



Japan Fair Trade Commission

October 6, 2017

ICN Cartel Workshop

Plenary #3

# **Prevention of bid rigging in public procurement in Japan**

Yukinari SUGIYAMA  
Director General  
Criminal Investigation Department  
Japan Fair Trade Commission

# Measures taken by JFTC

## ① Cease and desist order

- Cease and desist orders are the administrative measure aimed at the prompt elimination of illegal conducts and the quick recovery of competition.

## ② Surcharge payment order

- Surcharges are imposed to those companies involved in cartels, bid rigging, etc. Surcharges are calculated, typically by multiplying the sales amounts of the products or services in question during the period of the violations by 10% .

## ③ Criminal accusation

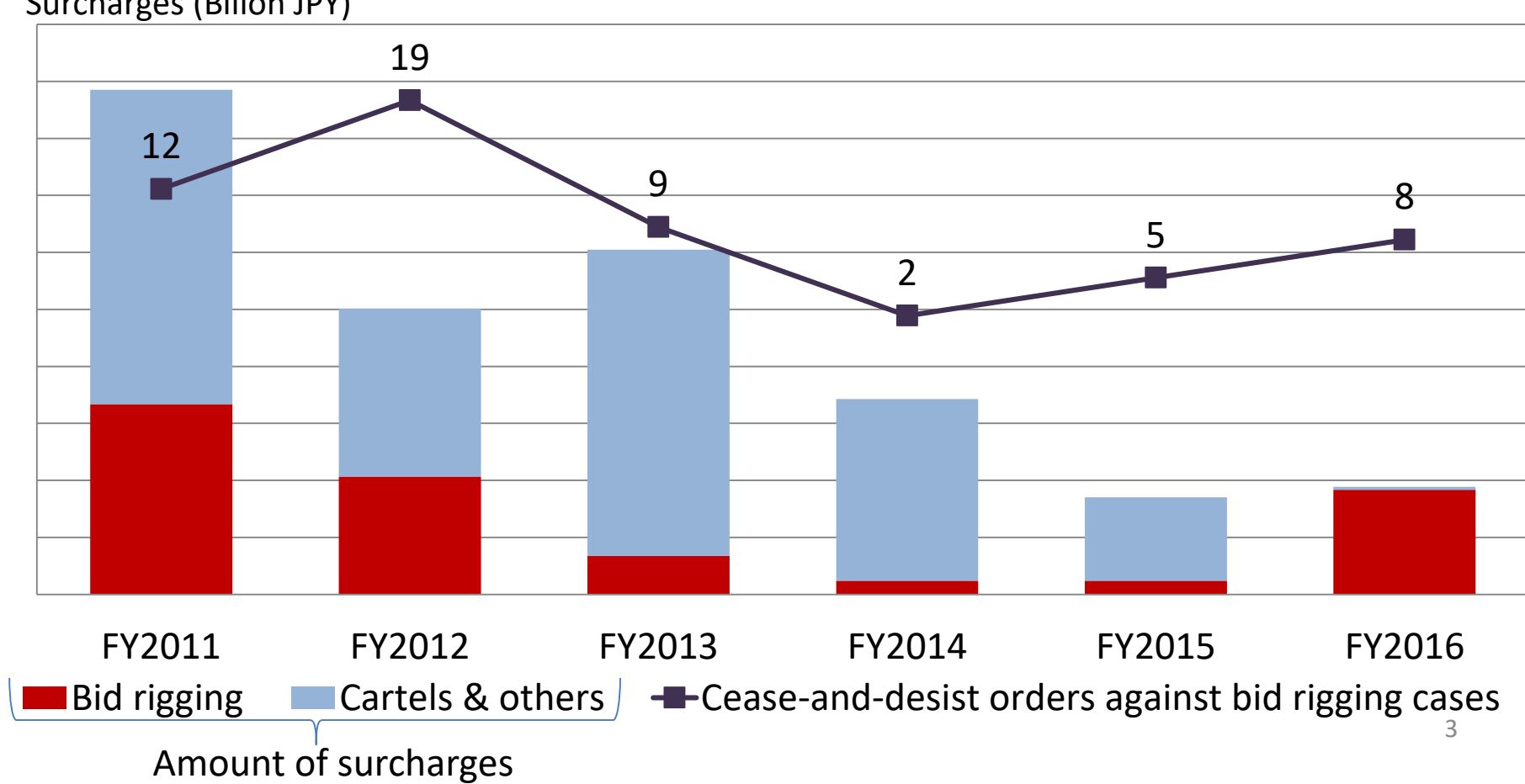
- JFTC may file a criminal accusation with the Prosecutor General against the serious violation.

# The JFTC's Enforcement Against Bid Rigging

Bid rigging in public procurement has been observed nationwide both at central and local levels in Japan – and even now!

“One of top priorities in the JFTC's enforcement agenda”

Surcharges (Billion JPY)



# Importance of Non-Enforcement Efforts (1)

Huge public procurement activities in value

- Government & affiliated organs: 7.4 trillion JPY(FY2016)
- Local governments: 14.2 trillion JPY (FY2015)

The JFTC has only about 800 staff

- Law enforcement alone is not sufficient to secure effective deterrence to bid rigging.
- Supplemental measures are necessary.

# Importance of Non-Enforcement Efforts (2)

Supplemental measures are designed to bring sound competition culture to:

- Businesses (cf. compliance promotion)
- Consumers, regulators, legislators and other stakeholders (cf. awareness raising)

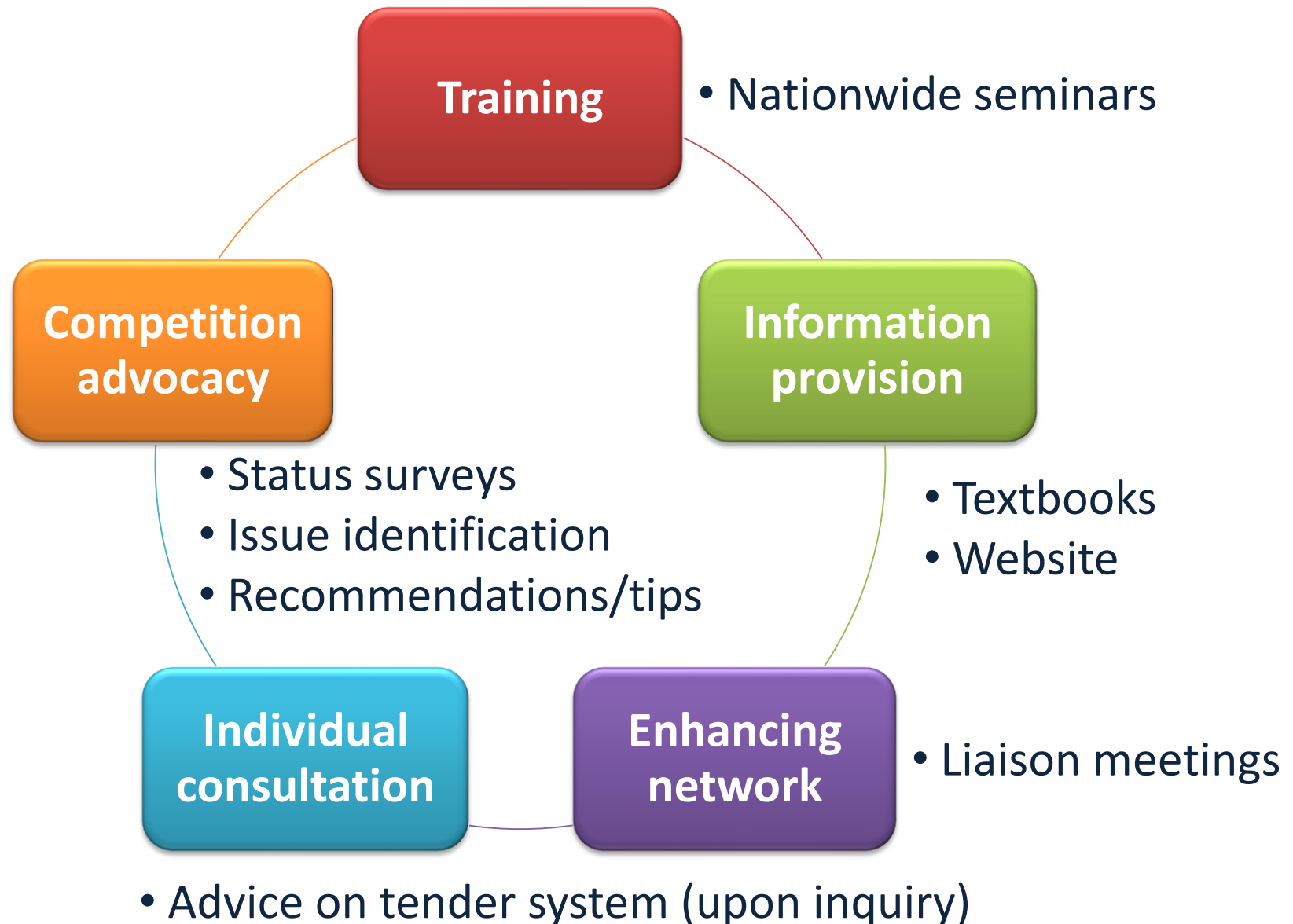
And, in bid rigging context,

- Procurement agencies  
(= Designer and user of tender system)



“Shut off main valve” of bid rigging risks

# Program Components of the JFTC's Outreach



## Liaison meetings

- Set up annual meetings with procurement agencies for deeper channel and information exchange, since 1993  
(FY2016: 9 places in Japan, 10 times)
- The JFTC staffers explain, in the meetings, how to detect the clue of bid rigging cases and how to report it to the JFTC

# Training

## Nationwide seminars

The JFTC hosts seminars and/or dispatches its staff members to seminars held by each procurement agency.

- The staff members of HQ office as well as 8 local offices assigned as lecturers
- No fees and expenses needed
- All materials (e.g. textbooks) provided by the JFTC
- Contents





# Training (2)

Keep increasing from year to year

	Staff dispatched	Trainings hosted
<b>FY2011</b>	<b>158</b>	<b>20</b>
<b>FY2012</b>	<b>214</b>	<b>21</b>
<b>FY2013</b>	<b>288</b>	<b>24</b>
<b>FY2014</b>	<b>294</b>	<b>24</b>
<b>FY2015</b>	<b>289</b>	<b>28</b>
<b>FY2016</b>	<b>258</b>	<b>29</b>

A total of about 20,000 officials participated in FY2016.

Positive feedbacks from trainees

96% says “it helps better understanding”

96% says “it is useful in practice”

Many repeat clients

# Training / Information Provision

## Textbook ...

- Updated annually
- 23,000 copies distributed a year
- Downloadable online
- Contains:
  - (i) Basic facts and cases
  - (ii) Skills & knowledge to prevent/detect bid rigging
  - (iii) How to report to the JFTC
  - (iv) Risks/costs of involvement in bid rigging



## Status surveys

- Analyzing local public procurement market and competition issues
- Recommended measures:
  - To make tender systems more competitive and resistant to bid rigging (2003, 2004, 2006 & 2008)
  - To prevent officials from being involved in bid rigging (2005 & 2011)
  - To strictly manage information on each bidding

# Involvements of Procurement Officials

Part of bid rigging cases have been found to be instructed or assisted by officials of the relevant procurement agencies.

(Motives of the procurement officials to be involved in the bid rigging)

- Expecting golden parachutes
- React to lobbying
- To continue exiting contract
- To preserve interest of industry/local business etc.

⇒ Along with criminal & disciplinary penalties, high needs to improve awareness & culture among procurer side

# The Involvement Prevention Act

The Involvement Prevention Act to prevent bid rigging involving government officials was enacted in 2002.

- The act grants the JFTC authority to require the head of procurement bodies to implement improvement measures when the JFTC finds involvement of procurement officials in the bid rigging.  
⇒ So far, the JFTC has demanded that procurement agencies implement improvement measures concerning 11 cases based on the Involvement Prevention Act.
- With regard to the prevention of involvement in bid rigging, governmental agencies have to cooperate by coordinating with each other(Article 7).

Thank you for your kind attention !!



Japan Fair Trade Commission  
(<http://www.jftc.go.jp/en/index.html>)