can compete with each other on an equal footing. Thus, the issue should be addressed through competition policy as well as other measures in an integrated manner. (Tokushima)
- The leniency system is significant in the sense that it brings deterrent effects against violative conducts. Further efforts including PR campaigns are strongly recommended in order to increase the preventive effects of violation, so that the presence of the leniency system would bring deterrent power. (Kofu)
- It is necessary to monitor price increases of kerosene and business actions of enterprises as well as to take strict measures if there is any violation against the AMA such as cartel. (Sapporo, Yamagata)
- In the retail industry of gasoline, there is a huge price difference between major gas stations and small- and medium-size gas stations, which can be called discriminatory pricing. Due to this price gap, many small- and medium-size gas stations are being forced to close. Such a situation cannot be called normal. Strict and thorough investigations are requested. (Ohtsu)
- It is required to take prompt measures to prevent unjust low price sales and to improve appropriateness of subcontract transactions from the viewpoint of protecting small- and medium-size enterprises. (Yamagata)
- Recently, low price biddings are often observed in the construction industry. There would be doubt that a main subcontracting enterprise is avoiding a loss by making subcontractors conclude the contract at a low rate in order to escape regulation of unjust low price sales. (Yamagata)
- Clear criteria seem to be necessary in order to develop fair rules. Unjust low price sales would be easier to understand if there were clear criteria; for example, if a price is less than a specific level even without adverse effect to other business entities, such a price setting is considered to be unjust low price sale. (Kofu)
- Under the circumstances where the prices of raw materials used in food products are rising, there is a concern that suppliers may be left to carry the burden if large retailers maintain the present supply price by exercising their buying power. Thus, monitoring abuse of superior bargaining position is requested. (Sapporo, Ohtsu)

3. Regarding the Act against Delay in Payment of Subcontract Proceeds

- Subcontractors are placed in difficult situation where the delivery price to a main subcontracting enterprise is kept low while the cost of purchase is rising. Thus, it is necessary to take appropriate measures based on a clear understanding of the actual situation that subcontractors are facing. (Ohtsu)
- The JFTC needs to be aware of cases where a very small subcontractor may lose business if they ask a main subcontracting enterprise to issue a written purchase order. (Hiroshima)
- A large part of business of local enterprises is comprised of those derived from subcontracts or sub-subcontracts ordered by main subcontracting enterprises outside the prefecture. To prevent subcontractors from being bullied by main subcontracting enterprises, it is requested that the JFTC strengthen the enforcement against violations of the Act against Delay in Payment of Subcontract Proceeds and then make efforts to form the fair competitive market environment. (Miyazaki)

4. Regarding the Act against Unjustifiable Premiums and Misleading Representations

- There has recently been a string of incidents of misleading representations. Close market monitoring is requested so that consumers in general can make an appropriate choice in choosing products. (Toyama, Hiroshima)
- With respect to a representation that indicates the effect or performance of a product, consumers have no choice but to refer to the given representation in choosing a product. Because the impact of misleading representation on consumers could be large, it is requested to make efforts to promptly investigate and take measures against misleading representations. (Miyazaki)

5. Reform of regulations and public utilities

- Relaxation of economic regulations should be carried out on the premise of a clear distinction between social regulations and economic regulations. (Tokushima)

6. Organization and enforcement system of the JFTC

- In order to control abuse of superior bargaining position or violation of the Act against Delay in Payment of Subcontract Proceeds, the current number of officials of the JFTC appears to be too few at about 760. The JFTC should increase its number of officials and undertake stricter investigations. (Ohtsu)

7. Public Relations

- Expansion and enhancement of the consultation system is needed in order to support the compliance system of enterprises. A deeper understanding of the laws is one way to reduce violations. To that end, it is requested to establish a consultation section of the JFTC in more accessible places. (Toyama)

- Owing to an increasing number of cases detected by the JFTC, public awareness on bid-rigging has recently been changed. But public understanding about competition policy seems still lower than the level hoped for by the JFTC. More opportunities for talks with the public would appear to be necessary to gain understanding from people with a wide range of backgrounds. (Miyazaki)
- It is recommended to provide in-depth training for industrial associations and corporations so that they are made aware that incidents such as misleading representations may undermine the trust of consumers, and consumers will eventually walk away from the enterprise. (Toyama)
- Representations about food products involve various laws, and consumers do not understand the scope and contents of the Act against Unjustified Premiums and Misleading Representations. Further publicity activities are requested so that the scope and contents of the Act can be easily understood by consumers. (Miyazaki)
- Holding lessons on the AMA for junior-high school students is a good method, so it is recommended to enhance such activity. (Toyama, Miyazaki)
- The guidelines listed in the website are hard to understand. More specific cases should be listed so that companies can make judgments by themselves. (Hiroshima)

Appendix 1

List of the Discussion Sessions between Local Experts and the Japan Fair Trade Commission

Place	Date	Commissioner
Sapporo-shi	October 23	Yasuo Hamasaki
Yamagata-shi	October 2	Yasuo Hamasaki
Kofu-shi	October 22	Akira Goto
Toyama-shi	October 24	Akira Goto
Ohtsu-shi	October 23	Akio Yamada
Hiroshima-shi	October 2	Seisui Kamigaki
Tokushima-shi	October 2	Akio Yamada
Miyazaki-shi	October 23	Seisui Kamigaki

I. Hokkaido Block (Sapporo-shi)

1. Regarding the amendment to the Antimonopoly Act

- Please examine what form the measures for small- and medium size enterprises should take in relation to free and fair competition. Further measures need to be incorporated as part of the upcoming amendment to the Antimonopoly Act to make it possible for small- and medium-size enterprises to compete successfully with large corporations.

2. Regarding the Antimonopoly Act

- There are substantial regional discrepancies with respect to kerosene prices in Hokkaido. The price remains stuck at a high level over a long period, particularly in rural areas. Please monitor closely the causes of kerosene price rises and business movements. Please also take strict action if there is any suspicion of a cartel being formed in violation of the Antimonopoly Act.
- Under the circumstances where the prices of raw materials used in food products are rising, it is a concern that suppliers may be left to bear the burden if large-scale retailers maintain the supply price at the current level by exercising their buying power, as some large suppliers have announced a price freeze. Therefore, please monitor any abuse by companies of their dominant bargaining position.
- Regulatory reform has been promoted, reflecting the globalization of the economy, which has resulted in lack of competition in local regions with a few large corporations becoming dominant. In order to revitalize battered local economies, each competent authority is requested to review and promote appropriate measures in cooperation with each other.
- Despite the fact that warning cases are disclosed and social sanctions are practically imposed on a subject party, there is the issue that the subject party cannot take any countermeasures, such as filing a petition of objection. Thus, reviews should be made, for example, by making it confidential or taking legal action.

II. Tohoku Block (Yamagata-shi)

1. Regarding Antimonopoly Act

- The price of kerosene has nearly doubled compared to two years ago. It just does not make sense that the price of kerosene has increased at a greater rate than that for crude oil. Careful attention should be paid to kerosene price changes as this commodity is one of the daily essentials.
- As a company becomes larger, for example, through a merger, the ability of subcontractors to negotiate on price becomes relatively lower. Thus, when conducting a merger review, ample consideration should be given to the impact on the local small- and medium-size subcontractors.
- Recently, cases of low price bidding are often seen in the construction business. The primary contractors may be avoiding a loss by making subcontractors undertake the contract at a low rate in order to escape prosecution for unjustifiable low price sales.
- Please take prompt action to prevent unjustifiable low price sales and improve subcontract transactions in order to protect small- and medium-size enterprises.

III. Kanto-Koshinetsu Block (Kofu-shi)

1. Regarding amendment to the Antimonopoly Act

- Please maintain a steady approach to applying the Antimonopoly Act. Please provide relief to weak enterprises by flexibly responding to economic conditions if they are being oppressed by the current situation. Small- and medium-size enterprises are extremely vulnerable. Please incorporate relief for vulnerable enterprises when discussing amendment to the law.
- Under the basic concept of the amendment to Antimonopoly Act, an exclusive private monopoly is subject to surcharge, but not unjustifiable low price sales. Thus the law does not act as a deterrent for cases of unjustifiable low price sales. Please review the law before small- and medium-size enterprises are forced into bankruptcy because at present measures are taken against unjustifiable low price after periphery enterprises went into bankruptcy.
- With respect to lawsuits filed by consumers' associations, the eligibility requirements for organizations are too strict under the Consumer Contract Act. Thus it would be easier to form organizations if the requirements were to be less stringent under the Act against Unjustifiable Premiums and Misleading Representations.

2. Regarding the Antimonopoly Act

- A surcharge reduction and exemption system is significant in the sense that it deters offending activity. Further efforts including PR campaigns are strongly recommended in order to increase the preventive effect so that the presence of the surcharge reduction and exemption system would act as a deterrent.
- Clear criteria seem to be necessary to develop fair rules. The expression used in the Antimonopoly Act with respect to unjustifiable low price sales is quite abstract: "tend to cause difficulties to business activities of other entrepreneurs." Unjustifiable low price sales would be easier to understand if clear criteria existed; for example, an action is considered to be an unjustifiable low price sale if a price is less than specific price. This needs to be done before other business entities are affected. Thus, more specific criteria should be developed.
- Responses to unjustifiable low price sales of gasoline attract the attention of consumers. There is a total lack of clarity regarding the distribution process, the relationship between purchase price and retail price, and as to whether the difference in quality of gasoline is reflected on the price. Please investigate and correct unjustifiable low price sales and provide information about the result.

IV Chubu Block (Toyama-shi)

1. Regarding Antimonopoly Act

- Please consider what fair and free market competition means in local areas.

2. Regarding the Act against Unjustifiable Premiums and Misleading Representations

- Please conduct strict monitoring in response to a string of incidents of false representation of food products.
- With respect to setting of service costs, there are many obscure cases from the point of view of consumers: particularly in the case of the basis of estimation used in relation to housing. Thus, it is necessary to have rules that require companies to disclose to consumers the basis and details of service costs.
- Information pertaining to the issue of representation is shared among three parties: namely, prefectural governments, consumer protection centers, and the National Consumer Affairs Center of Japan. The Japan Fair Trade Commission is requested to provide information quickly to allow a prompt response to false or misleading representations, in cooperation with these organizations.

3. Public Relations

- Expansion and enhancement of consultative system is necessary to support the corporate compliance system. A deeper understanding of the laws is a way to reduce violations. To that end, please establish consultative sections of the JFTC in more accessible places.
- Establishment of compliance systems in companies is necessary in order to respond to a series of false representation cases. Please disclose cases of previous violations and other related information through the media in order to improve compliance.
- Please provide in-depth training for industrial associations and corporations so that they are made aware that scandals such as misleading representation may undermine the confidence of consumers and consumers will eventually walk away from the company. If there are pamphlets (2-3 pages long) explaining the Act against Unjustifiable Premiums and Misleading Representations, the prefecture would like to distribute them to business associations.
- It is expected that many Chinese and Russian companies will come to Toyama prefecture. It is therefore important to thoroughly disseminate the Antimonopoly Act and the Act against Delay in Payment of Subcontract Proceeds to such foreign companies.
- It seems that the number of lessons being taught on the Antimonopoly Act for junior-high school students is not enough. Please enhance this activity because it is a good approach.

V. Kinki Block (Ohtsu-shi)

1. Regarding the amendment to the Antimonopoly Act

- In current deliberations on the amendment to the Antimonopoly Act, abuse of dominant bargaining position will be subject to surcharge. It is a move that is highly appreciated by small- and medium size enterprises.
- In order to strengthen the overall position of small- and medium-size enterprises, it is necessary to drastically review and improve the trading environment surrounding small- and medium-size enterprises; particularly it is essential to enhance the regulations on abuse of dominant bargaining position exercised by large corporations.
- The Act against Unjustifiable Premiums and Misleading Representations will be amended to give consumer associations the right to take legal action against misleading representations. This is a bold action and is to be applauded.

2. Regarding the Antimonopoly Act

- In the retail gasoline trade, there is a huge price gap between major gas stations and small- and medium-size gas stations, which can be called “discriminatory pricing.” Because of this, many small- and medium-size gas stations are being forced to close. Such a situation cannot be tolerated. Thorough investigations are requested.
- Under the circumstances where prices of raw materials increase,, it is important for the Japan Fair Trade Commission to consider how to respond to the fact that small- and medium-sized enterprises are having difficulty regarding how to propose a price increase to their clients or large corporations such as supermarkets. Please listen to the unheard voice of the small- and medium-size enterprises.

3. Regarding the Act against Delay in Payment of Subcontract Proceeds

- Subcontractors are put in difficult situation where the delivery price to a parent company is kept low while purchase prices are rising. Thus, please take appropriate action based on a clear understanding of the actual situation subcontractors are facing.

4. Regarding the Act against Unjustifiable Premiums and Misleading Representations

- Since many of the issues regarding misleading representations are locally based, it is important for local governments to share the responsibility in dealing with the issues.

5. Organization/system of the Japan Fair Trade Commission

- To control abuse of a dominant bargaining position or violation of the Act against Delay in Payment of Subcontract Proceeds, the current number of members of the Japan Fair Trade Commission appears to be too few at about 760. The number of members should be increased so that stricter investigations can be undertaken..

VI. Chugoku Block (Hiroshima-shi)

1. Regarding the amendment of the Antimonopoly Act

- Companies in the distribution industry are getting larger through M&As and local companies are no match for large companies. This may be associated with the so-called “gap issue.” Please consider this situation when reviewing the Antimonopoly Act.

2. Regarding the Act against Delay in Payment of Subcontractor Proceeds

- Please thoroughly and continuously address how to prevent violations of the Act against Delay in Payment of Subcontractor Proceeds, in cooperation with other ministries and agencies.
- There are cases where a very small subcontractor may lose business if they ask a major company to issue a purchase order.

3. Regarding the Act of Unjustifiable Premiums and Misleading Representations

- We are seeing a rash of cases of misleading representations such as the Nagoya Cochin case. Please conduct strict market monitoring so that consumers can make sound decisions when selecting products.
- Please put a whistle blowing system into force positively since many cases of misleading representation are brought to light by in-house whistle blowers.

4. Public Relations

- The guidelines listed in the website are hard to understand. More specific cases should be listed so that companies can make judgments by themselves.

VII. Shikoku Block (Tokushima-shi)

1. Regarding the Antimonopoly Act

- Some companies do not comply with the laws and regulations and the guidelines of the Japan Fair Trade Commission. A more effective approach might be to approve regulations that the industry would voluntarily impose upon itself. In addition, please further strengthen investigations of violations of the Antimonopoly Act.
- The Japan Fair Trade Commissions only takes up high-profile cases which attract public attention. Please actively address local incidents which cause damage to local small- and medium-size enterprises by increasing the number of personnel, etc.
- Abuse of dominant bargaining position by large retailers has been greatly curtailed, but abuse by small- and medium-size general merchandise stores in local areas still persists. This is because small- and medium-size general merchandise stores think that regulations against abuse of dominant bargaining position apply only to large corporations, but not to them. Thus, please take up cases of abuse of dominant bargaining position by small- and medium-size general merchandise stores and make efforts to disseminate information thoroughly.
- It is necessary to have detailed discussions about the issue of how to ensure free competition in society as a whole. There are doubts about the argument that major companies and local small- and medium-size enterprises can compete on an equal footing. So, the issue should be addressed in an integrated manner in conjunction with other measures, in addition to the competition measures.
- It is true that stricter regulations are applied to violations of the Antimonopoly Act, including bid-rigging or cartel formation. However, if the importance of competition is stressed too much, local small- and medium-size enterprises may be forced out of business as the number of large companies starting up businesses in local areas like Tokushima is increasing. This is not to say that cartels are acceptable, but please implement measures based on a clear understanding that small- and medium-size enterprises are facing severe hardships.

2. Regulatory reform of public utilities

- Perhaps reflecting the Japanese characteristic that everyone follows everyone else, when the time comes to reform regulations in Japan, every single regulation seems to be subject to amendment. Regulatory reform should be carried out with a clear distinction between social regulations and economic regulations. (Tokushima)

VIII. Kyushu Block (Miyazaki-shi)

1. Regarding the amendment to the Antimonopoly Act

- The rate of surcharge was increased by the amendment to the Antimonopoly Act of 2005,

but further increases may be necessary to deter offending activity.

2. Regarding the Antimonopoly Act

- Please continue with efforts to strengthen the investigation of abuse of dominant bargaining position by large corporations and violations of the Act against Delay in Payment of Subcontract Proceeds to assist small- and medium-size enterprises and subcontractors in local areas.

3. Regarding the Act against Delay in Payment of Subcontract Proceeds

- Projects, which are subcontracted or sub-subcontracted by major companies outside the prefecture to local companies, comprise most of the business of local companies. Please make efforts to enhance measures to prevent violations of the Act against Delay in Payment of Subcontract Proceeds and to develop a fair market, in order to prevent “bullying of subcontractors.”

4. Regarding the Act against Unjustifiable Premiums and Misleading Representations

- With respect to a representation that indicates the effect or performance of a product, consumers have no other means but to refer to the given representation when selecting a product. Please make efforts for speedy investigation and action because the impact of misleading representations on consumers could be large.

5. Public Relations

- Bid-rigging has long been regarded as a business practice in the local construction industry. However, the industry has been thrown into confusion recently because bid-rigging for public projects has frequently led to prosecutions being brought. It is necessary in the future to implement competition measures with due consideration to gaining the understanding of business entities about the purpose of such measures.
- Due to an increasing number of cases detected by the JFTC, public awareness about bid-rigging has recently been raised. Still, public understanding about competition measures seems lower than the level hoped for by the JFTC. More opportunities for talks with the general public would appear to be necessary to gain understanding from people with a wide range of backgrounds.
- Representations about food products involve various laws and consumers do not understand the scope and contents of the Act against Unjustified Premiums and Misleading Representations. Further publicity activities are requested so that they can be easily understood by consumers.
- In order to fully educate consumers about the organizations and competition measures of the Japan Fair Trade Commission, booklets and the like are not sufficient to attract the public's attention. Thus, please improve PR materials, for example, by producing

large posters, etc.

- Lessons on the Antimonopoly Act for junior-high school students would be a good PR method so please enhance this activity.