

Prospective Amendments to AMA

1. Review of measures against infringements of the AMA

(1) Introduction of surcharge imposed against exclusion of new entry, conducts which adversely affect fair competition, etc.

Introduction of surcharge imposed on those entrepreneurs that engage in:

- exclusionary type of private monopolization,
- particular types of misleading representations and abuses of superior bargaining position among types of conducts categorised as unfair trade practices.

(2) Review of measures against cartels, bid-riggings, etc.

- Extension of the statute of limitations for administrative order from current three-year to five-year (maximum period between termination date of infringement and issuance of such order).
- No changes of the current surcharge rate (10% in principle), surcharge calculation period (up to three years), and adjustment provisions on the amounts of surcharge and criminal penalty.

(3) Consideration on additional mitigating or aggravating factors in calculating surcharge amount

- Increase of surcharge rates imposed on entrepreneurs that have played a leading role in concerned cartels, bid-riggings, etc.
- Review leniency program on surcharges to extend the framework in which, regarding cartels or bid-riggings, the JFTC reduces surcharge rates to entrepreneurs that have provided with the JFTC facts other than those the JFTC has already found out.

2. Review of procedural provisions of the AMA

(1) Warning

Stipulating provisions regarding the issuer of and requirements for warning, as well as the procedures including hearing of opinions.

(2) Ensuring fairness and transparency of public hearing examination procedures

Stating clearly:

- legal professional shall be included in a panel of public hearing examiners,
- the Commission shall make clear in its decision the reason why the Commission

determines to issue a decision different from a draft decision presented by hearing examiners, when such a case happens,

- the Commission shall not designate as a hearing examiner an official who has conflict of interest with the person who has requested the hearing procedures on a specific case.

3. Strengthening of private enforcement system

(1) Introduction of group lawsuit system

- Establishing a system allowing specific consumer organizations to file injunction suits against misleading representations prohibited by the Act against Unjustifiable Premiums and Misleading Representations.

(2) Special provisions concerning document production order in injunction suits

- Introduction of special rules, similar to the ones in the Patent Act, etc., to allow litigants to be able to ask the court to issue document production order for a broader range of documents in private injunction suit over unfair trade practices than those in usual civil lawsuit cases.

4. Review of provisions concerning notification and report to the JFTC

(1) Revisions of notification and reporting system stipulated in the Chapter 4 of the AMA

- Introduction of pre-notification system to business combination conducted by acquiring shares, as other types of business combination including mergers.
- Revisions of the current notification thresholds applied to foreign corporations in order to ensure that business combination including foreign corporations is notified in case it would affect the Japanese market.
- Expanding the exemption of the notification requirement (currently, business combination between corporations in parent-subsidiary relation or in sibling relation is not required to be notified.).

(2) Abolishment of the notification system concerning trade associations

- Abolishing the notification requirement imposed on trade associations at the time when they have been established, dissolved, etc.

5. Other issues

(1) Certain limitation on access to case records by interested persons

- Limiting a scope of access to case records by interested persons (provided at Article 70-15 of the AMA), if there is a justifiable reason for such limitation.

- (2) Information exchange and sharing with foreign competition authorities
- Introduction of a provision which stipulates certain conditions to be satisfied when the JFTC would exchange or share information with foreign competition authorities.
- (3) Review and clarification of how entrepreneurs affiliated with a violator shall be treated in a leniency application, cease-and-desist order and surcharge payment order
- Review of the current provisions to deal with a case in which more than one companies, which are affiliated with each other and implicated in the same infringement, submit a leniency application as one group.
 - Review and clarification of the current provisions so that the JFTC can, when de-merger or business transfer has been conducted by a violator, issue cease-and-desist order and/or surcharge payment order to succeeding firms.