

Unclassified

English - Or. English

25 May 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**The Future of Effective Leniency Programmes – Note by Japan**

13 June 2023

This document reproduces a written contribution from Japan submitted for Item 5 of the 137th meeting of Working Party 3 on 13 June 2023.

More documents related to this discussion can be found at  
<https://www.oecd.org/competition/the-future-of-effective-leniency-programmes-advancing-detection-and-deterrence-of-cartels.htm>

Antonio CAPOBIANCO  
Email : Antonio.CAPOBIANCO@oecd.org

**JT03519674**

## Japan

### 1. Introduction

1. Leniency program in Japan has been applied in a lot of cases since its introduction in January 2006<sup>1</sup>. In the meantime, there has been several amendments of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947; hereinafter referred to as the “Antimonopoly Act”), including a revision of the leniency system based on actual operation, and in December 2020, the reduction system for cooperation in the investigation (hereinafter referred to as the “reduction system”) was introduced. (Current “leniency system” includes the reduction system. And hereinafter, when it is necessary to discuss leniency system before the introduction of the reduction system (see 3.1 below) separately from the current system, the former is referred to as the “previous system”.)<sup>2</sup>

2. This note first describes the recent operation and developments of the Japanese leniency program in sections 2 and 3 below. In addition, it also introduces the recent initiatives to detect violations in section 4.

### 2. Operating Status of Leniency System

3. In the period from the introduction of the leniency system in January 2006 to the end of FY 2022, a total of 1,417 leniency application had been filed to the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) by enterprises under the leniency system. The average number of applications per year from FY 2006 to FY 2022 is 81 (see Graph 1).

4. In the period from January 2006 to the end of FY 2022, the JFTC took legal measures against 191 cartels including bid rigging which are types of violation for which leniency can be applied, and among them, the leniency program was used in 164 cases or about 85 % (Table 1)<sup>3</sup>. The leniency program contributes significantly to the detection of cartels including bid rigging.

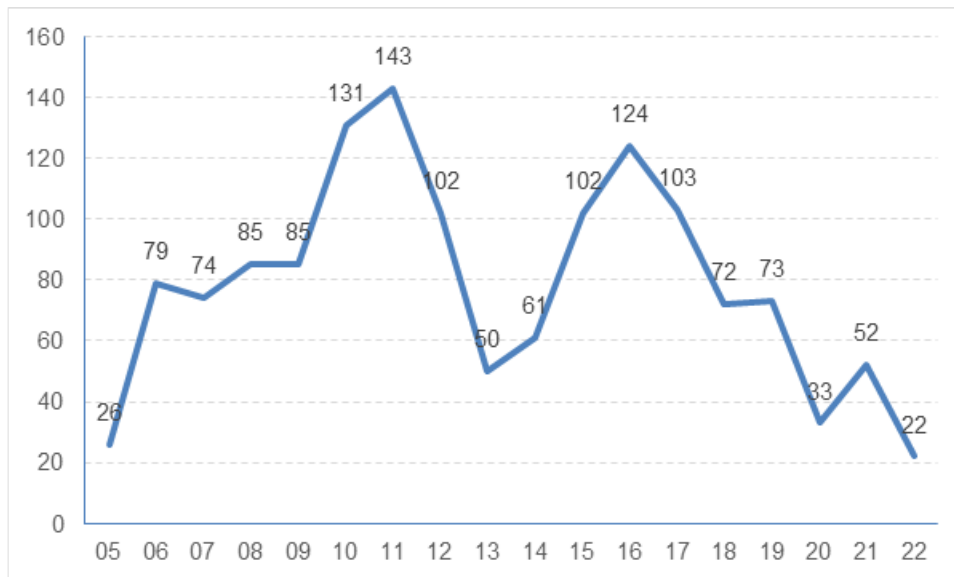
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<sup>1</sup> The revised Antimonopoly Act was enacted on April 20, 2005 and came into force on January 4, 2006.

<sup>2</sup> The revised Antimonopoly Act was enacted on June 19, 2019 and came into force on December 25, 2020.

<sup>3</sup> Since June 2016, when the JFTC finds a violation and issues a cease-and-desist order or fine (“surcharge payment”) order, the JFTC has made public the names of all leniency applicants regarding the case, at the same time as issuing the order. In contrast, for enterprises that applied for leniency between January 2006, when the leniency system was introduced, and the end of May 2016, the JFTC only published the names of the leniency applicants if they requested the disclosure.

Figure 1. Number of leniency applications (FY 2005-FY 2022)



Note: \* Figures for FY 2005 refer to the number of cases from January 4, 2006 (introduction of leniency system) to March 31, 2006 (end of FY 2005)

Table 1. Number of cartel cases where leniency program was applied

Fiscal Year	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	Total
Number of Cartel Cases	5	20	11	22	10	17	20	17	7	7	9	11	7	9	8	3	8	191
																		(100%)
Of which leniency applied	5	17	8	21	7	9	19	12	4	7	9	11	7	9	8	3	8	164
																		(85%)

Note: \* Figures for FY 2005 refer to the number of cases from January 4, 2006 (introduction of leniency system) to March 31, 2006 (end of FY 2005).

“Number of Cartel Cases” refers to the number of cases in which a cease-and-desist order or administrative fine (“surcharge payment”) order was issued.

### 3. Developments of Leniency System

#### 3.1. Background of Reduction System

5. Under the previous system, if an enterprise made a leniency application to the JFTC that met certain requirements, it could automatically receive immunity or a certain rate of reduction in surcharges based on the order of the application regardless of the value of information it gave. Therefore, among leniency applicants, there were not a few that provided only the minimum required report and were not cooperative with JFTC’s investigation after filing the application.

6. As a result of considering measures to improve this situation, in order to increase the incentive of enterprises to cooperate in investigations and to achieve efficient and effective revealing of the truth and handling of cases, the revised Antimonopoly Act of 2019 introduced a system to apply a reduction rate according to the degree of cooperation of enterprises (the degree to which their cooperation contributes to revealing the truth of

cases), in addition to the previous system to apply an immunity or reduction rate according to the order of application.

7. In response to this, in September 2020, the JFTC issued “Rules on Reporting the Facts and Submitting the Materials Regarding Immunity from or Reduction of Surcharges” (hereinafter referred to as the “Rules”)<sup>4</sup>, and “Guidelines to Reduction System for Cooperation in Investigation” (hereinafter referred to as the “Guidelines”)<sup>5</sup>.

## 3.2. Reduction System

### 3.2.1. Outline of the System

8. The reduction system, which applies a reduction rate according to the degree of cooperation of enterprises, is designed as an addition to the previous system.

9. It is aimed at maintaining the function of the previous system, which gives enterprises an incentive to report their own violations as soon as possible, while adding a new function to give enterprises an incentive to cooperate with the JFTC's case investigations.

10. Under the previous system, a maximum of 5 enterprises could receive leniency, including those applied for leniency before and after the investigation start date. However, the upper limit on the number of enterprises which may receive leniency was abolished as it was considered necessary to provide incentives for more enterprises to apply for leniency in order to reveal the truth of the case with the cooperation of enterprises concerned.

11. The immunity or reduction rates for leniency applicants (reduction rates based on the order of application and the one by the reduction system) under the Antimonopoly Act revised in 2019 are shown in the table below.

**Table 2. Immunity or Reduction rates to be applied**

The date of application	The order of application	Reduction rates according to the order of leniency application		Reduction rates according to the degree of cooperation (Based on the Reduction System)		Total reduction rate
Before the investigation start date	1st	100%	+	-	=	100%
	2nd	20%		Up to 40%		Up to 60%
	3rd-5th	10%				Up to 50%
	6th and after	5%				Up to 45%
After the investigation start date	Up to 3 <sup>rd</sup>	10%		Up to 20%		Up to 30%
	Other than the above	5%				Up to 25%

<sup>4</sup> “Rules on Reporting the Facts and Submitting the Materials Regarding Immunity from or Reduction of Surcharges”. Available at [https://www.jftc.go.jp/en/legislation\\_gls/201225001.pdf](https://www.jftc.go.jp/en/legislation_gls/201225001.pdf) (English)

<sup>5</sup> “Guidelines to Reduction System for Cooperation in Investigation”. Available at [https://www.jftc.go.jp/en/legislation\\_gls/201225002.pdf](https://www.jftc.go.jp/en/legislation_gls/201225002.pdf) (English)

### ***3.2.2. Relationship Between the System giving the Immunity or Reduction Rates Based on the Order of Application and the Reduction System***

12. Under the reduction system, a reduction rate is determined after evaluating the extent to which the cooperation by the enterprise contributes to revealing the truth of the case, including the content of the report and materials submitted (hereinafter referred to as a "report in conjunction with the leniency application")<sup>7</sup>.

13. After a leniency application, if the applicant is willing to cooperate with the JFTC in further ascertaining facts that will contribute to revealing the truth of the case, the enterprise may report facts and submit materials (hereinafter referred to as a "report under the reduction system" and the combination of a "report in conjunction with the leniency application" and a "report under the reduction system" is simply referred to as a "report"), following the procedures described in 3.2.3. below.

### ***3.2.3. Procedures of the Reduction System***

14. The procedures for the reduction system are carried out in the following order: (i) a conference and agreement between the JFTC and the leniency applicant on the content of the cooperation in the investigation and the reduction rate, and (ii) a cooperation in the investigation by the leniency applicant.

15. After a leniency application, the applicant receives a notice of receipt of the application<sup>8</sup> from the JFTC, and then may request a conference for utilizing the reduction system<sup>9</sup>. In the conference with the JFTC, the applicant explains the planned contents of the report under the reduction system, and in response, the JFTC presents a reduction rate. The applicant must include in the content of the cooperation to be explained at the conference that it will respond to the request for additional reports from the JFTC<sup>10</sup>.

16. If the JFTC and the applicant reach a consensus in the conference, they conclude an agreement<sup>11</sup>. The JFTC ordinarily seeks an "Agreement on the Upper and Lower Limit"<sup>12</sup>, which states that the final reduction rate will be determined based on the facts that the leniency applicant ascertains and reports to the JFTC after the agreement.

17. After the "Agreement on the Upper and Lower Limit" is concluded, the enterprise implements the agreed cooperation by the deadline set in the agreement<sup>13</sup>, and the JFTC evaluates the extent to which the content of the enterprise's report contributes to revealing the truth of the case to determine<sup>14</sup> and apply the reduction rate within the agreed upper and lower limits.

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<sup>7</sup> See Article 7-5(1)(2) of the Antimonopoly Act

<sup>8</sup> See Article 7-4(5) of the Antimonopoly Act

<sup>9</sup> See Article 7-5(1) of the Antimonopoly Act, Sec.14 of the Rules, and 3(1) and (2) (i) of the Guidelines

<sup>10</sup> See Article 7-5(1) (i) (b) and (c) of the Antimonopoly Act, 3(1) and (2) (i) of the Guidelines

<sup>11</sup> See Article 7-5(1) of the Antimonopoly Act

<sup>12</sup> See Article 7-5(2) of the Antimonopoly Act

<sup>13</sup> See 3(2)(ii) of the Guidelines

<sup>14</sup> See 3(4) of the Guidelines

### 3.2.4. Evaluation Methods and Reduction Rates

18. In evaluating how the content of the applicant's report contributes to revealing the truth of the case for determining the reduction rate, the JFTC takes into consideration the following factors, in the context of the progress status of revealing the truth of the case: whether or not the content of the report (a) is detailed and concrete, (b) includes all the relevant factors “contributing to revealing the truth of the case”; and (c) is corroborated by materials submitted by the applicant<sup>15</sup>.

19. The JFTC assesses whether the content of the applicant's report meets the three factors (a) - (c) above, and the reduction rate in the table below is applied according to the number of the factors satisfied<sup>16</sup>.

**Table 3. The reduction rates according to the degree of contribution to revealing the truth of the case**

Degree of Contribution to Revealing the Truth of the Case	Timing of Leniency Application	
	Before the Investigation Start Date	After the Investigation Start Date
High (Satisfying all factors)	40%	20%
Medium (Satisfying two factors)	20%	10%
Low (Satisfying one factor)	10%	5%

20. In case of making the “Agreement on the Upper and Lower Limit,” the upper limit of the reduction rates proposed by the JFTC is usually 40% for an enterprise that applied for leniency before the investigation start date, and it is 20% for an enterprise that applied after the investigation start date.

### 3.2.5. Operation Status of Reduction System

21. The reduction system has been applicable for leniency applicants on or after December 25, 2020, and enterprises whose administrative fines (“surcharges”) have been deducted under the system is disclosed on the JFTC's website. Up to the end of FY 2023, in a bid rigging case involving pharmaceutical procurement for hospitals in Kyushu area ordered by National Hospital Organization, in which cease- and-desist order and administrative fine order were issued on March 24, 2023, three of the five enterprises that were ordered to pay administrative fine received the reduction under this system<sup>17</sup>. Also, in a cartel case by incumbent electric companies, in which cease-and-desist order and administrative fine order were issued on March 30, 2023, one of the four enterprises that were ordered to pay administrative fine received the reduction under this system<sup>18</sup>.

### 3.2.6. Conclusion of the Section

22. In Japan, a lot of applications for leniency are filed every year, and they have served as an important tool for cartel detection. In addition, the reduction system was introduced in 2020 to increase the incentive for leniency applicants to cooperate with the JFTC's investigation after the application. With this system, it is expected that enterprises and the

<sup>15</sup> See 4(1) of the Guidelines

<sup>16</sup> See 4(3) of the Guidelines

<sup>17</sup> [https://www.jftc.go.jp/houdou/pressrelease/2023/mar/230324\\_daigo.html](https://www.jftc.go.jp/houdou/pressrelease/2023/mar/230324_daigo.html) (Japanese)

<sup>18</sup> [https://www.jftc.go.jp/houdou/pressrelease/2023/mar/230330\\_daisan.html](https://www.jftc.go.jp/houdou/pressrelease/2023/mar/230330_daisan.html) (Japanese)

JFTC will cooperate to reveal the truth of the case and handle cases efficiently and effectively.

## 4. Initiatives to Detect Violations

### 4.1. Utilizing Market Surveys

23. The JFTC has been conducting market surveys in various business areas for a long period of time. The primary purpose of a market survey is to understand business activities and the actual state of transactions in the subject areas, and based on the facts ascertained in the survey, to make recommendations for voluntary improvement of trade practices by enterprises and review of the regulatory system by competent authorities. Market surveys are carried out by sending questionnaires and holding hearings to enterprises, trade associations, consumers and other relevant players in the subject areas. Market surveys are primarily advocacy activities and are not focused on detecting violations, but the JFTC sometimes obtains information on specific acts by enterprises in the course of market surveys, such as questionnaires and hearings. If the information relates to acts that may violate Antimonopoly Act, the JFTC is to utilize the information for case detection on the basis of the individual consent of the informant.

24. For consciously reinforcing the seamless linkage between advocacy and enforcement, in which information obtained through market surveys is also used as a case clue, the JFTC implements initiatives including the followings.

- Call for information on suspected violations by e.g. indicating a contact point to provide such information on the questionnaire
- If there is a possibility that the law enforcement teams will utilize the information collected through the market survey, the possibility is noted in the questionnaire<sup>19</sup>.

25. In enforcement, the JFTC proactively utilizes the information provided through these initiatives, and, if a suspected violation of the Antimonopoly Act is identified, it conducts specific case investigations.

26. The JFTC publicized the above initiatives through a statement titled “Cooperation and strengthening of advocacy and enforcement for the active promotion of competition policy in response to socioeconomic changes such as digitalization” (hereinafter referred to as the “Statement”)<sup>20</sup> issued in June 2022<sup>21</sup>.

### 4.2. Exercising Authorities under Article 40 of the Antimonopoly Act

27. The JFTC has been collecting information to determine whether to initiate a case investigation based on voluntary cooperation from informants including enterprises. While

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<sup>19</sup> Even in cases where such description is not included in the questionnaires, if the JFTC receives information on suspected violations during the course of market surveys, the information may be used for detection of cases after obtaining the individual consent of the informant. This operation is the same as before.

<sup>20</sup> [https://www.jftc.go.jp/dk/advocacy/220616digital\\_statement.pdf](https://www.jftc.go.jp/dk/advocacy/220616digital_statement.pdf) (Japanese)

<sup>21</sup> The Statement declared that, in cases where the questionnaires do not note that law enforcement teams may use information provided through the market survey, if specific information on suspected violations is provided by the respondent to the survey, the JFTC obtains consent from the informant to use such information for case investigation.

taking the same approach in principle, the JFTC decided to exercise its authorities under Article 40 of the Antimonopoly Act<sup>22</sup> as another initiative for detection, to the extent necessary and reasonable to achieve the purpose of information collection, and the initiative was made public by the Statement<sup>23</sup>.

28. It is expected that the exercise of investigative authorities under Article 40 of the Antimonopoly Act will enable the JFTC to collect information for case detection even when, for example, suspected violators or their business partners refuse to voluntarily cooperate with the JFTC's investigation on the grounds of confidentiality obligations with their business partners or their own trade secrets, thereby improving the JFTC's information collection capabilities.

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<sup>22</sup> Based on Article 40 of the Antimonopoly Act, the JFTC may order enterprises or their personnel to appear or request them to submit necessary reports, information or materials when it is necessary for the JFTC to perform its duties, and if they violate any of the dispositions under the said article, they shall be punished by a fine of not more than 3 million yen (Article 94-2 of the Antimonopoly Act). Article 40 of the Antimonopoly Act is a separate provision from Article 47 (1) of the Antimonopoly Act, which provides for the authority of the JFTC to conduct investigations after the initiation of a case, and it is considered that the authority under Article 40 can also be used for fact-findings for the purpose of case detection at a stage when it is not clear whether there is any suspected Antimonopoly Act violation.

<sup>23</sup> The JFTC also decided to, depending on the circumstances, exercise the authorities under Article 40 of the Antimonopoly Act in the market survey described in 4.1. above, and made it public by the Statement.