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## **OECD Global Forum on Competition**

### **HOW ENFORCEMENT AGAINST PRIVATE ANTICOMPETITIVE CONDUCT HAS CONTRIBUTED TO ECONOMIC DEVELOPEMENT**

#### **Contribution from Japan**

-- Session IV --

*This contribution is submitted by Japan under Session IV of the Global Forum on Competition, to be held on 12 and 13 February 2004.*

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## **HOW ENFORCEMENT AGAINST PRIVATE ANTICOMPETITIVE CONDUCT HAS CONTRIBUTED TO ECONOMIC DEVELOPMENT**

### **Introduction**

1. The approach presented by the Japan Fair Trade Commission (JFTC) in this paper is to quantify and examine economic effects brought by an investigation against an actual bid rigging case, an example of typical anticompetitive conduct in Japan, under the Antimonopoly Act. The research has shown grounds for us to be convinced that strict implementation of cease and desist measures against anticompetitive conduct under the Antimonopoly Act has promoted fair and free competition, and as a result, has also boosted economic efficiency.

### **1. Two Economic Effects of Cease and Desist Measures against Anticompetitive Conduct**

2. Economic effects of promoting fair and free competition through taking measures against bid rigging, etc. has two folds. One is a direct effect, namely price reduction, quality improvement and cost reduction concerning objects or items which are subject to bidding. The other is an indirect effect, namely a ripple effect on preventing violations of the Antimonopoly Act by others.

3. It is difficult to demonstrate all of those effects quantitatively by related evidence; nevertheless, it may be possible to establish a substantial part of possible economic effects quantitatively by examining the movement of prices before and after the entrepreneurs ceased their anticompetitive conducts, among various conceivable effects. If a significant economic effect is found by using prices as an indicator, it can be concluded that the investigations have been substantially effective.

### **2. Cease and Desist Measures under the Antimonopoly Act**

4. The JFTC shall initiate investigation of conducts which may violate the Antimonopoly Act by entering any place of business of those concerned or other necessary places, obtaining testimonies, etc. The JFTC shall take appropriate cease and desist measures and order to pay surcharges when the Antimonopoly Act is found to have been violated.

(Note: An order to pay surcharges shall be rendered in the case of bid rigging, price cartels, etc.)

### **3. Presentation of the Case Concerned**

5. We studied bidding price changes in a bid rigging case concerning automobile testing machines and equipment ordered by government agencies, etc.

6. In this case, four entrepreneurs participated in the bid riggings. They had decided in advance which bidders would be successful. They made different rules among themselves for each local branch office of the orders for almost all items which were subject to bidding. The four entrepreneurs ceased such violations of the Antimonopoly Act after the JFTC entered their premises for investigation.

7. Subsequently, the JFTC rendered the cease and desist order against these entrepreneurs, and ordered payment of surcharges, totalling about 74 millions yen (US\$670,000).

#### 4. Measurement and Examination of the Effectiveness of the Cease and Desist Orders

##### 4.1 *The method of measuring and examining the effectiveness of the cease and desist orders*

8. It is not meaningful to simply compare the actual contract prices since properties subject to bidding vary by content, scale, etc. Therefore, we examined changes in the ratios of actual contract prices to planned contract prices pre-set by public agencies etc. placing the order, hereafter referred to as the "RCP".

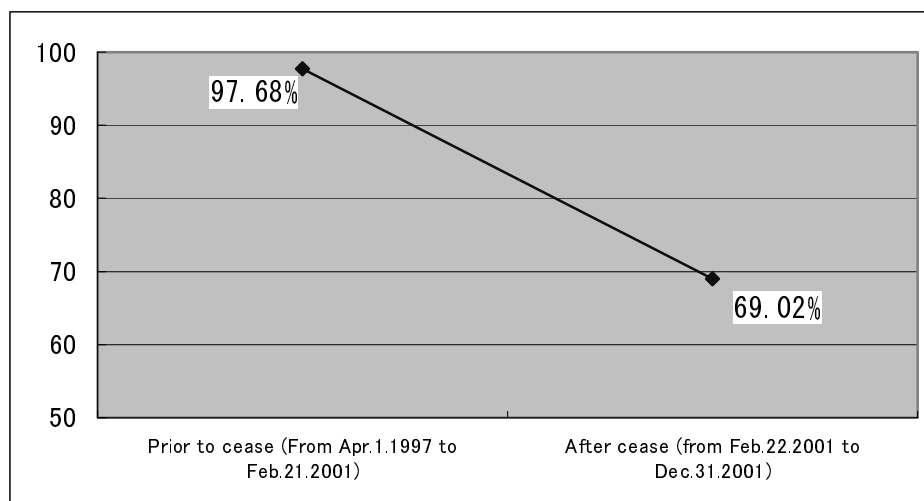
9. In order to assess cost and effect balance of measures taken by the JFTC, we conducted an estimation of materials expenses, personnel expenses, etc. which were devoted to the case concerned.

##### 4.2 *Result of measurement and examination on the effectiveness of the investigation*

###### A. *The change in the RCP*

10. The change in the average RCP is given below; it was confirmed that the average RCP has gone down since the entrepreneurs ceased such violations.

Chart: Change in the Average RCP for the Automobile Testing Machines and Equipment



###### B. *Economic effect caused by the decline of the average RCP*

11. The economic effect caused by the decline of the average RCP concerning the case from the date of cease and desist (February 22, 2001 to December 31, 2001) is estimated to be approximately 483 millions yen (see the table below). This estimation was carried out on the tentative assumption that no other factors than the investigation against violations of the Antimonopoly Act led to the decline of average RCP. We also assumed that the average RCP would remain at the same level as that in pre-investigation period if there were not the investigation.

Table: Economic Effect in the Bid Rigging Case Concerning Automobile Testing Machines and Equipment (Unit: 100 Millions Yen)

Period	Number of biddings	Planned total contract price (a)	Assumed total actual contract price (b) (a×97.68%= b)	Actual total successful bid price (c)	Economic effect (b) – (c)
From the date of cease and desist (Feb.22.2001 to Dec. 31, 2001)	29	1396	1364	881	<u>483</u>

C. *Factors other than the investigation*

12. Factors other than the investigation by the JFTC such as reduction in material expenses, personnel costs might have contributed to the lowered RCP. It is therefore not appropriate to evaluate all decline of the average RCP as a direct consequence of the investigation implemented by the JFTC in the absence of considering these factors. We analysed whether other factors contributed to the decline of RCP in the period. We checked impacts of following factors: 1) changes in material prices and personnel expenses; 2) business trends in the construction industry; 3) presence of a recurring tendency in the index (RCP); 4) business trends in the localities or nation; 5) tendencies of the measures against bid riggings implemented by the JFTC, and 6) others (seasonal factors, etc.). In conclusion, these external factors are unlikely to have had any effect on the RCP decline in the case.

**4.3 Result of Measurement and Examination on Economic Efficiency of the Investigation**

13. It is useful to take into account the cost of the investigation of the JFTC against the anticompetitive conduct in evaluating their economic effect.

14. We examined the efficiency based on the input cost (personnel and travel cost) of dealing with the case.

15. The approximate cost incurred by the JFTC to deal with the case is about 21 millions yen (US\$190,000), which realised the above-mentioned economic effect, namely about 483 millions yen (US\$4.4 millions). This indicates that the investigation by the JFTC is highly cost-effective.

Note: Cost here refers to the total of personnel and travel expenses required to deal with the case by the staff in charge. The former (personnel expenses) has been calculated based on the average annual income (including various allowances) of the staff of the JFTC, taking into account the number of staff involved in dealing with the case and the time taken. The latter represents travel expenses of the staff to inspect the premises of those concerned, interviewing them, etc. The incidental cost is also incurred in dealing with the cases, but is ignored in this calculation.

**5. Conclusion**

16. This paper proposed that the strict and distinct enforcement against bid riggings to promote fair and free competition results in improving the economic efficiency of public procurement.

17. JFTC's research indicates that the cease and desist order rendered by the JFTC had the following direct economic effect: average RCP decline from 97.68% to 69.02% in the course of nearly ten months,

from February to December 2001, thus the total procurement cost reduction of 483 millions yen (US\$4.39 millions). The JFTC spent approximately 21 millions yen (US\$190,000) to deal with the case.

18. As it is not easy to quantify the indirect economic effects of the cease and desist measures taken by the JFTC, our estimation is confined to a part of direct economic effects. It is necessary to develop a method to gauge indirect economic effects.