

# Achieving an efficient and effective leniency programme - in light of Japan's experience

Cartel Workshop in Madrid  
October 3, 2016

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## **Topics:**

### **1. Outline of Japanese Leniency Programme**

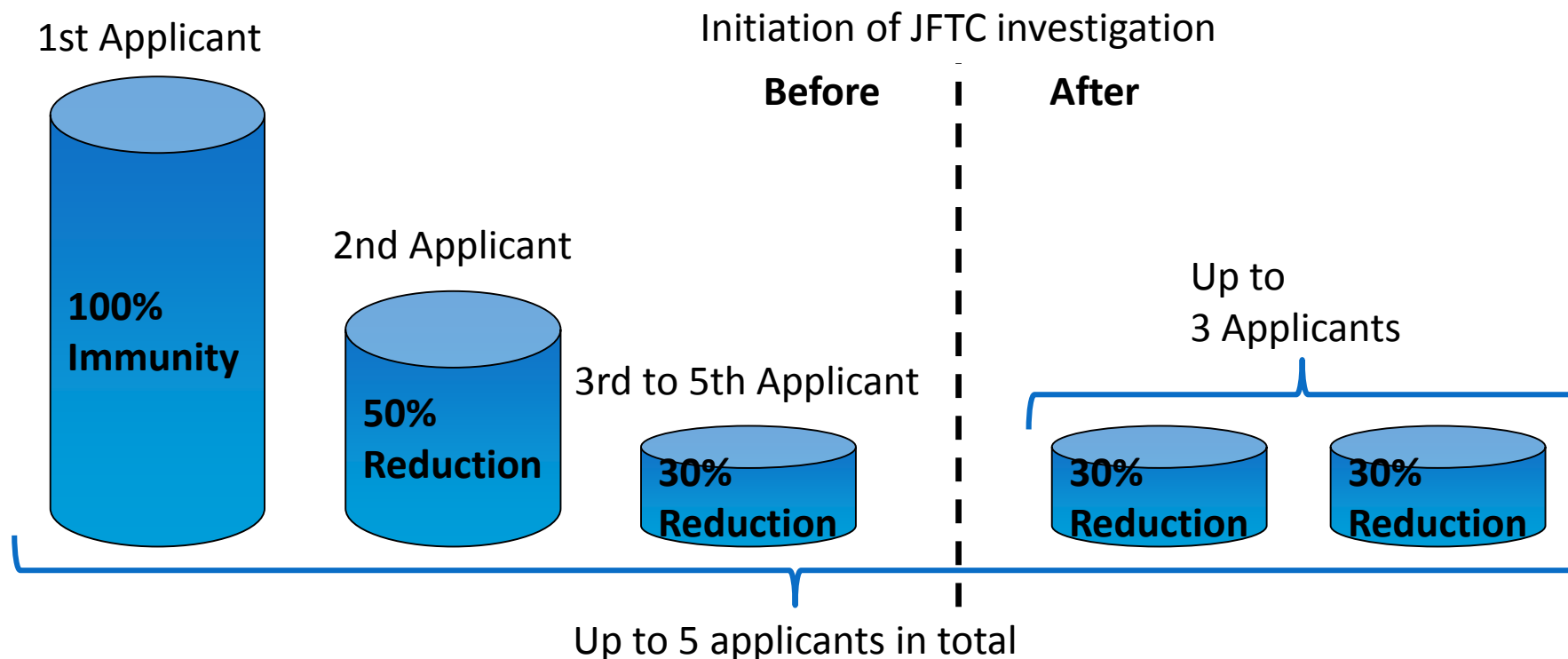
**- Factors Contributing to an Efficient and Effective Leniency Programme**

### **2. Future Amendments**

### **3. Summary**

# **1. Outline of Japanese Leniency Programme**

## Overview



- 1st applicant can also get immunity from criminal prosecution
- Providing false information/evidence can disqualify leniency
- Later applicants (4th and 5th / after investigation) are required to submit information/evidence unknown to JFTC
- Cartel ringleader is not eligible for immunity/reduction

## Features

### A. Incentives for (early) self-reporting

- Marker system
  - Reserving a leniency position before submitting a formal application
  - Anonymous prior consultation is accepted
- Substantial advantages according to priority
  - Significant gap between 1st and 2nd+ applicants / applications before and after investigation
- Oral statements
  - Protection from exposure to civil litigation in multiple jurisdictions
- Confidentiality of application information
  - Duty of secrecy (Article 39 of AMA), limitation for third party access
- Transparent procedure
  - Clear conditions for granting leniency are stated in the leniency rules

## Features (cont.)

### B. Effectiveness as an investigative tool

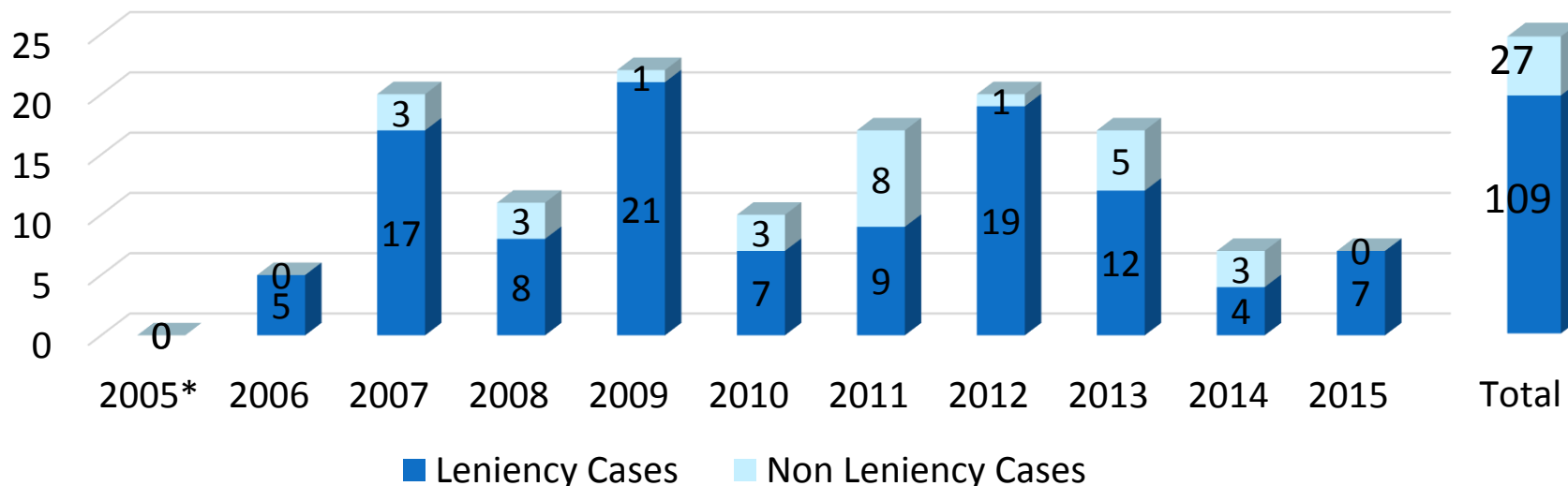
- Joint application
  - Available for parent/subsidiary companies
- Continuous cooperation is required for companies
  - Providing false information/evidence can disqualify leniency
  - Must respond to JFTC's additional requests for information/evidence
  - Final leniency decision takes place at the end of the enforcement process
- International cooperation amongst competition authorities
  - Waiver

## Statistics

### ➤ Number of Leniency Applications

FY	2005*	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
No.	26	79	74	85	85	131	143	102	50	61	102	938

### ➤ Number of Cartel Cases Triggered by Leniency (published)



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



## **2. Future Amendments**



## Issues for Consideration

- Strengthening potential fines?
  - More severe penalties for non-applicant(s)
- JFTC's discretion on reduction rates? (e.g. “up to” 50%)
  - Depending on the quality of information/evidence provided/the degree of cooperation



## 3. Summary

## Key to a Successful Leniency Programme

- A. Incentives for (early) self-reporting
  - Encourage a race to contact JFTC
  - Remove disincentives for making application
  
- B. Effectiveness as an investigative tool
  - Gather valuable information/evidence
  - International cooperation



## **“Checklist for efficient and effective leniency programme”**

## “Leniency Checklist”

- SG1 project in 2016-2017
- A list of the elements for an effective and efficient leniency programme
- Particularly beneficial to younger agencies
- Elements:
  - Scope of application
  - Evidential thresholds for granting leniency
  - Behavioural conditions
  - Application proceedings
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**Thank you for your attention.**