



CPI Antitrust Chronicle

August 2012 (2)

Outreach Activities of the JFTC

Japan Fair Trade Commission

Outreach Activities of the JFTC

Japan Fair Trade Commission¹

I. INTRODUCTION

As in the case of any policy, unless the society, including government bodies, understands why a policy is established and implemented, how it is used, and what kind of advantages can be obtained, the policy won't go anywhere. Therefore, the success of any policy depends on how the government body responsible for the policy "advertises" it. (This kind of advertising activity is referred to as "outreach activity" in this paper.) Especially for competition policy, which maintains and promotes fair and free competition in the market, it may take time for the society to understand both its advantages and benefits. So the outreach activities of the government body responsible for a competition policy are important and essential for the policy to work well.

In this paper, we would like to explain three types of the outreach activities the Japan Fair Trade Commission (hereinafter referred to as "JFTC")—the government body responsible for the competition policy in Japan—uses for enterprises, government bodies, and the general public.

II. OUTREACH ACTIVITIES IN THE JFTC

A. For Enterprises

Since enterprises or business associations are subject to the Antimonopoly Act (hereinafter referred to as "AMA")—the competition law in Japan—outreach activities for enterprises are designed to prevent potential conduct against the AMA. For that purpose, the main tools of the JFTC are: 1) surveys and recommendations on corporate compliance systems, and 2) guidelines.

1. Surveys and Recommendations on Corporate Compliance Systems

The JFTC surveys enterprises' corporate AMA compliance systems and regularly recommends appropriate measures to enhance those systems. As a good recent example, we published a report in June 2010 that included findings from questionnaires targeted at enterprises listed on the first section of the Tokyo Stock Exchange. In that report, the JFTC recommended the following primary measures for enterprises to promote compliance effectiveness with the AMA:

- To create a special division to deal with AMA compliance, and to create a positive and continuous compliance connection with sales departments.
- To make top managements require their employees to be responsible for compliance by telling them, clearly and repeatedly, of the importance of the AMA.
- To enhance training programs for senior management, so they can build knowledge about the AMA.

¹ For further information, contact Hideyuki Shimozu at intnldiv@jftc.go.jp.

- To actively involve compliance with the AMA within group companies, both in Japan and in other countries.
- To develop rules on how an employee of one enterprise may contact his/her counterpart; make those rules known to the employees; and, in order to check on the status of the rules objectively and consistently, make the legal and compliance department check if departments are following those rules.
- To implement internal investigations effectively from the top-down when there has been information relating to a violation of the AMA.

The following are some results of the survey, relating to the recommendations above:

- Messages calling for compliance with the AMA were transmitted by senior management in most of the companies surveyed. However, in most cases, such information was sent in writing via in-house journals, postings on the intranet, etc., while only about 10 percent of the companies surveyed were giving the information directly to their employees at training seminars, etc.
- Regarding their compliance with the AMA, 9.3 percent of companies answered “no involvement” concerning their domestic group companies, while 29.3 percent answered “no involvement” regarding their overseas group companies.
- Rules on meetings, etc. with other enterprise counterparts had been established at 27.2 percent of the companies surveyed. Approximately 70 percent of the companies surveyed responded that compliance checks for meetings, etc. with counterparts were conducted by the supervisor of the department to which the suspicious employee belonged.

These surveys and recommendations help companies establish or enhance their compliance systems.

2. Guidelines

The JFTC has issued many guidelines on the AMA. Since these guidelines show what kind of conducts are likely—or not likely—to be against the AMA, they help enterprises predict AMA enforcement and avoid getting involved in illegal conducts. For example, with the establishment of the Bill to Amend the Antimonopoly Act in 2009, the JFTC became liable for ordering surcharge payments regarding any abuse of a superior bargaining position that falls under Article 2, paragraph (9), item (v) of the AMA and that satisfies certain requirements. To clarify the AMA’s position on these conducts, in 2010 the JFTC formulated the “Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act” to enhance both the transparency and predictability of law enforcements regarding this bill.

The JFTC publicizes these kinds of guidelines on their website.²

B) For the Government Bodies

From past experience, outreach activities for government bodies are also important. The AMA was enacted in 1947. At the same time, the JFTC was established as an independent

² http://www.jftc.go.jp/en/legislation_guidelines/antimonopoly_guidelines.html.

administrative commission to enforce the AMA. However, in the 1950s and 1960s, many laws or regulations to exempt certain conducts of enterprises from the AMA had been established. At its peak, the number of exempted cartels had surprisingly increased up to 1,079 in 1966 (the number has been cut to 28 as of 2011) despite the concern that this kind of policy can exclude competition in a market. At the present time, some regulations, such as barriers to entry, are sometimes introduced to meet a specific policy requirement, such as the protection of the environment. These regulations, however, may diminish or distort competition in the market. Therefore, new regulations should be minimized and existing regulations should be reviewed continuously.

To achieve these actions, outreach activities are essential for the government bodies not only to plan and establish policies that are consistent with competition policy, but also to review existing regulations. To promote these reviews, the JFTC provides the following measures: 1) coordination between the AMA and other economic laws or regulations, 2) support for the implementation of competition assessments, and 3) enrichment of training seminars for officials in the procurement agencies.

1. Coordination Between the AMA and Other Economic Laws or Regulations

When administrative bodies propose to enact or amend an economic law or ordinance, the JFTC acts in accordance with those bodies to ensure that the content of the proposed enactment or amendment is consistent with the AMA and the competition policy. The JFTC also advises other Ministries how to adopt more pro-competitive regulations in the process of drafting laws and guidelines.

For example, when the Ministry of the Environment started to consider the introduction of an “Emission Trading Scheme,” the JFTC organized a study group, including economists, and asked it to examine the impact of this scheme on competition. Based on the report of the study group, in 2010 the JFTC published its opinions. Among these, the JFTC pointed out that if emission allowances were allocated throughout trade associations, they could cause collusion or the exclusion of a particular firm. The Minister of the Environment stated that the Ministry would respect the JFTC’s suggestions when they designed the details of the emission trading system.

2. Support for the Implementation of Competition Assessments

Since October 2007, when government bodies newly enact, revise, or abolish regulations, they have been obliged, in principle, to implement an *ex-ante* evaluation of regulations. In this evaluation, the impact of the regulations on competition is supposed to be considered as one of “other social costs.” A trial to evaluate (*ex-ante*) the impact of regulations on competition was started in April 2010. The JFTC supports the trial in several ways, including by preparing “competition assessment check-lists,” informing the relevant ministries of the trial, and so on. Through these activities, regulations or policies are expected to be implemented in a way to promote competition in the market.

3. Enrichment of Training Seminars for Officials in the Procurement Agencies

To prevent bid-rigging and other illegal conducts, an environment designed to encourage appropriate bidding systems and to practice appropriate operations is essential. This allows

procurement agencies and their officials to improve their ability not to be involved in bid-rigging and permit the bidding system to be built up. Therefore, with the aim of: i) enhancing the consciousness of the procurement agencies and their officials regarding bid-rigging, ii) making them use appropriate actions, and iii) helping them achieve the goal of having no one involved in illegal conducts, the JFTC dispatches experienced and knowledgeable staff to train the officials in the procurement agencies. With these efforts, we have supported and promoted the programs to prevent bid-rigging and other illegal conducts by the procurement agencies and their officials.

C. For the General Public

The outreach activities for the general public, such as consumers, might be the most important programs since the general public will decide whether they wish (or don't) to uphold the cornerstone of competition policy. The key word for these activities is "communication." It is crucial to listen to opinions from the public and explain to them, in an easy-to-understand way, about the policy. With this understanding, the JFTC conducts several activities:

- Since 1999, the JFTC has appointed about 150 members of the general public (such as consumers) to be "Antimonopoly Policy Cooperation Members." The JFTC implements policy by reference to opinions from the members.
- Also, in order to promote competition policy effectively and properly under economic changes, the JFTC has held a Council on Antimonopoly Policy, which consists of experts from academia and business, as well as consumers.
- Furthermore, the JFTC commissioners exchange opinions with local experts around the country. When visiting, the director generals of regional offices and local experts gather for discussion.
- The JFTC hosts "JFTC for One Day" and holds "Consumer Seminars," the former to enhance the public's understanding of and to provide consultation services regarding the AMA and Subcontract Act. The latter is to introduce consumers about the AMA and help them understand what the JFTC works on. These events are held in cities where the JFTC doesn't have a local office.
- At the request of junior high schools, high schools, and universities, the JFTC has made efforts to spread knowledge by dispatching officials to speak on the role of competition in economic activities. Since junior high school, high school, and university students are expected to take an active part in the society, these kinds of activities will promote a pro-competitive environment in the future.
- Lastly, the JFTC has been improving its website to make it easy to understand the AMA and JFTC's activities. For example, the JFTC has set up a website for children with a character named "Dokkin!" to easily explain the merits of the AMA and competition policy.³ The JFTC also has a website for general consumers titled "Relationships between our lifestyle and the AMA."⁴ In this website, the JFTC explains the meaning of competition, gives an outline of the AMA, and describes the role of the JFTC, responding to questions and comments such as "Why can we buy a good quality product at a low

³ <http://www.jftc.go.jp/en/kids/index.html>.

⁴ <http://www.jftc.go.jp/en/ippan/index.html>.

price?” “If such a thing happens, will our lives be exposed to risk?”, and “Let’s issue a Yellow card against a violation of rules by enterprises.”

III. CONCLUSION

So far we have explained the major outreach activities of the JFTC. In closing, we would like to comment on two general perspectives about outreach activity as it regards competition policy.

First, it is important for a competition authority to keep explaining the advantages and benefits of competition policy at every opportunity—such as in seminars, conferences, and other venues. As we described at the beginning, the advantages of competition policy can be difficult to grasp, and it takes time for society to understand.

Second, unless a competition authority rigorously enforces competition laws and shows a stringent attitude against anticompetitive conducts, no outreach activity will work well. Outreach activities cannot be persuasive if a competition authority overlooks or accepts anticompetitive conducts. When the JFTC issues a cease and desist order and/or a surcharge payment order, the media, such as national newspapers, writes about it. Through the media, therefore, people notice what kind of conduct violates the AMA and will create a financial disadvantage to the involved enterprise. This publicity allows society to recognize competition policy. In this sense, it can be said that vigorous law enforcement against anticompetitive conducts might be the most effective outreach activity of all.

For competition policy to be accepted by the society, the importance of the competition authority’s role cannot be overstated.