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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Balancing Prudential Regulation and Competition Considerations in Banking – Note by  
Japan**

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## Japan

### 1. Introduction

1. In December 2023, the Financial Services Agency (FSA) issued business improvement orders against four Japanese major non-life insurance companies under the Insurance Business Act. These orders aim to ensure the sound and proper management of their operations, in response to conduct suspected to violate the Antimonopoly Act and improper business practices in light of the Antimonopoly Act, as well as systemic issues underlying them, uncovered by reports from those companies. In October 2024, the Japan Fair Trade Commission (JFTC) issued cease and desist orders and surcharge payment orders totaling approximately JPY 2 billion against the four major non-life insurance companies and one insurance agency for violations of Article 3 (Prohibition of Unreasonable Restraint of Trade) of the Antimonopoly Act. Simultaneously, the JFTC compiled and published the points to be noted under the Antimonopoly Act and competition policy regarding the formation and use of co-insurance for non-life insurance companies, non-life insurance agencies and policyholders. The JFTC also requested the FSA and the General Insurance Association of Japan to ensure that all non-life insurance companies and agencies as well as members of the Association, fully comply with the Antimonopoly Act.

2. The JFTC, which is a government institution established to enforce the Antimonopoly Act, covers competition issues in all sector, not limited to the non-life insurance sector. It investigates alleged violations of the Antimonopoly Act such as cartels and bid-riggings among enterprises, and take necessary measures such as cease and desist orders, to eliminate violations and restore competition in the market. The FSA is also a government institution established to ensure financial stability, protect policyholders, etc. and facilitate the smooth functioning of the financial system. Regarding non-life insurance, the FSA takes necessary supervisory measures, including orders against insurance companies to ensure the sound and appropriate operation of insurance companies and to protect policyholders, etc.

3. In addition to the effort by a competition authority to eliminate and prevent the recurrence of violations, which employs enforcement and advocacy as a dual approach, measures based on a sector-specific law by a regulatory agency is also considered an effective means of realizing a proper competition environment, particularly, against inappropriate incidents arising from business practices spread throughout the entire industry and the market environment created by such practices, like the case above.

### 2. Non-Life Insurance

#### 2.1. Non-Life Insurance

4. “Non-life insurance” refers to insurance for which premiums are received in exchange for an agreement to compensate for damage caused by specific and accidental events. Non-life insurance includes automobile insurance, fire insurance and earthquake insurance.

5. Particularly in non-life insurance transactions for corporates, negotiations and contracts are often conducted through corporate agencies<sup>1</sup> under the co-insurance framework. Co-insurance refers to a framework where multiple non-life insurance companies jointly underwrite a single insurance contract at the policyholder's discretion. This framework is utilized in cases where the amount of the insurance contract exceeds the underwriting limit of a non-life insurance company or its coverage involves high-risk. Under the co-insurance framework, the actual operations are handled by only one of the participating insurance companies, designated as the lead insurer.

6. Under the Insurance Business Act<sup>2</sup>, concerted actions related to specific insurance businesses, and concerted actions related to reinsurance pools in other insurance businesses are exempted from the application of the Antimonopoly Act (Article 101, Paragraph 1 of the Insurance Business Act). However, the Antimonopoly Act applies to acts that are outside the exemption system, including those under the framework of co-insurance.

## 2.2. Non-Life Insurance Company

### 2.2.1. License

7. Under the Insurance Business Act, only non-life insurance companies are permitted to underwrite non-life insurance. To engage in the insurance business, it is necessary to submit certain documents to the FSA, which is the competent authority, undergo an examination, and obtain a license from the Prime Minister.

### 2.2.2. Market Structure

8. In the past, insurance premium rates for non-life insurance were calculated by the rate-setting organization, and compliance with these rates was mandatory. Subsequently, starting with the revision of the Act on the Rate-Setting Organizations for Non-Life Insurance Premiums<sup>3</sup> in 1998, liberalization of insurance rates was promoted. That created an environment in the non-life insurance industry where sales competition driven by reductions in premium could take place. Since the 2000s, restructuring among non-life insurance companies has progressed.

9. According to published data from each insurance company and the FSA, as of the end of March 2023, the market size of net premiums for non-life insurance companies in Japan was approximately JPY 9.3 trillion. The market shares of each company were as follows: Tokio Marine & Nichido Fire Insurance Co., Ltd. with 25.7%, Sompo Japan Insurance Inc. with 23.9%, Mitsui Sumitomo Insurance Company, Limited with 17.5%, and Aioi Nissay Dowa Insurance Co., Ltd. with 14.4%, together accounting for 81.5% of the market.

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<sup>1</sup> In corporate non-life insurance contracts, it is common to deal through insurance agencies due to the need for support in claim handling or certain administrative procedures, although non-life insurance companies may negotiate and conclude contracts directly with policyholders. Among insurance agencies, "corporate agency" refers to an agency that is part of the policyholder's corporate group.

<sup>2</sup> The purpose of this Act is to protect policyholders, etc. by ensuring the sound and appropriate operation of business by persons conducting insurance business and by ensuring fairness in insurance solicitation, in view of the public nature of insurance business.

<sup>3</sup> Regarding premiums for compulsory automobile liability insurance and earthquake insurance, each non-life insurance company uses the rates calculated by the General Insurance Rating Organization of Japan, which operates based on the Act on Non-Life Insurance Rating Organizations.

10. Hereinafter, Tokio Marine & Nichido Fire Insurance Co., Ltd., Sompo Japan Insurance Inc., Mitsui Sumitomo Insurance Company Limited and Aioi Nissay Dowa Insurance Co., Ltd. are collectively referred to as “the four major non-life insurance companies”.

### 3. Administrative Sanctions imposed on the Four Major Non-Life Insurance Companies

11. Since 2023, it had been uncovered that non-life insurance companies coordinated premiums for corporate non-life insurance. In December 2023, the FSA issued business improvement orders against the four major non-life insurance companies under the Insurance Business Act. Furthermore, in October 2024, the JFTC issued cease and desist orders against the four major non-life insurance companies as well as one other company under the Antimonopoly Act. An overview of these administrative measures is described below.

#### 3.1. JFTC

##### 3.1.1. Cease and Desist Orders and Surcharge Payment Orders

12. The JFTC had been investigating suspected violations of the Antimonopoly Act by the major non-life insurance companies, including on-site inspections in December 2023. On October 31, 2024, the JFTC issued cease and desist orders and surcharge payment orders totaling approximately JPY 2 billion against the four major non-life insurance companies and one insurance agency for violations of Article 3 (Prohibition of Unreasonable Restraint of Trade) of the Antimonopoly Act.

##### 3.1.2. Outline of the Violations

13. The JFTC found a total of nine violations for nine policyholders and clients.<sup>4</sup> For example, the following outlines the violation related to insurance policy for JERA Co., Inc.<sup>5</sup>

14. The four major non-life insurance companies jointly made it possible to raise or maintain insurance premiums. These practices involved adjusting the premium levels offered by each company during the competitive quotation process for a property damage/business interruption insurance procured by JERA Co., Inc., which had a per-incident coverage limit of JPY 150 billion. As a result, they substantially restrained competition in the market, contrary to the public interest.

##### 3.1.3. The Points to be Noted Under the Antimonopoly Act Regarding Co-insurance

15. The JFTC compiled the points to be noted under the Antimonopoly Act and competition policy regarding the formation and use of co-insurance for non-life insurance

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<sup>4</sup> The nine policyholders and clients are JERA Co., Inc., Cosmo Oil Co., Ltd., Japan Organization for Metals and Energy Security, Sharp Corporation, Keisei Electric Railway Co., Ltd., Tokyo Metropolitan Police Department, Tokyo Metropolitan Government (Metropolitan Hospitals), Sendai International Airport Co., Ltd., and Tokyu Corporation.

<sup>5</sup> JERA Co., Inc. is an energy company that engages in fuel procurement, power generation, and wholesale sales of electricity and gas, etc. with holding the largest power generation capacity in Japan.

companies, non-life insurance agencies and policyholders. This was done to prevent violations of the Antimonopoly Act, as many of the violations that were the subject of the cease and desist orders described above B occurred during the formation of co-insurance.

16. These points highlight that co-insurance has a structure that is prone to raising issues under the Antimonopoly Act, as outlined below.

17. It is premised that two or more non-life insurance companies jointly underwrite non-life insurance with identical premiums and other conditions. In the process of forming such co-insurance, competing non-life insurance companies have access to information regarding premiums and other various conditions, making it easier to coordinate actions to be taken among the non-life insurance companies and related parties.

18. In addition, these points provide examples of cases where problems under the Antimonopoly Act may arise in the formation of co-insurance. They also indicate issues to be noted by non-life insurance companies from a competition policy perspective as below.

19. The formation of co-insurance by multiple non-life insurance companies is structurally prone to leading to conduct that restricts competition. Therefore, non-life insurance companies and related parties should thoroughly consider whether co-insurance is necessary to diversify the underwriting risks; otherwise, they may not be able to adequately address such risks.

#### ***3.1.4. Request to the FSA and the General Insurance Association of Japan***

20. The JFTC requested the FSA and the General Insurance Association of Japan<sup>6</sup> to ensure that compliance with the Antimonopoly Act is communicated to all non-life insurance companies and non-life insurance representatives, as well as members of the Association. This request was made because the violations occurred in relation to various non-life insurances, as described above.

21. The FSA, taking this request into account, appropriately followed up on each company's effort to improve their operations.

22. Additionally, the General Insurance Association of Japan took measures to establish compliance systems for the Antimonopoly Act and other laws, such as revising the "Guidelines for Compliance with the Antimonopoly Act," holding compliance seminars for insurance companies, and conducting training sessions for junior employees.

### ***3.2. Overview of Business Improvement Orders Issued by the FSA***

23. On December 26, 2023, the FSA issued business improvement orders to the four major non-life insurance companies pursuant to the Insurance Business Act. These orders were based on findings from reports submitted by the companies in response to the FSA's request for information under the Insurance Business Act. The reports revealed acts that were considered to be in violation of the Antimonopoly Act, acts that were inappropriate in light of the purpose of the Antimonopoly Act and underlying systemic issues within the companies.

24. The business improvement orders include the following measures:

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<sup>6</sup> The General Insurance Association of Japan is an association of non-life insurance companies in Japan. The object of the association is to promote sound development and maintain reliability of the non-life insurance business in Japan, and thus contribute to a secure and safe society.

1. Clarification of management accountability in light of these business improvement orders.
2. Identification and investigation of additional cases that may violate the Antimonopoly Act or are inappropriate under its purpose.
3. Consideration and implementation of measures to ensure fair competitive environments in the corporate insurance sector, including the co-insurance.

25. The FSA identified several factors contributing to the emergence of risks related to violations of the Antimonopoly Act in the corporate insurance sector as below. Based on this, simply leaving the problems to each company's voluntary effort may not lead to a fundamental solution. Therefore, to ensure the proper implementation and establishment of each company's business improvement plan, the FSA determined that its involvement was necessary, and issued the business improvement orders.

26. In the corporate insurance sector, the following factors created an environment where risks of violating the Antimonopoly Act were likely to arise. Moreover, the management did not adequately consider responses based on these circumstances.

- Frequent interactions and facilitated coordination among non-life insurance companies, due to their small number
- Relationships with client companies influenced by non-contractual factors, such as cross-shareholdings rate and support for client companies' businesses
- Unclear positioning of corporate agencies affiliated with client company groups
- Co-insurance practices where premiums are typically based on the lead insurer's rates

#### 4. Conclusion

27. The JFTC, which is a government institution established to enforce the Antimonopoly Act, covers competition issues in all sector, not limited to the non-life insurance sector. It investigates alleged violations of the Antimonopoly Act such as cartels and bid-riggings among enterprises, and take necessary measures such as cease and desist orders, to eliminate violations and restore competition in the market.

28. The FSA is also a government institution established to ensure financial stability, protect policyholders, etc. and facilitate the smooth functioning of the financial system. Regarding non-life insurance, the FSA takes necessary supervisory measures, including orders against insurance companies to ensure the sound and appropriate operation of insurance companies and to protect policyholders, etc.

29. In addition to the effort by a competition authority to eliminate and prevent the recurrence of violations, which employs enforcement and advocacy as a dual approach, measures based on a sector-specific law by regulatory agency is also considered an effective means of realizing a proper competition environment, particularly, against inappropriate incidents arising from business practices spread throughout the entire industry and the market environment created by such practices, like the case above.

30. The JFTC will continue to address appropriately whenever opportunities arise to utilize its expertise in fostering an appropriate competitive environment.