

Incentives and Disincentives for Leniency

- in light of Japan's experience

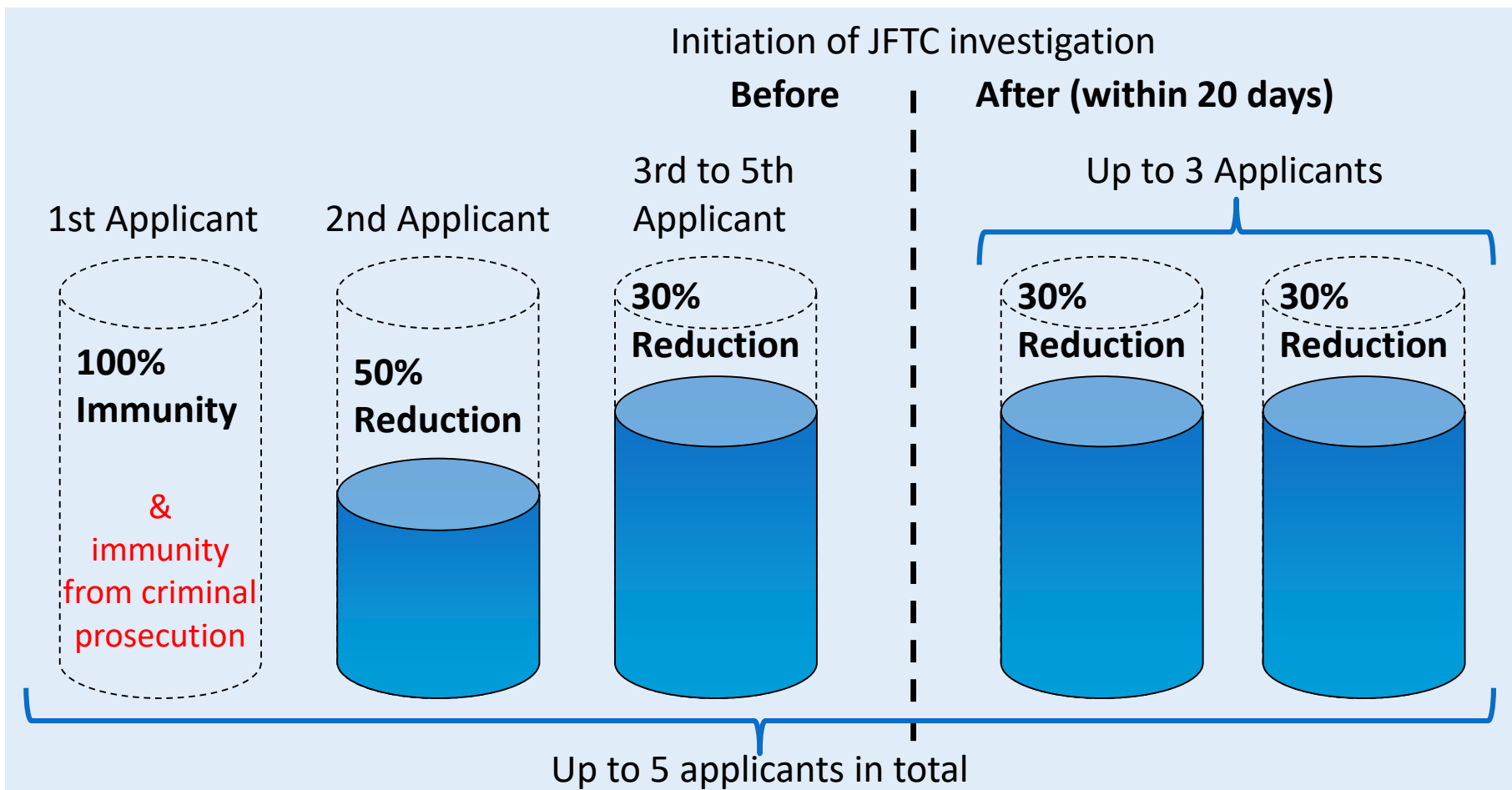
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- 1. Outline of the Japanese Leniency Program**
 - 2. Incentives and Disincentives for the Japanese Leniency Program**
 - 3. Possible Directions for Future Amendments in Japan**
- (Reference)**
- Outline of the report of the Study Group on the Antimonopoly Act**

1. > Overview (1)

- Introduced in January 2006, amended in January 2010
- Joint application is available for parent/subsidiary companies (2010 revision)



1. > Overview (2)

<Requirements>

- Scope: Companies (not individuals); Hard core cartels
- Later applicants (4th and 5th/after investigation) are required to submit information/evidence unknown to JFTC
- Companies must respond to JFTC's additional requests for information/evidence
- Providing false information/evidence will result in disqualification of leniency
- Coercer will not be eligible for immunity/reduction

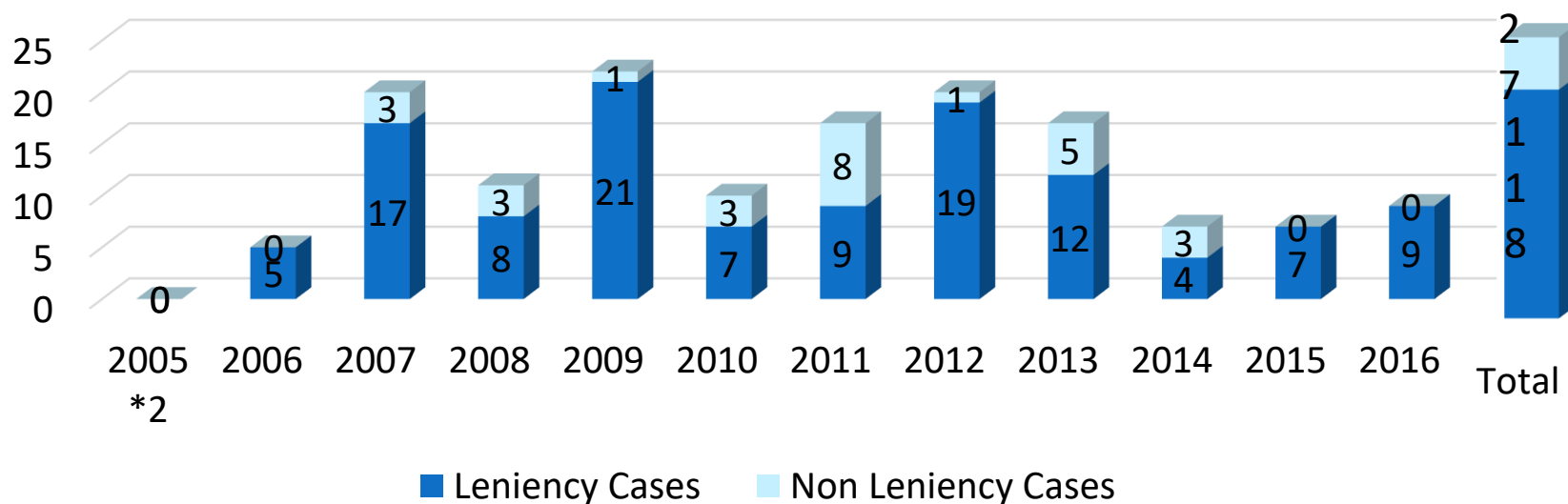
1. > Statistics

➤ Number of Leniency Applications*1

FY	2005 *2	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
No.	26	79	74	85	85	131	143	102	50	61	102	124	1062

*1 Among these, the number of cross-border leniency applications is not published.

➤ Number of Cartel Cases Triggered by Leniency (published)



*2 From January 4, 2006 (introduction of leniency program) to March 31, 2006 (end of FY2005)

2. > (i) Incentives for Leniency Program based on the JFTC's experience

- Marker system
- Leniency for subsequent applicants
- Substantial advantages according to priority
- Confidentiality of application information
- Transparent procedure

2.>(ii) My Thoughts on Disincentives for Cross-border Leniency Applications

- Increase of applicants' burdens caused by introduction of leniency programs in many jurisdictions
- Uncertainty of leniency programs in some jurisdictions
- Fear of the imposition of multiple fines/other sanctions in several jurisdictions for the same violation (double jeopardy)

⇒ My thoughts on the possible solutions

- To strengthen the cooperative framework among the competition authorities.
- To promote convergence of leniency programs of each competition authority.
- To improve transparency of competition authorities' procedure
(by improving advocacy regarding outline and utilization of procedure,
for example)

3.> Possible Directions for Future Amendments in Japan

➤ Strengthening potential fines

- Abolishment or extension of the current 3years upper limit on the calculation period

→ More incentives for self-reporting

< Fine calculation formula >

Base rate for
calculation
(10%)

×

Sales amounts of products in question
during the period of violation
(Maximum 3 years)

=

Fines

➤ JFTC's discretion on reduction rates

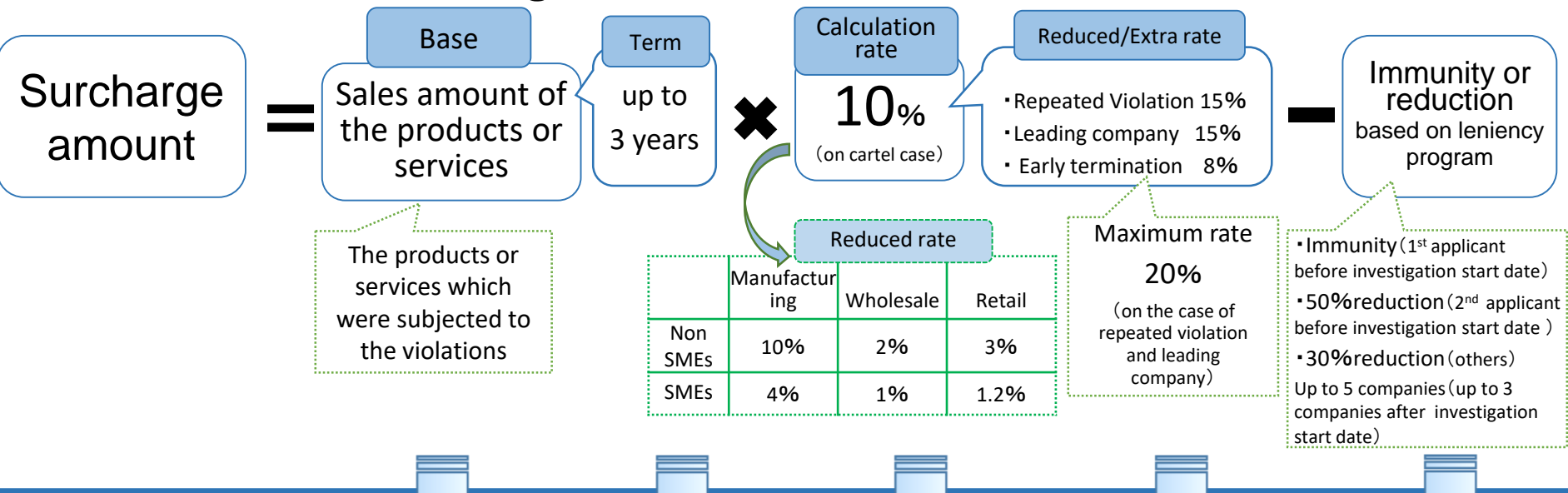
- Individual mitigation rate shall be determined by the JFTC according to the value of proof
- Introduction of the obligations of applicants to cooperate continuously with investigations

→ More incentives for cooperation

In Japan, the study group which is made up of experts from various sectors has examined the review of the administrative suchage system, and shown the direction of the system for enhancing incentives of cooperation in investigations etc. (See the slide 35 and 36)
The system based on the consideration mentioned above is consistent with the leniency program of the other competition authorities and would lead to the promotion of the convergence of the leniency programs of each competition authority.

Current Systems and Conclusions of the Report for the Systems

◆ On the current surcharge system, the JFTC calculates and imposes surcharges uniformly and impartially in accordance with prescribed calculation rates (= Rigid calculation method)



Main Conclusions of the Report

- Methods for violators who have no sales in Japan such like foreign companies on international market allocation cartels
- Abolition or extension of the maximum calculation period
- Abolition of the industry-classified calculation rate
➢ Adjustment of applicable companies of the SMEs rate
- Introduction of the system for adding extra charges to obstruction of investigations
- Expanding the leniency program for enhancing incentives of cooperation in investigations

Conclusions of the Report about the Main Issues

Basic framework of the method of surcharge calculation and imposition

- Revision of the amount of sales serving as basis for calculation of surcharges
 - The basic amount of sales shall be established as a new basis for calculation of surcharges to operate swiftly and efficiently
 - In cases such as when the basic amount of sales never arises, concerning some types of infringements on which actual economic gain or expected one from them can be generally and abstractly assumed, the provisions of sales serving as the basis for calculation of surcharges on each type of infringement shall be stipulated by law
 - In order to deal with unpredictable types of infringements in advance, the provisions shall be stipulated by Cabinet Order and etc.
 - Provisions shall be stipulated by law to allow the JFTC to deduct a certain amount of sales within the scope on which it approves of necessary deduction, if the basic amount of sales is found to exceed the required amount, in light of the purport and the nature of the system
- Abolishment or extension of the current 3years upper limit on the calculation period, The revision of the basic calculation rate
- Abolishment of the calculation rates by type of business, Determination of appropriate subjects for the application of the calculation rates for small and medium-sized enterprises
- The current higher calculation rate for repeated infringements and leading roles of infringements may be appropriate to maintain the current system, Abolish the reduced calculation rate for early withdrawal
- Maintaining compulsory surcharge imposition methods , etc.

System for enhancing incentives of cooperation in investigations

- Expanding the current leniency program
 - Abolishment of limit on applicable enterprises in the leniency program (currently, up to five enterprises) and the application term (currently, twenty business days starting from the date on which the JFTC started to investigate)
 - individual mitigation rate shall be determined by the JFTC according to the value of proof which applicants have voluntarily submitted
 - Introduction of the obligations of applicants to cooperate continuously with investigations (to submit all the information promptly to the JFTC that they have and are able to obtain pertaining to infringements, and etc.)
- A predetermined rate shall be added to the amount of surcharges for cases of obstruction of investigations by enterprises, directors, employees, or representatives, etc.

For More Details, See the Report released by the Study Group on the Antimonopoly Act:

<http://www.jftc.go.jp/en/pressreleases/yearly-2017/April/170425.html>