

Enforcement of the Antimonopoly Act in FY2023 (Summary)

May 28, 2024
Japan Fair Trade Commission

Features of FY2023

- Addressed Cases in Sectors Where Regulatory Reforms Have Been Promoted Such as Energy Sectors

Strictly tackled bit-rigging (in private demand) cases such as the supply of city gas ordered by large-scale users, and unfair trade practices involving fishery cooperatives in the trade of dried seaweed which is the first legal measure applied in the matter

- Responded to the Digital Sector and Emerging Business Fields

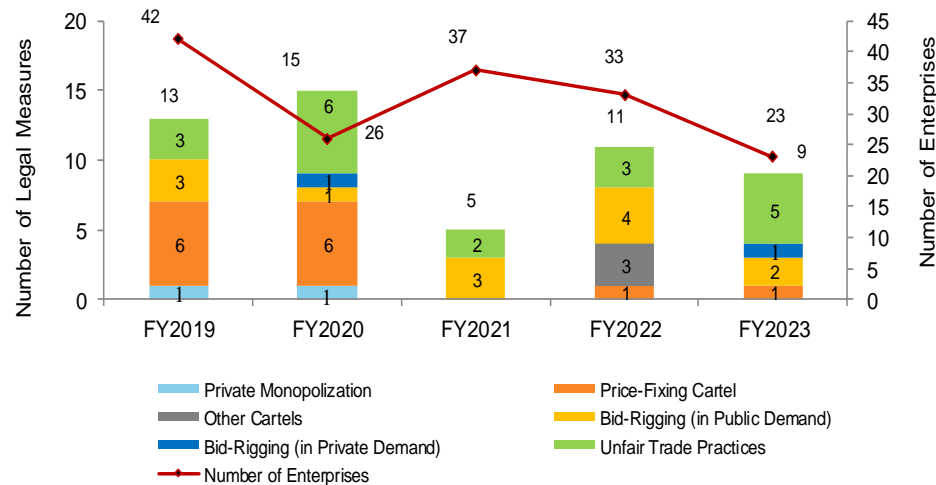
Investigation started into suspected Antimonopoly Act violations by Google LLC, etc. and the application of legal measures to trade practices in the marriage matchmaking business sector

- Tackled Conduct that Unfairly Disadvantages Small and Medium-Sized Enterprises

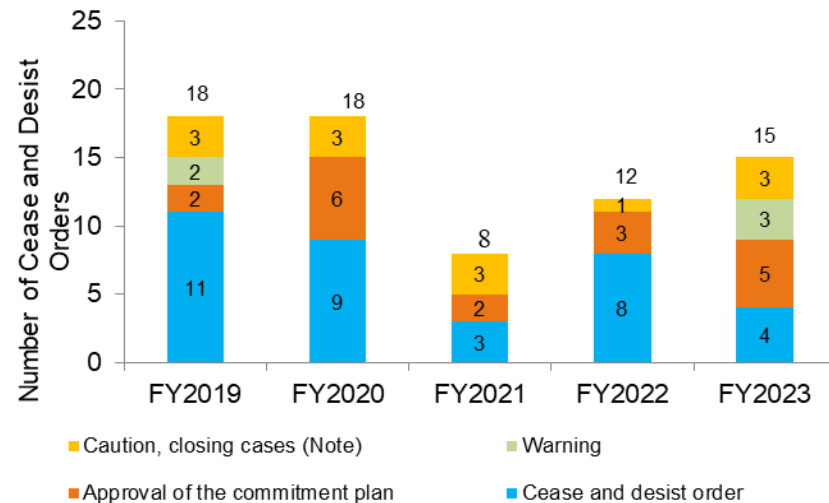
Actively responded to cases of abuse of superior bargaining position by large-scale retailers against suppliers, and promptly addressed conduct by ordering-side operators that unfairly disadvantage small and medium-sized enterprises in connection with the implementation of the invoice system and price pass-through due to the recent sharp rise especially in labor costs, raw material prices, and energy costs

● Nine Legal Measures (Four Cease and Desist Orders and Five Approvals of Commitment Plans)

【Number of Legal Measures (Note 1)】



【Number of Cease and Desist Orders, etc.】



(Note 1) “Legal Measures” consist of Cease and Desist Orders, Surcharge Payment Orders, and approvals of Commitment Plan. If a Cease and Desist Order and a Surcharge Payment Order are jointly issued for a single case, the number of legal measures is counted as one.

(Note 2) If a case relating to both provisions concerning Private Monopolization and Unfair Trade Practices, such case is classified as Private Monopolization.

(Note 3) “Other Cartels” are cartels involving quantity, sales channels, prohibitions on customer movement, facility restrictions, etc.

(Note 4) “Caution, closing cases” only include cases for which summaries were published.

● Total Amount of Surcharge: Approx. 220 million JPY

Amount of Surcharge after FY2019

Fiscal year	FY 2019	FY2020	FY 2021	FY2022	FY2023
Surcharge Payment Order					
Amount of Surcharge (JPY Billion) (Note)	69.27	4.32	2.18	101.98	0.22
Number of Enterprises	37	4	31	21	16

(Note 5) Amount of Surcharge is rounded down to the nearest 10 million yen.

● One case with voluntary remedies taken by the enterprise

◆ Products and Services Involved in Cases Published by the JFTC in FY 2023

IT, Digital Sectors/ Start Up	Public Procurement and Industrial Goods		Areas Closely Related to People’s Lives	
<div>Smartphone Search Application (Google)</div> <div>Review Started</div>	<div>Large-Scale City Gas</div> <div>Bid-Rigging (in Private Demand)</div>	<div>Geological Investigation</div> <div>Bid-Rigging(in Public Procurement)</div>	<div>Transactions of pharmaceuticals between drugstores and suppliers</div> <div>Unfair Trade Practices (Abuse of Superior Bargaining Position)</div>	<div>Transaction of dried seaweed between the fishery cooperatives and producers</div> <div>Unfair Trade Practices (Trading on Exclusive Terms or Trading on Restrictive Terms)</div> <div>First Legal Action</div>
<div>Marriage Matchmaking Business</div> <div>Transactions between operator of marriage agency network and marriage agencies</div> <div>Unfair Trade Practices (Trading on Restrictive Terms)</div> <div>First Legal Action</div>	<div>Wood Working Drill</div> <div>Price-Fixing Cartel</div>	<div>Official Gazette Paper</div> <div>Bid-Rigging(in Public Procurement)</div>	<div>Transaction of furniture between a large furniture store and suppliers</div> <div>Unfair Trade Practices (Abuse of Superior Bargaining Position)</div>	<div>City Gas and Electricity for Residential Use</div> <div>Price-Fixing Cartel</div>
<div>Transactions between securities firms and startups during the initial public offering pricing process</div> <div>Unfair Trade Practices (Abuse of Superior Bargaining Position)</div>			<div>Transactions between a movie theater chain and distribution companies for the movie films</div> <div>Unfair Trade Practices (Trading on Restrictive Terms)</div> <div>First Legal Action</div>	<div>Purple: Cease and Desist Order and Surcharge Payment Order</div> <div>Orange: Approval of the Commitment Plan</div> <div>Green: Warning/Caution</div> <div>Blue: Investigation Started</div>



Alleged Conduct	Cases	Summary
Bid-Rigging (in Public Procurement)	Participants in biddings for geological investigation ordered by Kochi Prefecture (September 2023)	The participants had conspired to decide prospective winners and allowed those winners to win geological investigation ordered by Kochi Prefecture. (Amount of Surcharge: 86.26 million JPY)
Bid-Rigging (in Private Demand)	Participants for city gas quotations, ordered by large-scale users located in the distribution area of Toho Gas Co., Ltd. (March 2024)	The participants had conspired to decide prospective winners and allowed those winners to win city gas quotations ordered by large-scale users in the Distribution Area of Toho Gas Co., Ltd. (Amount of Surcharge: 26.78 million JPY)
Bid-Rigging (in Public Procurement)	Participants in biddings for the official gazette paper ordered by the National Printing Bureau (March 2024)	The participants had conspired to decide prospective winners and allowed those winners to win the official gazette paper ordered by the National Printing Bureau. (Amount of Surcharge: 16.40 million JPY)
Price-Fixing Cartel	Manufacturers of wood working drill bits (March 2024)	Manufacturers of wood working drill bits reached an agreement to raise the wholesale price of the specified wood working drill bits. (Amount of Surcharge: 93.96 million JPY)

Alleged Conduct	Cases	Summary
Abuse of Superior Bargaining Position	Daikoku Co., Ltd. (April 2023)	Daikoku returned unsold goods and forced its suppliers to dispatch their employees to the stores operated by Daikoku. ⇒ The JFTC approved Daikoku's Commitment Plan, including the recovery of the lost monetary value to the suppliers.
Trading on Exclusive Terms/ Trading on Restrictive Terms	Fukuoka Ariake Sea Fisheries Cooperative Association (June 2023)	The Association, through members of fishery cooperatives, is entrusted with the sale of dried seaweed by the producers and sell the dried seaweed to designated trading companies through a tender of the dried seaweed conducted by the Association. The Association requests (1) producers to ship all the dried seaweed they produced to the fishery cooperative to which each producer belongs, and (2) its members to ship all the dried seaweed collected from producers to the Association. ⇒ The JFTC approved the Association's Commitment Plan, including the cease of the alleged conduct.
Trading on Restrictive Terms	TOHO Cinemas Ltd. (October 2023)	TOHO had asked film distribution companies who distribute movie films to TOHO, that they have to treat TOHO more favorably than other movie theater chains. In addition, TOHO had forced the distribution companies to comply with TOHO's request by informing them that TOHO would no longer accept distributing their movie films if they do not comply with the request. ⇒ The JFTC approved TOHO's Commitment Plan, including the cease of the alleged conduct.

Alleged Conduct	Cases	Summary
Trading on Restrictive Terms	IBJ, Inc. (January 2024)	<p>IBJ, an operator of a marriage agency network, has been suggesting to its affiliate agencies also belonging to networks operated by other enterprises that they will not be able to arrange matchmaking with IBJ Members Marriage-Hunting Lounge, Sunmarie, and ZWEI unless they withdraw from the networks of the other enterprises.</p> <p>As a result, these multi affiliate agencies are forced to withdraw from the networks operated by the other enterprises.</p> <p>⇒ IBJ submitted a Commitment Plan to cease suspected violations and the JFTC approved it.</p>
Abuse of Superior Bargaining Position	TOKYO interior corporation (January 2024)	<p>At the time of opening a new store or refurbishing an existing one, TOKYO interior forced its suppliers to dispatch their employees to the stores and provide money under the pretext of "open monetary contribution."</p> <p>⇒ The JFTC approved Tokyo interior's Commitment Plan, including the recovery of the lost monetary value.</p>

Caution issued to Mizuho Securities Co., Ltd. (April 2023)

- Mizuho Securities has engaged in practices during the offering pricing process of the IPO that may lead to violation of the Article 19 (falling under the Item 5, Paragraph 9, Article 2 [Abuse of Superior Bargaining Position] of the Antimonopoly Act.

Inquiry on Initial Public Offering (IPO) Pricing Process, etc. (January 2022)

It has been pointed out that if a lead underwriter in a superior bargaining position unilaterally sets the offering price and conducts underwriting transactions in such a manner that causes unreasonable disadvantage to startups, in light of normal business practices, it may raise a issue under the Antimonopoly Act.

Opened an Investigation Concerning the Suspected Violation of the Antimonopoly Act by Google LLC , etc. (October 2023)

- Google LLC ,etc. have been suspected to exclude business activities of its competitors or restrict business activities of its counterparties by following conduct:
 - ✓ entering into license agreements with Android mobile device manufacturers (OEMs) under which Google makes them install its applications, such as a search application named “Google Search” and a web browser application named “Google Chrome”, together with its application store named “Google Play”, and designates where to place icons of such applications on screens of the devices
 - ✓ entering into agreements with OEMs, etc. under which Google shares its revenue from its search advertising service with them on conditions including that they do not pre-install competitors' search application

Market Study Report on Mobile OS Distribution (February 2023)

Clarifying the Antimonopoly Act's perspective on the pre-installation and default settings of applications by mobile OS providers.

Electric Power and City Gas Sectors

- Cease and Desist Order and Surcharge Payment Orders, etc. against Participants for City Gas Quotations, ordered by Large-scale Users located in Distribution Area of Toho Gas Co., Ltd., etc. (March 2024)
 - Cease and Desist Order and Surcharge Payment Orders
 - ✓ Bid-rigging (in private demand) concerning the specific large-scale city gas
 - ✓ Total amount of surcharge: 26.78 million JPY
 - Warning
 - ✓ Information exchange on residential city gas and electricity rates
 - ✓ Bid-rigging (in private demand) related to LNG supply

Agricultural and Fisheries Cooperatives

- Approval of a Commitment Plan Submitted by the Fukuoka Ariake Sea Fisheries Cooperative Association (June 2023)
 - Alleged conduct
 - ✓ Requesting producers to ship all dried seaweed through the fisheries cooperatives
 - ✓ Requesting the fisheries cooperatives to ship all dried seaweed collected from producers
- Caution against Conduct by Agricultural Cooperative May Lead to Violations
 - Collecting administrative fees from members who ship raw milk to entities other than the agricultural cooperative
 - Setting minimum selling prices for agricultural products sold by members at direct sales stores

Abuse of a Superior Bargaining Position [1/2]

In FY 2023, in addition to the legal measures taken against Daikoku and TOKYO interior, the Task Force on Abuse of Superior Bargaining Position also addressed the following items:

1. Requests from large-scale retailers to suppliers
2. Requests from shippers to transport operators
3. Cases related to the implementation of the Invoice System
4. Cases related to price pass-through due to the recent sharp rise especially in labor costs, raw material prices, and energy costs

A total of 67 cautions were issued concerning these matters

FY	2019	2020	2021	2022	2023
Number of Cautions	29	47	46	55	67

Abuse of a Superior Bargaining Position [2/2]

Major Cases Where the Task Force on Abuse of a Superior Bargaining Position Issued Cautions

Requests from Large-Scale Retailers to Suppliers

Large-scale retailers (supermarkets) requested suppliers to dispatch employees for inventory work without prior agreement on the dispatch conditions and without bearing the usual costs associated with such dispatch.

Requests from Shippers to Transport Operators

Shippers (plywood manufacturers) required logistics operators who handle transportation operation to perform unloading and other tasks not included in the order details, without paying the necessary costs for these tasks.

Requests to Suppliers Related to the Implementation of the Invoice System

Manufacturers of processed agricultural products, despite being allowed input tax deductions under transitional measures, unilaterally informed farmers in writing that, if they chose to remain as tax-exempt enterprises instead of converting to taxable enterprises after the implementation of the Invoice System, the equivalent amount of the consumption tax would be deducted from the transaction price.

(Note) When purchasing goods/services from tax-exempt enterprises, 80% of the consumption tax on purchases could be deducted from amount of tax due for the first three years after the introduction of the Invoice System, and 50% of the same for the following three years after the term.

Response to Price Pass-Through Requests from SMEs Affected by Sharp Cost Increases

The textile wholesaler was alleged to be unilaterally setting trading conditions by only agreeing to price increases for some items, and refusing to negotiate, and maintaining the existing trading prices in response to requests from small and medium-sized business partners for price increases due to rising costs.

Unjust Law Price Sales

- JFTC aims to complete its investigations within two months in principle if it receives complaints regarding cases in retail sectors such as liquors, petroleum products, and home appliances, etc.
- JFTC issues cautions against conduct which could lead to unjust low price sales.

FY	2019	2020	2021	2022	2023
Liquors	63	9	29	37	29
Petroleum products	162	115	206	151	233
Home appliances	2	0	1	0	0
Others	8	12	8	4	55
Total	235	136	244	192	317

- Warning to Petroleum Products Retailer that Operates a Gas Station in Tsuchiura City, Ibaraki Prefecture (May 2023)
 - ✓ SAN-AI Retail Service Co., Ltd. continuously supplied regular gasoline at a low price for thirty-six days, from January 31 to March 7, 2023, at a price excessively below the cost of supply, thereby likely causing difficulties for the business activities of other petroleum products retailers in the surrounding area of its gas station.
- Strengthening measures against operators that have received repeated cautions (such as follow-up investigations)