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Competition in the Food Supply Chain – Contribution from Japan

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More documentation related to this discussion can be found at: oe.cd/gfc24.

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Competition in the Food Supply Chain

- Contribution from Japan –

1. Introduction

1. In this contribution paper, the food supply chain refers to the distribution process from production to consumption in which foods are delivered from producers of edible agricultural and marine products inside and outside Japan through food manufacturers, wholesalers, retailers, etc. to final consumers.

2. While food prices are determined through the food supply chain, which are considered to be affected by various factors in a complex manner, well-functioning market mechanism is especially a key for proper price formation of foods. In this regard, anticompetitive conduct hinders the function of market mechanisms. Therefore, competition advocacy in this field plays a significant role, as well as proper enforcement of competition law to eliminate anticompetitive activities. Under these backdrops, this contribution paper outlines the efforts of the Japan Fair Trade Commission (JFTC) on the food supply chain in Japan as follows:

2. Enforcement cases

2.1. Cases on agricultural cooperatives

3. An agricultural cooperative is a cooperative established voluntarily under the Agricultural Cooperatives Act. It aims to improve the management efficiency and quality of life for its member farmers who are small-scale business operators, and to provide maximum services for the members, through mutual assistance among them.

4. In Japan, the Antimonopoly Act (AMA) has an exemption system applied to the acts of cooperatives including agricultural cooperatives. However, as an exception of that, the AMA is applied if unfair trade practices are employed, or if competition in any particular field of trade is substantially restrained, resulting in unjust price increase.

5. If an agricultural cooperative forces its members to use its business, that would be against the original purpose of the agricultural cooperative system. It also has negative effect on competition in the field of agriculture by preventing the members from engaging in transactions based on their free and independent decisions, as well as by depriving competitors of the agricultural cooperative of business opportunities to transact with the members. The JFTC has taken legal measures and issued warnings against agricultural cooperatives' anticompetitive acts such as forcing their members to use the business of the cooperatives and preventing the members from directly making deals with the competitors of the cooperatives. The followings are some cases of such legal measures and warnings.

2.1.1. A case in which an agricultural cooperative treated its members who were shipping products to its competitors in a discriminatory manner

6. The group of farmers for small green onions, which is a section of the JA Oita Agricultural Cooperative (JA Oita), expelled its five member farmers, because they continued to ship their small green onions to other distributors than the JA Oita without a

consent of the group. In response to the expulsion, the JA Oita determined to stop dealing with the five members' small green onions with the JA Oita's brand name in its consignment sales business. Furthermore, the JA Oita had forced the five members not to utilize its facilities to arrange and package small green onions for shipment.

7. On February 23, 2018, the JFTC issued a cease and desist order which required the JA Oita to take measures, including;

- to cease the conduct,
- not to treat its members who are shipping products to competitors of the JA Oita less favorably than other members in the future, and
- to prepare action guides for compliance with the AMA.
- In this case, the conduct of the JA Oita was found to violate the Article 19 (Item 4 [Discriminatory Treatment on Trade Terms]) of the AMA.

8. In addition to the above case, there are cases in which agricultural cooperatives restricted its members from shipping products such as eggplant to other businesses than the agricultural cooperatives.

2.1.2. A Case in which agricultural cooperatives discussed to fix an amount of commission for rice sales

9. Central Union of JA Yamagata (Central Union), which consists of agricultural cooperatives, etc. located in Yamagata Prefecture in Japan, requested its member agricultural cooperatives to consider changing the way of calculation for the commission of rice sales from fixed rate to fixed amount, with indicating a formula and specific figures, in order to stabilize the management of the member cooperatives. As the background of the request above, the Central Union had a concern that the way of calculation at fixed rate in declining trend of the rice price would bring decrease in revenue of the member cooperatives, and it would have negative effect on the activity of the member cooperatives.

10. In response to the request, five agricultural cooperatives in the Shonai area in Yamagata Prefecture, which were the members of the Central Union, decided at a meeting of the heads of the five cooperatives to set a sales commission at a fixed amount, and to keep discussing a calculation formula and specific amount among their directors. Following that, at a meeting of the directors responsible for agricultural management departments of the five cooperatives, they decided to set the standard for the commission at 410 yen per bag (excluding the amount equivalent to consumption tax) and to apply it to the rice produced in 2011.

11. On September 11, 2014, the JFTC issued a warning to the five cooperatives to refrain from such conduct in the future. In this case, the conduct of the five cooperatives were likely to be in violation of the article 3 of the AMA (Unreasonable Restraint of Trade). In addition, the JFTC issued a caution to the Central Union not to take any action that would constitute a violation of the AMA, as the conduct of the Central Union was likely to lead to be in violation of the AMA.

2.2. A case in which a food manufacturer attempted to restrict resale price

12. Nissin Food Products Co., Ltd. (Nissin Food Products), which is a food manufacturer, set sales prices of retailers for its 5 products of instant noodles for normal

time and for a special sale day (hereinafter the set prices are collectively referred to as "Suggested Prices"). And Nissin Food Products itself carried out, as well as forced its client wholesalers to do, the following acts in February 2022 and after February 2023, under the policy to let the retailers obey to sell the 5 products at the Suggested Prices;

- During normal time, making retailers sell the 5 products at the Suggested Prices by requesting to raise prices, including conveying to each retailer that they made similar requests to other retailers or suggesting that they couldn't offer special conditions for a special sale day unless the retailer accept the request, and
- On a special sale day, making retailers sell the 5 products at the Suggested Prices by requesting to raise prices including offering special conditions for sale day only when retailers accept to sell at Suggested Prices.

13. On August 22, 2024, the JFTC issued a warning to Nissin Food Products to refrain from such conduct in the future. In this case, the conduct of the Nissin Food Products was alleged to be in violation of the Article 19 of the AMA (Article 2, Paragraph 9, Item 4 of the AMA (Restriction on Resale Price)).

2.3. A Case in which acts of a large scale retailer were alleged to correspond to abuse of superior bargaining position

14. Daikoku Co., Ltd. (Daikoku), which operates drug stores selling pharmaceuticals, household supplies, cosmetics, foods and other products, committed the following conduct on its suppliers at the latest from March 2020 to around April 2022.

- Return of unsold goods
- Daikoku returned unsold goods and other items that had left unsold due to the outbreak of the COVID-19 without reasons attributable to the suppliers who delivered the unsold goods.
- Forced dispatch of employees, etc.

15. When closing its stores, Daikoku forced its suppliers to dispatch their employees to the stores in order to have them perform works related to the return of unsold goods. Daikoku had not concluded agreements with those suppliers on the terms of dispatches in advance of the conduct, and did not bear expenses necessary to the dispatches.

16. Upon opening or renovating its stores, Daikoku forced its suppliers to dispatch their employees to the stores in order to have them display goods including goods other than those delivered by the suppliers. Daikoku had not concluded agreements with those suppliers on the terms of dispatch in advance of the conduct, and did not bear expenses necessary to the dispatches.

17. In this case, Daikoku submitted a Commitment Plan and the JFTC approved the plan on April 6, 2023. The Commitment Plan includes measures;

- to resolve followings at a meeting of its Board of Directors,
- to confirm that the conduct has been ceased,
- that Daikoku shall cease to engage in the same conduct, and measures committed in the plan shall be implemented for the next three years,
- to recover the monetary harm incurred by the conduct to the suppliers,
- to prepare guides for compliance with the AMA, and

- to report to the JFTC on the status of implementation of the measures annually for the next three years.

3. Fact-finding surveys

18. As the JFTC has concerns on competition in the food distribution sector in Japan, it has conducted several fact-finding surveys on the sector since before.

3.1. *Survey on the Distribution in the Processed Food Industry (1992)*

19. Based on observed significant changes in the distribution practices and transaction customs within the processed food industry due to shifts in consumer needs, the JFTC carried out a survey on the industry, including the conditions of delivery between retailers and suppliers, the burden of costs associated with the introduction of information systems, the burden of distribution center expenses, and the situation of returns of delivered goods due to the expiration of the sales deadline. Based on the results of this survey, JFTC made recommendations, including;

- (i) It is important for retailers to decide conditions on the delivery with considering rationality of business operations not only of themselves but also of their suppliers. Specifically, it is desirable that the delivery conditions are fully discussed between the two parties and clarified in writing.
- (ii) When consumers' preferences for freshness goes too far, it could lead to the setting of unnecessarily short or unnecessary best-before dates as well as deadlines for sales and delivery. This is expected to cause negative impacts such as increased costs due to decrease in production and efficiency of distribution. Therefore, it is desirable for manufacturers and retailers not to unnecessarily stimulate consumers' preferences for freshness. In addition, it is necessary to provide consumers with information that enables them to accurately understand best-before dates.

3.2. *Fact-finding survey on transactions between food manufacturers and wholesalers (2011)*

20. Based on the observation of cases in food transactions where the abuse of superior bargaining position might be applied, the JFTC conducted a survey to understand the actual trading conditions between food manufacturers and wholesalers. In addition, the Survey also focused on transactions between wholesalers and large-scale retailers, considering that the JFTC found many violation cases of abuse of superior bargaining position by large-scale retailers in the past.

21. The survey indicated that there might be action by wholesalers against food manufacturers, which could lead to abuse of superior bargaining position.

22. It also revealed that, as the reason behind the wholesalers' conduct in some cases, wholesalers had received demands from retailers, and the wholesalers made unreasonable demands on the food manufacturers in turn, besides wholesalers had intention to secure their profits. These cases indicated that there were transfers of disadvantages and burdens due to unfair demands carried out in multi layers. And it suggested the existence of a structure where large-scale retailers were at the roots of these problematic conducts.

23. Based on the results, the JFTC presented its further actions as follows.

- (i) In order to promote fair trade and the prevention of illegal conduct between food manufacturers and wholesalers, the JFTC holds industry-classified seminars, etc. for wholesalers and large-scale retailers, and requests the industry to implement self-imposed initiatives to realize appropriate trade practices.
- (ii) In addition to promoting efforts above, the JFTC also continues to focus on the industry's actual trade conditions. If an action is considered to have been in violation of the AMA, the JFTC will take stringent measures.

3.3. Fact-finding survey on transaction of private brand products in the food sector (2014)

24. Under circumstances that domestic sales of private brand products (PB products) have sharply increased since 2008, the JFTC decided to conduct a survey to understand the actual conditions of transactions of PB products in the food sector which accounts for a large part of all sales of PB products, in order to see whether retailers have conducted practices that may constitute problems.

25. According to the survey, there were relatively lots of acts that could be regarded as abuse of superior bargaining position against manufacturers by retailers who planned and designed private brand products, when they started transactions of the private brand products and then determined conditions of transactions. In addition, the survey revealed that the proportion of reports from manufactures being subject to acts of retailers that could constitute abuse of superior bargaining position in setting conditions of transactions tended to be higher, (i) when transactions with retailers involve large sales volumes in annual transaction of PB products and (ii) when transactions are occurred with retailers with large amount of capital.

26. Based on the results, the JFTC presented its further actions as follows.

- (i) In order to promote fair trade and the prevention of illegal conduct, the JFTC holds industry-classified seminars for retailers and requests the industry to implement self-imposed initiatives to realize appropriate trade practices.
- (ii) In addition to promoting efforts above, the JFTC also continues to focus on the actual trade conditions of PB products. If an action is considered to have been in violation of the AMA, the JFTC will take stringent measures.

3.4. Fact-finding survey on business practices in the food supply chain (2024)

27. The JFTC launched a fact-finding survey on business practices in transactions among manufacturers, wholesalers, and retailers of food and beverages in September 2024, as the JFTC had received various concerns on competition regarding business practices in the food supply chain, and the JFTC recognized that there were some practices which could correspond to abuses of superior bargaining position, such as so-called “the one third rule for delivery” which is a practice of delivering food and beverages to retailers within the one third of the period from the date of manufacture to the best-before date.

28. The JFTC sent requests for online questionnaires regarding the actual state of business practices to about 12,000 food manufacturers and to about 6,000 wholesalers on September 13, 2024. When the results of the survey indicate that there are abuses of superior bargaining positions by retailers, such as unjustly returning of goods or refusing to receive goods, the JFTC will publish the results and make them widely known throughout the industry in order to promote appropriate transactions in the food supply chain.

29. The launch of this survey was also considered the international developments regarding concerns on competition in food supply chain, such as discussion at the OECD.

4. Conclusion

30. Recognizing that the food supply chain is one of the most important areas indispensable to the lives of the people in Japan, the JFTC has been actively taking efforts to effectively eliminate and prevent anticompetitive conduct under the AMA throughout the food supply chain, so as to promote competition and enhance consumer welfare.