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Case Prioritisation and Prosecutorial Discretion – Note by Japan

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1. Target Area of the JFTC's Strict Law Enforcement

1. This paper introduces the enforcement policies of the Japan Fair Trade Commission (JFTC) for laws and regulations under its jurisdiction, including the Antimonopoly Act (AMA), followed by an overview of the procedures for initiating, investigating and disposing of AMA violation cases, and the JFTC's discretion in making determinations throughout these processes.

2. Investigations conducted by the JFTC to prove violations of the AMA (hereinafter referred to as "case investigations") consist of two types: "administrative investigations" and "criminal investigations."

3. An administrative investigation refers to an investigation conducted when the JFTC believes that a violation of the AMA exists. Under the authority of administrative investigations, where penalties may be imposed if a party fails to cooperate (indirect enforcement), the JFTC can conduct on-site inspections of business offices and other premises, order the submission of relevant documents, and require relevant persons to appear for interviews. If an administrative investigation confirms a violation of the AMA, the JFTC issues an order for necessary measures to eliminate the violation (known as a "cease-and-desist order"). Furthermore, in cases of violations subject to surcharges, the JFTC orders the payment of such surcharges to the national treasury (known as a "surcharge payment order").

4. On the other hand, a criminal investigation refers to an investigation of criminal cases that the JFTC deems appropriate for criminal accusation, based on the policy cited below. In a criminal investigation, the JFTC may conduct inspections, searches, and seizures of property by way of direct enforcement, upon obtaining warrants issued by a judge. As a result of a criminal investigation, the JFTC files a criminal accusation if it finds that a criminal offense has taken place (See below). Criminal penalties, including imprisonment and fines, may be imposed through criminal trials. Furthermore, it is held to be lawful to impose both a criminal fine and an administrative surcharge concurrently.

5. Regarding the implementation of competition policy, the JFTC published a statement on January 28, 2026, entitled "Proactive Development of Competition Policy for the Promotion of Innovation," which sets out its policy direction for the operation of competition policy going forward.¹ In this statement, in order to promote fair and free competition, the JFTC established three pillars: ensuring "a fair trading environment" by ensuring fair transactions; "promoting a competitive market environment" through dialogue with stakeholders, etc.; and "strict law enforcement" against violations. Under the pillar of strict law enforcement, the JFTC will proactively pursue the following specific initiatives.

To encourage the free ingenuity of enterprises and prevent innovation from being unduly nipped in the bud, the JFTC will proactively engage in law enforcement that supports initiatives for ensuring a fair trading environment and promoting a competitive market environment as well as law enforcement related to issues that have a significant impact on the lives of citizens such as rising prices, as follows.

¹ https://www.jftc.go.jp/en/about_jftc/innovation/index.html

- *Strict law enforcement against unfair business practices (such as abuse of a superior bargaining position) that could unfairly disadvantage SMEs (including startups), freelancers, etc., and make it difficult for them to conduct business activities aimed at innovation*
- *Strict law enforcement against actions that obstruct market renewal and impede innovation, such as blocking of new entrants or unfair elimination of competitors*
- *Strict law enforcement against price-fixing cartels and bid rigging, in which prices are raised in concert and unfair attempts to maintain resale prices, for goods and services closely related to the lives of citizens*

6. In addition, the JFTC has published the following policy regarding cases subject to criminal investigations and criminal accusations (published on October 7, 2005; revised on December 16, 2020).²

The JFTC will actively accuse to seek criminal penalties on the following cases:

- a. Vicious and serious cases which are considered to have wide spread influence on people's livings, out of those violations which substantially restrain competition in certain areas of trade such as price-fixing cartels, supply restraint cartels, market allocations, bid-rigging, group boycotts, private monopolization and other violation.*
- b. Among violation cases involving those firms or industries who are repeat offenders or those who do not abide by the elimination measures, those cases for which the administrative measures of the JFTC are not considered to fulfill the purpose of the AMA.*

2. Procedures and Discretion in the Detection, Initiation, and Disposition of AMA Violation Cases

7. Based on the policy mentioned in 1 above, the JFTC is committed to the strict enforcement of the AMA and other laws and regulations under its jurisdiction. The following sections explain the procedures for the detection, initiation, and disposition of AMA violation cases, as well as the discretion exercised in making determinations throughout these processes.

2.1. Sources and Initiation of Case Investigation

8. The JFTC initiates investigations based on information obtained through various sources, such as ex officio detection, reports from the general public, the use of the leniency program, requests from the Small and Medium Enterprise Agency (SME Agency)³, and requests from the Minister of Economy, Trade and Industry⁴ (see Section 3 below).

9. Specifically, when the JFTC obtains information through reports from the general public or other channels, it conducts the necessary examination to determine whether it is appropriate to initiate a case investigation based on that information. In deciding whether to commence a case investigation, a comprehensive judgment is made on a case-by-case

² https://www.jftc.go.jp/en/legislation_gls/210312.pdf

³ Article 4, paragraph 7 of the Act for Establishment of the Small and Medium Enterprise Agency

⁴ Article 13 of the Act on Improving Transparency and Fairness of Digital Platform

basis. This decision-making process takes into account various factors—in addition to the policy mentioned in Section 1 above—such as the potential impact of the case and the resources required for the investigation. These determinations are made under high-level decision-making, involving the Commission itself or the Director General of the Investigation Bureau of the General Secretariat of the JFTC.

10. The following part focuses on ensuring transparency in the JFTC’s law enforcement. If a report to the JFTC is submitted in writing, including the name and address of the reporting party, and provides specific facts, the JFTC is required to notify the reporting party of whether or not any measures have been taken regarding the reported case (Article 45, Paragraph 3 of the AMA).

11. In connection with this system, a contact point for complaints and inquiries has been established to receive questions, complaints, or other submissions from reporting parties who, for instance, have been notified of the results but are not satisfied with the conclusion. Submissions are reviewed by a review committee within the JFTC, and the results of the review are, in principle, communicated to the party who made the submission within two months from the date of receipt.

12. It should be noted that the JFTC does not publicly disclose the specific sources of individual cases, even after the case investigation has been concluded.

2.2. Case Handling

2.2.1. Reallocation of personnel during the case investigation process

13. In each case investigation, to reach an appropriate conclusion as expeditiously as possible, the investigation resource allocation is reviewed as necessary. This includes the rebalancing of personnel in charge of the investigation to ensure an optimal and efficient workflow.

2.2.2. Disposition of administrative cases

14. Regarding cases subject to administrative investigations, the JFTC, based on its findings, may take measures such as cease-and-desist orders, surcharge payment orders, and the approval of a commitment plan, or it may decide to terminate the investigation.

15. In this connection, there was a case where it was contested during a hearing procedure⁵ whether the JFTC’s limitation of the scope of its investigation and legal measures to only a portion of the conduct constituted a violation of the principle of equality. In the hearing decision for this case, the JFTC determined that even when violations appear to be widespread, it is reasonable and not a violation of the principle of equality—from the perspective of administrative effectiveness—for the JFTC to limit its investigation and legal measures to the portions with significant social impact, and to establish the existence of a violation within those limits.⁶

16. Furthermore, regarding the limitation of an administrative measure to only certain enterprises, there is a judicial precedent concerning a cartel case. In this case, the court held

⁵ Hearing procedure refers to a process in which hearing examiners designated by the JFTC preside over a case, allowing an enterprise to contest the existence of a violation or other issues against the JFTC investigators. Following these hearing procedures, the JFTC would issue a hearing decision. It should be noted that the hearing system has been abolished under the current AMA.

⁶ JFTC Hearing Decision of April 26, 2006 (The Bid-Rigging Case involving Civil Engineering Works ordered by Chiba City, etc.)

that the JFTC's decision not to impose any administrative measures on a company that participated in meetings where information was exchanged was not be manifestly unreasonable in light of socially accepted norms, nor was it an illegal measure that violated the principle of equality or proportionality.⁷

2.2.3. Disposition of criminal cases

17. Regarding cases subject to criminal investigations, the JFTC must file an accusation with the Prosecutor General if it is convinced, after an investigation conducted, that a criminal offense has taken place (Article 74, Paragraph 1 of the AMA).

18. Furthermore, with respect to crimes such as unreasonable restraint of trade, an accusation by the JFTC is a prerequisite for prosecution; this is referred to as the "exclusive accusation" (Article 96 of the AMA). The rationale behind this exclusive accusation system is explained that it is most appropriate for the JFTC—which possesses specialized expertise in economic structures and corporate behavior—to make such determinations.⁸

19. In addition, if the Prosecutor General decides not to prosecute a case that is the subject of an accusation, the Prosecutor General must promptly submit a written report to that effect to the Prime Minister through the Minister of Justice, giving the reasons therefor (Article 74, Paragraph 3 of the AMA).

20. To ensure smooth and appropriate accusations, the JFTC and the prosecuting authorities hold the "Consultative Meeting on Accusation Issues" to exchange opinions and information on specific issues related to individual cases.

3. Requests for Measures from other Ministries and Agencies

21. In relation to the JFTC's prioritization of cases, this section introduces the system under which other government ministries and agencies can request the JFTC to take measures.

3.1. The Act on Improving Transparency and Fairness of Digital Platforms

22. The Act on Improving Transparency and Fairness of Digital Platforms, which the Ministry of Economy, Trade and Industry (METI) implements, designates and regulates operators of digital platform services as "Specified Digital Platform Providers," for which there is a particularly high need to enhance transactional transparency and fairness. Specified Digital Platform Providers are required to:

- disclose information such as terms and conditions of use;
- establish procedures and systems such as for complaints handling; and
- annually submit to METI a report on the measures taken for enhancing transparency and fairness as well as the self-assessment of those measures.

23. Based on the report and other information, METI annually conducts a review and evaluates the transparency and fairness of the designated digital platform services. When METI finds a case where a Specified Digital Platform Provider violates the provisions of

⁷ Tokyo High Court Judgment of December 3, 2020 (The Capacitor Cartel Case)

⁸ Report of the Study Group on the Antimonopoly Act, October 28, 2003, p. 28

Article 19 of the AMA, METI can request the JFTC to take appropriate measures in accordance with the provisions of the AMA.

24. To date, there was one case in November 2024 that METI made that request to JFTC, and JFTC has been conducting an investigation into the matter.

3.2. Act on Proper Transactions with Small and Medium-Sized Entrusted Business Operators (SME Transactions Act)

25. The SME Transactions Act, which serves as a supplementary law to the AMA, aims to protect small and medium sized entrusted enterprises both promptly and effectively. It achieves this by clearly defining the scope of application and codifying specific types of violations regarding conduct that may constitute an abuse of a superior bargaining position—one of the types of unfair trade practices prohibited under the AMA—while also providing for simpler procedures than those of the AMA.

26. The JFTC and the SME Agency, which jointly administer the SME Transactions Act, strive to detect violations through measures such as conducting periodic surveys.

27. The JFTC is authorized to issue recommendations to violators of the SME Transactions Act, requiring them to take corrective actions or other necessary measures. When a recommendation is issued, the JFTC, in principle, publicly discloses the name of the enterprise, a summary of the violation, and an outline of the recommendation. Furthermore, if the Commissioner of the SME Agency identifies a fact of violation of the SME Transactions Act, they may submit a request for measures to the JFTC.

28. It should be noted that if a violator fails to comply with a recommendation issued by the JFTC, the JFTC may issue a cease-and-desist order or a surcharge payment order based on the AMA.

Table 1. The numbers of recommendations and requests from the SME Agency

FY	2021	2022	2023	2024	2025
Recommendations	4	6	13	21	39
Requests	1	0	0	1	9