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**Information Sharing in Competition Policy – Note by Japan**

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## *Japan*

### 1. Introduction

1. The Antimonopoly Act (AMA) prohibits private monopolization, unreasonable restraints of trade, and unfair trade practices by enterprises. At the same time, it prohibits trade associations that are combinations of enterprises or federations of combinations of enterprises from engaging in conduct that restrains or impedes competition. The purpose of the AMA is to promote fair and free competition by eliminating such violations when they take place.

2. Regarding information exchange among enterprises, if those enterprises formulate an agreement concerning restriction of competition with respect to such matters as price, quantity, customers, sales channels, or facilities, and they substantially restrain competition in a market, their conduct shall constitute a violation of Article 3 of the AMA.

3. Moreover, if a trade association collects from or offers to constituent enterprises information comprised of important and specific competition-related factors (e.g., pricing), or promotes the exchange of such information among them, such information activities, depending on the content and other elements thereof, might lead to or accompany conduct that restrains competition, and might pose a problem in light of the AMA (Article 8).

4. The Japan Fair Trade Commission (JFTC) takes strict actions against serious anti-competitive conduct, including price cartel or bid rigging, arising from such information exchange.

5. However, there are many types of information exchanges among enterprises or activities of trade associations that do not necessarily pose particular problems in light of the AMA. These include information activities through which trade associations collect and offer various kinds of information concerning their field.

6. In its administration of the AMA, the JFTC has published various guidelines to clarify what types of conduct, including information exchange among enterprises and trade associations (hereinafter collectively referred to as “enterprises, etc.”), pose problems under the AMA. This is intended to prevent violations and assist the appropriate business activities of enterprises, etc. Furthermore, the JFTC has responded to individual consultations regarding specific conduct that enterprises, etc. plan to undertake on their own.

7. In addition, from the perspective of supporting the efforts of enterprises, etc. regarding AMA compliance, the JFTC has compiled and published reports to identify current issues and challenges, as well as to present various measures for further improvement. These reports are based on the JFTC’s grasp and analysis of the status of such compliance efforts, conducted through questionnaires and interviews. The JFTC has also developed a guide that outlines best practices to serve as a reference for individual enterprises in establishing and operating effective AMA compliance programs (published in December 2023 and revised in June 2025).

8. This contribution paper introduces the JFTC initiatives related to information exchange among enterprises or that of trade associations, in addition to presenting a recent enforcement case of the AMA concerning information exchange among enterprises.

## 2. Enforcement Case

9. This section presents a case involving information exchange between enterprises in which the JFTC issued warnings to 15 hotel operating companies on May 8, 2025.

10. The hotels located in Tokyo, operated by each of the 15 companies, exchanged information such as monthly occupancy rates, average daily rates, revenue per available room, future booking status and pricing strategies through emails and in-person meetings at the hotels. This information included each company's non-public data. Among the 15 companies, some stated that the monthly information exchange allowed them to grasp whether the occupancy rates and average daily rates of their benchmark hotels were trending upward or downward, while others used the data to verify the validity of their own sales strategies. It is considered that there was an aspect of conducting these information exchanges to serve as a reference for their own sales policies. By mutually tracking competitors' past performance trends through these exchanges, it becomes easier for each hotel to decide whether to maintain or raise its own room rates. Given that such conduct by the 15 companies might constitute an unreasonable restraint of trade (Article 2, Paragraph 6) and violate Article 3 of the AMA, the JFTC issued warnings to ensure these practices do not recur.

11. In addition, since the members of the Japan Hotel Association or the All Japan Hotel Federation were included among the hotels operated by the 15 companies, the JFTC requested both organizations to ensure their members are fully aware of and comply with the AMA to prevent any recurrence of such conduct.

12. It should be noted that even in cases where the JFTC does not obtain sufficient evidence to issue a cease-and-desist order, it will issue warnings to the relevant enterprises and instruct them to take remedies if there is a suspicion of a violation.

## 3. Guidelines Concerning the Activities of Trade Associations under the Antimonopoly Act

13. By describing specific examples of trade associations' activities, these Guidelines aim to facilitate a better understanding of the kinds of trade associations' activities that might pose problems in light of the AMA. Through these means, these Guidelines aim to help trade associations to avoid engaging in unlawful activities and serve as a useful resource for taking appropriate actions. The following is an overview of the section regarding information activities within these Guidelines. The principles regarding information exchange set out in these Guidelines also apply, in principle, to information exchange conducted among competitors.

### 3.1. The Diversity of Information Activities

14. Trade associations engage in information activities in their respective fields for a variety of reasons. For example, they collect objective information concerning products, technological trends, management expertise, the market environment, statistics concerning industrial activities, legislative or administrative trends, and socioeconomic conditions; and they provide this information to the constituent enterprises, related fields of business, and consumers, in order to develop an accurate understanding of society's demands on their respective fields of business and to accommodate those demands, to improve consumer convenience, or to understand and introduce the actual conditions in the fields of business concerned. There is a wide range of information activities such as these that do not pose any particular problem in light of the AMA.

### 3.2. Conduct Suspected to Constitute a Violation

15. However, there are also cases where a trade association's information activities make it possible for competitors to mutually predict the specific contents of such important competition-related factors as pricing concerning present or future business activities. In consideration of this, information activities such as described below are suspected to constitute violations of the AMA.

16. Collecting or offering information from or to constituent enterprises, or promoting the exchange of information among them, where such information specifically relates to important competition-related factors, concerning the present or future business activities of the constituent enterprises, such as: specific plans or prospects regarding the prices or quantities of goods or services supplied or received by the constituent enterprises; the specific contents of the constituent enterprises transactions with or inquiries from customers; or the limits of anticipated investment for facilities.

17. If an information activity of this kind results in the formation of a tacit understanding or common intent among constituent enterprises to restrain competition, or if it is used as a means or a method of restraining competition, the case shall in principle be found to constitute a violation of the AMA.

18. That is, if a trade association's information activities lead to restrictive conduct by the association, such as fixing prices, restricting resale prices, restricting quantities, restricting customers, allocating markets, allocating contracts, predetermining the bidder expected to win a contract, restricting the construction or expansion of facilities, restricting entry, or if they accompany such restrictive conduct, such cases shall be found to constitute a violation of Article 8 of the AMA.

### 3.3. Conduct in Principle Not Constituting a Violation

19. In contrast to the conduct cited in (3.2) above, types of conduct such as those described below usually do not have the effect of restraining competition, and therefore in principle do not constitute violations of the AMA.

#### ***3.3.1. Collecting and offering information about technological trends, management, expertise, etc.***

20. Collecting and offering general information that concerns such matters as technological trends, management expertise, market environment, legislative or administrative trends, and socioeconomic conditions in the field concerned, and that is provided by government agencies, private research organizations, and so forth.

#### ***3.3.2. Collecting and disseminating information about past business activity***

21. In order to obtain and disseminate information on general business performance in the field concerned, collecting, at the discretion of the constituent enterprises, general information regarding the previous business performance of those enterprises, including collecting data relating to such matters as the quantities or monetary value of previous production, sales, and plant investment; statistically and otherwise objectively processing such information; and publicly disseminating that information in a rough form, without disclosing the actual quantities or monetary amounts relating to individual constituent enterprises (except for information concerning prices and information activities for monitoring conduct that restricts prices). However, in cases where the constituent

enterprise in question has already publicly announced its specific quantities or monetary amounts, the association may disclose relevant information.

### **3.3.3. Formulating and disseminating rough forecasts of demand**

22. Collecting and offering general information concerning overall demand trends in the field of business concerned; or formulating and disseminating rough forecasts of demand, based on objective facts (except for giving common specific standards concerning future quantities of supplies of the constituent enterprises).

## **4. Collection of Consultation Cases**

23. The JFTC responds to individual consultations regarding specific conduct that enterprises, etc. plan to undertake on their own. The “Collection of Consultation Cases” is published annually, compiling major consultation cases with the aim of further deepening the understanding of the AMA among enterprises, etc.

24. The following are some of the cases published in the Collection that relate to the information activities of trade associations. As with Section 3 above, the principles applied in these cases are, in principle, also applicable to information activities among competitors.

### **4.1. Information Activities Not Specifically Related to Important Competition-Related Factors**

25. A case where the JFTC concluded that it would not pose problems under the AMA for a trade association, consisting of seed and seedling manufacturers, to share information with constituent enterprises within its vegetable seed division. This involved collecting voluntary, multiple-choice questionnaire data from constituent enterprises regarding crop conditions for specific vegetable categories by production area, subsequently sharing the results after objective statistical processing.

#### ***Reasoning***

26. Since this initiative involves a trade association collecting information related to vegetable seed production from members of its vegetable seed division and sharing the results with them, the JFTC examined it from the perspective of Article 8, Item 1 of the AMA.<sup>1</sup>

27. The JFTC concluded that the initiative would not pose problems under the AMA for the following reasons:

1. Because the information in question is limited to trends in crop conditions for specific vegetable seeds by production area, it does not constitute information specifically related to important competition-related factors in the present or future business activities of each member of the vegetable seed division (constituent enterprises of the association).
2. The management of the information from the questionnaire is handled exclusively by the secretariat of the trade association (which does not include members of the vegetable seed division), and the information is shared with the members after objective statistical processing. Therefore, the sharing of this information among

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<sup>1</sup> Article 8, Item 1 of the AMA prohibits trade associations from engaging in acts that substantially restrain competition in a particular field of trade.

the members will not make their mutual conduct predictable, nor will it lead to the formation of a common intent to restrict competition among them.

#### **4.2. Information Activities for Compiling and Publishing Demand Forecasts by End-use that might pose a problem under the AMA**

28. A case where the JFTC concluded that it might pose a problem under the AMA regarding a trade association A, consisting of manufacturers of construction component X, compiling and publishing a 5-year demand forecast for component X by end-use on the trade association's website, based on publicly available data from government agencies and economic research institutes.

##### ***Reasoning***

1. Compiling demand forecasts based on already publicized data is unlikely to provide constituent enterprises with specific targets for their respective future supply volumes, provided that the content remains general and aggregate.
2. However, construction component X is standardized, and no significant differences are recognized among the products of the manufacturers. Furthermore, market shares have remained static over a long period, with association A's member enterprises holding an extremely high combined share of over 95%, and the top three companies alone accounting for 70% of this oligopolistic market. Additionally, for certain end-uses of construction component X, there are only two or three manufacturers.

Under such circumstances, presenting demand forecasts by end-use cannot be considered general or aggregate. Instead, there is a high risk that such forecasts might be serve as de facto targets for each member enterprise's future supply volume and be utilized as a means of supply-demand adjustment.

3. In light of the above, even the compilation and publishment of demand forecasts might pose a problem under the AMA.

#### **5. Guidelines for Supporting Joint Initiatives among Enterprises**

29. In pursuing the realization of a 'Green Society' (a society that balances economic growth with the reduction of environmental impact) or the stable supply of generic drugs, enterprises, etc., may find it necessary to exchange information regarding their business activities when considering joint initiatives or business combinations.

30. The JFTC aims to prevent anti-competitive conduct while further enhancing the transparency of law enforcement and the predictability for enterprises, etc., thereby supporting such initiatives. To this end, the JFTC has formulated guidelines and documents, including the following:<sup>2</sup>

31. "Guidelines Concerning the Activities of enterprises, etc. Toward the Realization of a Green Society (March 2023)" (Green Guidelines)

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<sup>2</sup> Please refer to the contribution paper from Japan for the roundtable "National Security Considerations in Competition Enforcement" regarding the JFTC's efforts, including the "Collection of Cases on Economic Security and the Antimonopoly Act."

32. “Collection of Case Examples under the Antimonopoly Act Regarding Industrial Structural Reform for the Stable Supply of Generic Drugs (February 2025)”<sup>3</sup>

33. The following describes the basic approach under the AMA concerning joint initiatives, as presented in the Green Guidelines.

*There are cases in which enterprises, etc., establish voluntary standards or implement joint activities such as joint R&D, as steps toward the realization of a green society. These activities seek to streamline business activities, for example, by enabling prompt business execution, cost reduction or mutual complementation to address insufficiency related to work, technologies, etc., and are aimed at achieving the early realization of a green society. In many cases, joint activities can be implemented without causing problems under the AMA, and enterprises, etc. will not necessarily be held to be in violation of the AMA merely because of the fact they have conducted such activities.*

*Most of the joint activities of enterprises, etc. that satisfy the following factors are considered to fall under the category of acts without anti-competitive effects: not affecting matters that constitute important means of competition including prices,<sup>4</sup> not restraining entry of enterprises, and not excluding incumbents from markets. Accordingly, it is likely that, in many cases, the joint activities of enterprises, etc. toward the realization of a green society can be implemented in a manner that does not pose any problem under the AMA. In addition, when enterprises, etc. consider joint activities, it may be necessary to mutually exchange information regarding business activities, etc. In this case, if there is no exchange of information regarding matters that are important means of competition including prices, there is usually no problem under the AMA. Furthermore, even the exchange of information regarding matters that are important means of competition including prices, does not normally pose a problem under the AMA if measures to block information are taken.<sup>5</sup>*

## 6. Guide for the Design and Implementation of an Effective Antimonopoly Act Compliance Programs

34. Promoting fair and free competition in Japan's markets requires an environment where individual businesses act competitively and autonomously through robust AMA compliance.

35. The “Guide for the Design and Implementation of an Effective Antimonopoly Act Compliance Programs” (the Guide) outlines best practices that serve as a reference for enterprises, etc., in promoting AMA compliance.

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<sup>3</sup> Please refer to the contribution paper from Japan for the roundtable "Competition in the Healthcare Sector" in December 2025 GFC, for an overview of the “Collection of Case Examples under the Antimonopoly Act Regarding Industrial Structural Reform for the Stable Supply of Generic Drugs (February 2025)” (URL:[https://one.oecd.org/document/DAF/COMP/GF/WD\(2025\)12/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2025)12/en/pdf))

<sup>4</sup> This refers to the various elements of a business's activities that, when restricted, have a direct impact on market mechanisms; these include the price or quantity of goods or services supplied or received, customers or sales channels, and facilities for supply.

<sup>5</sup> Measures to block information involve establishing information barriers to ensure that information is shared only with those directly responsible for joint efforts or business combinations, while strictly prohibiting any use of the information beyond its original purpose.

36. The following provides an overview of the “Design and Implementation of Internal Rules for Contacts with Competitors,” as part of the initiatives described in the Guide.

37. If officers and employees can reduce opportunities to engage in conduct that may lead to AMA violations, and if such opportunities can be appropriately identified and managed within daily business activities, it will lead to the prevention and early detection of such violations. To prevent involvement in concerted practices, it is crucial to establish rules in advance, such as strictly prohibiting officers and employees from contacting or exchanging information with competitors regarding important competition-related factors, such as pricing.

38. On the other hand, a blanket prohibition on all contacts with competitors where information exchange on important competition-related factors might occur could impose excessive restrictions on joint initiatives between enterprises. Some of these initiatives generate pro-competitive effects, such as the creation of new technologies or superior products, and can be implemented without raising concerns under the AMA. Such strict bans risk creating a "chilling effect" on officers and employees on the ground who seek to promote these initiatives.

39. Therefore, in cases where a total ban on contacting competitors is expected to be an excessive constraint, it is important to establish rules in advance that—while prohibiting contact and information exchange with competitors on important competition-related factors as a general rule—provide for instances where such contact is unavoidable due to business necessity, as outlined below.

- Pledge to refrain from engaging in any conduct that may violate the AMA after confirming the necessary precautions, and commit to complying with all internal rules.
- Submit a prior application to and obtain approval from a supervisor or the department in charge of compliance, specifying the date, time, location, and purpose of the contact, as well as the counterparty's department, title, and name.
- In the event that a counterparty raises a topic that might pose AMA concerns, demand that the topic be dropped; if the demand is not met, lodge a formal protest and immediately withdraw from the meeting.
- Report the details of the interactions and the factual sequence of events during the contact to a supervisor or the department in charge of compliance after the fact.

40. Regarding the aforementioned rules, companies may consider applying stricter standards to employees in high-risk positions compared to other officers and employees—for instance, by imposing a total ban on those high-risk employees from contacting or exchanging information with competitors regarding important competition-related factors such as pricing. Similarly, establishing such stringent rules may be appropriate in countries or regions where the mere fact of contact or information exchange with a competitor could lead to suspicions of cartel involvement.

41. Furthermore, even if a company’s own officers or employees do not initiate contact, they may be approached by competitors who seek to solicit information exchange regarding important competition-related factors, which could lead to cartel or bid-rigging. It is crucial to establish rules similar to those mentioned above in anticipation of such scenarios.

42. Additionally, in Japan, trade associations are organized across many industries, and their activities inherently involve contact and information exchange among competitors. Therefore, it is advisable to establish similar rules in advance regarding membership in trade associations and participation in their activities.

43. It is crucial that the aforementioned rules concerning contact with competitors are thoroughly disseminated to individual officers and employees through AMA compliance manuals, in-house training, and other means. Furthermore, it is important to periodically monitor compliance with these rules and to appropriately maintain and manage records—such as evidence of applications, approvals, and reports required under the rules—as an audit trail.

### *Examples of Good Practices*

44. The Guide introduces the following good practices identified through surveys and interviews conducted by the JFTC in past fact-finding studies. It is expected that enterprises will establish and implement appropriate rules tailored to their specific circumstances and AMA violation risks, using these initiatives as a reference.

1. The detailed regulations of the AMA compliance basic rules stipulate that, in principle, prior application and follow-up reporting are required when contacting competitors. The process requires submitting an application to the compliance department including the purpose of contact, the names of the competitors and all participants (from both the company and the competitor), the date and time, and a pledge to comply with the AMA, and obtaining approval from the head of the compliance department.
2. Establishment of rules for attending meetings with competitors, requiring that:
  - -Agendas are finalized in advance, and participants do not raise topics outside the agenda.
  - -Accurate minutes are prepared, shared with participants, and reported to supervisors.
  - -If a topic posing AMA concerns is raised, participants must demand it be dropped; if refused, they must lodge a protest and withdraw.
  - -If a participant withdraws, they must request that their withdrawal be recorded in the minutes.
  - -Any solicitation to engage in inappropriate discussions is reported immediately to the legal department.