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1. The JFTC's Public Announcement of "Processing Status of Cases in Violation of the Antimonopoly Act in FY2022"

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On June 1, 2023, the Japan Fair Trade Commission (the "JFTC") published "Processing Status of Cases in Violation of the AMA in FY2022"¹. As the impact of COVID-19 pandemic subsided, the number of legal actions increased significantly, and the total amount of surcharges increased significantly to a record high of ¥101.9 billion (\$890.9 million). The most notable features of the report are the investigation of bid-rigging cases in the electric power company and event sectors, and the first public announcement of a case using the surcharge reduction system. Below, we would like to briefly comment on the status of the JFTC's handling of the announced antitrust cases.

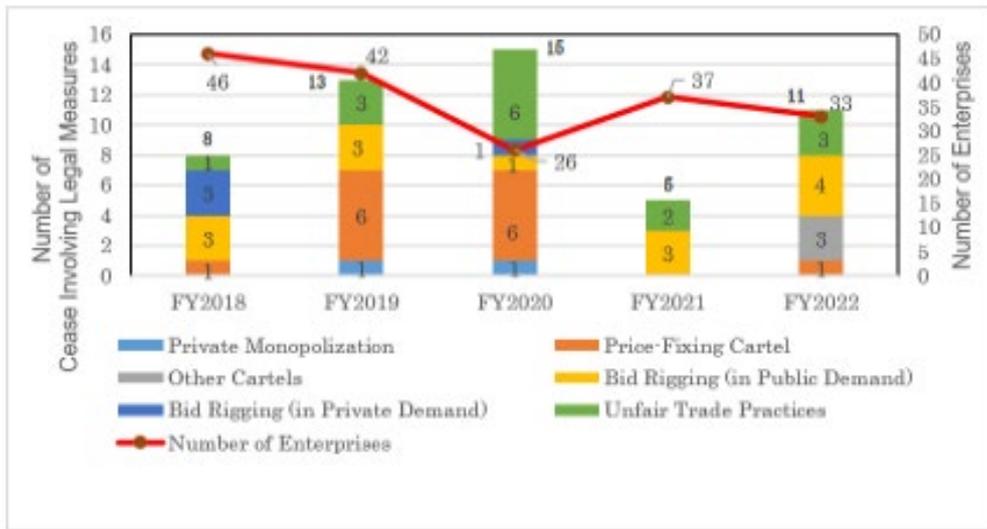
As the impact of COVID-19 pandemic subsided, the number of cases involving legal measures have increased significantly, and the total amount of surcharges has increased significantly to a record high of JPY 101.99 billion (approximately USD 731.76 million) in FY2022. The most notable features of the report are the investigation of bid-rigging cases in the electric power company and event sectors, and the first public announcement of a case using the surcharge reduction system. In the following section, we would like to comment briefly about the processing status of cases in violation of the AMA published by the JFTC.

1.1 Trends in Cease and Desist Orders

In FY2022, a total of 11 legal measures (Note 3) were taken, including a total of 8 cease and desist

¹ https://www.jftc.go.jp/houdou/pressrelease/2023/jun/230601_kanki.html

orders (1 price-fixing cartel, 3 other types of cartels (Note 1), 4 bid rigging (in public demand) cases and 0 bid rigging case (in private demand)), and 3 commitment plan approvals (Note 2) concerning unfair trade practices. This is a significant increase from the FY2021 total of 5 cases.



(Source: The JFTC [“Processing Status of Cases in Violation of the AMA in FY2022”](#) (June 1, 2023) p. 2)

(Note 1) Other cartels are cartels involving quantity, sales channels, prohibitions on customer movement, facility restrictions, etc.

(Note 2) An approval of the commitment plan is an administrative disposition under the AMA, in which the JFTC approves a commitment plan submitted by a business operator that has received the Notice of Commitment Procedures. The JFTC is to render a decision to rescind the approval and resume the investigation procedure conducted before the Notice of Commitment Procedures is issued, for instance, if the JFTC recognizes that the commitment plan is not being conducted according to the approved commitment plan

(Note 3) Legal measures refer to cease and desist orders, surcharge payment orders and approvals of the commitment plans. The case in which both a cease and desist order and a surcharge payment order are issued is counted as one legal measure.

(Note 4) The cases which fall into both private monopolization and unfair trade practice are categorized as “Private monopolization”.

The reason why the number of cases involving legal measures have increased significantly in FY2022 as mentioned above, is that restrictions on economic activities and investigation activities due to COVID-19 has been limited.

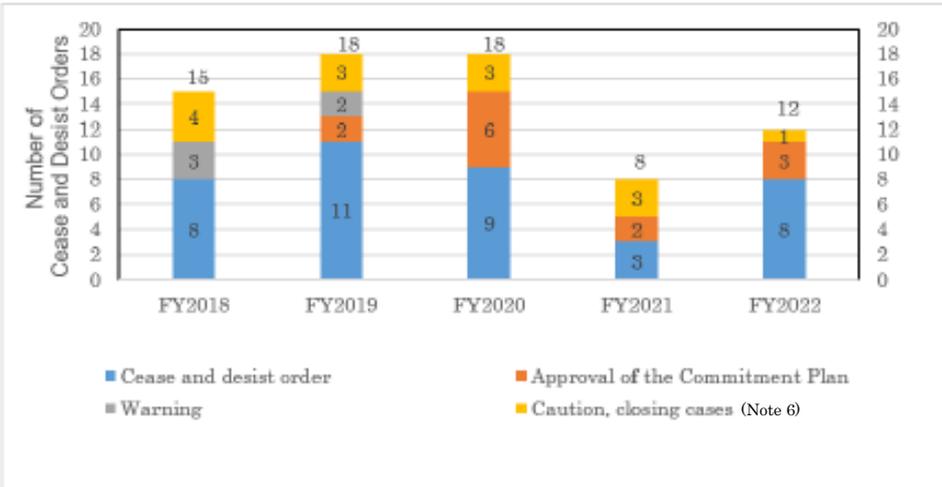
Among the legal measures taken in FY2022, it is noteworthy that strict measures were taken against other large-scale cartel cases and bid rigging cases ([“The JFTC Issued Cease and Desist Orders and Surcharge Payment Orders against the Former General Electricity Utilities, etc.” dated March 30, 2023](#)), ([“The JFTC’s criminal accusation on bid-rigging concerning the outsourcing contracts of planning test events, etc. regarding the Olympic and Paralympic Games Tokyo 2020 ordered by the Tokyo Organizing Committee of the Olympic and Paralympic Games” dated February 28, 2023](#)). With respect to the former case, the JFTC ordered related business operators

to pay surcharge totaling approximately JPY 101 billion, and as a result, the total amount of surcharges in FY2022 reached a record high.

Other notable point includes the response to acts that unfairly disadvantage small and medium-sized business operators ([“Report from SEVEN-ELEVEN JAPAN ceasing Product Guide Production Fee in PB manufacturing contract” dated December 22, 2022](#)). In addition, although the case was not made public, the JFTC has issued a warning to a business operator that notified its outsourced illustrator that if it does not convert to a taxable business operator and instead selects a tax-exempt business operator after the introduction of the invoice system, an amount equivalent to 10%, which is the consumption tax rate, will be deducted from the transaction value.

1.2 Efforts in IT and Digital-related Fields

As in the previous year, the JFTC continued to implement effective measures in IT and digital-related fields in response to each case, including measures such as terminating investigations based on approvals of commitment plans or voluntarily applications for measures instead of issuing cease and desist orders, for the purpose of promptly restoring the competitive situation so that innovation is not hampered.



(Source: The JFTC [“Processing Status of Cases in Violation of the AMA in FY2022”](#) (June 1, 2023) p. 2)

For example, it became an issue whether Expedia Lodging Partner Services Sàrl, in operating “Expedia”, the accommodation reservation website, constituted trading on restrictive terms (Paragraph 12 of the Designation of Unfair Trade Practices) when it required that the room rates and availability of the accommodation operators’ accommodation facilities listed on the Expedia website shall be equivalent to or more favorable than those offered through other sales channels. In this case, when the company submitted a commitment plan to the effect that it will cease the conduct and thoroughly disseminate the details of the measure to its affiliated parties, the JFTC recognized that the commitment plan conforms to the approval requirements under the AMA, and approved the commitment plan ([“Approval of the Commitment Plan submitted by Expedia Lodging Partner Services Sàrl” dated June 2, 2022](#)). In addition, it became an issue whether or not the following case constituted interference with competitor’s transactions (Paragraph 14 of the

Designation of Unfair Trade Practices): SCINEX CORPORATION and Smartvalue Co., Ltd. have urged municipalities, etc. considering order of redesign of their websites to include in the order specification the requirements that made it difficult for businesses providing content management system (hereinafter referred to as the “CMS”) of open source software to enter the competition for the order, by distributing draft specification documents, etc. describing that it is essential to apply the two companies’ CMS instead of those of open source software for the purpose of information security, to the municipalities that do not have sufficient capacity to set specification concerning the CMS by themselves. In this case, when the two companies submitted a commitment plan to the effect that they will cease the conduct and thoroughly disseminate the fact thereof to their own employees and the relevant municipalities, etc., the JFTC recognized that the commitment plan conforms to the approval requirements under the AMA, and approved the commitment plan ([“Approval of the Commitment Plan submitted by SCINEX CORPORATION and SMARTVALUE Co., Ltd.” dated June 30, 2022](#)).

As seen from the above, the JFTC intends to promptly restore the competitive order through prompt and effective handling of each case based on the details of each case.

1.3 Other Trends

The total number of leniency applications was 22, decreased from 52 in the previous fiscal year. The number of legal measures for which the application of the leniency program was announced was 8.

In addition, the new leniency program that came into effect on December 25, 2020 removed the upper limit on the number of business operators which may use the leniency program. This may have had an impact on the number of business operators that were eligible for the leniency program, which increased significantly from 10 business operators in the previous fiscal year to 22 business operators.

In 2020, the Reduction System for Cooperation in Investigation was established to reduce surcharges based on the degree of cooperation with investigations by the JFTC, and in FY2022, the system was applied for the first time to a total of 4 business operators in 2 cases, resulting in reduced surcharges.

In addition, the JFTC filed a criminal accusation against a total of 7 persons and companies, including 6 individuals in charge of work related to ordering the outsourcing contracts at 6 companies that run advertising business or event planning and management business, and 1 relevant person of the Tokyo Olympic Organizing Committee ([“The JFTC’s criminal accusation on bid-rigging concerning the outsourcing contracts of planning test events, etc. regarding the Olympic and Paralympic Games Tokyo 2020 ordered by the Tokyo Organizing Committee of the Olympic and Paralympic Games” dated February 28, 2023](#)), and prosecutors indicted them on the same date.

1.4 Future Outlook

In comparison with FY2021, the number of cases involving legal measures and the amount of surcharge have increased significantly in FY2022.

In FY2023, the impact of COVID-19 is expected to be more limited, and the JFTC's investigation activities, including on-site inspections, will be more active, leading to an increase in the number of cases involving legal measures. In addition, the JFTC plans to continue to actively investigate whether or not price increases in costs such as labor costs, raw material prices and energy costs are being passed on appropriately, and to conduct on-site investigations into cases where it is suspected that transaction prices are being deferred without consultation between the orderer and contractor. We should pay attention to these developments as well.

2. Recent Publications

- ◆ *Competition Litigation Comparative Guide: Japan*
May 2023 ([Ryoichi Kaneko](#)) Mondaq
Link [here](#)

- ◆ *Market Intelligence -CARTELS IN JAPAN- 2023*
April 2023 ([Shigeyoshi Ezaki](#) [Vassili Moussis](#) [Takeshi Ishida](#)) Law Business Research Ltd.
Original PDF [here](#)

- ◆ *Lexology Getting The Deal Through - Dominance 2023 (Japan Chapter)*
March 2023 ([Atsushi Yamada](#) [Yoshiharu Usuki](#)) Law Business Research Ltd.
Original PDF [here](#)

- ◆ *GCR - The Asia-Pacific Antitrust Review 2023 (Japan Chapter: Cartels)*
March 2023 ([Atsushi Yamada](#)) Law Business Research Ltd.
Original PDF [here](#)

- ◆ *GCR - The Asia-Pacific Antitrust Review 2023(Japan Chapter: Merger Control)*
March 2023 ([Takeshi Suzuki](#)) Law Business Research Ltd.
Original PDF [here](#)

3. NEWS (Achievements)

In the latest rankings of an internationally recognized rating medium, our firm was ranked the highest (Band 1 / Tier 1) in a number of practice areas, including competition law, as in the previous year. Several of our lawyers were also ranked in the individual competition law category.

- ◆ The A-List: Japan's Top 100 Lawyers
Japan's Top 100 lawyers [Yusuke Nakano](#)
Link [here](#)

- ◆ Chambers Asia-Pacific 2023
Practice Area : Competition / Antitrust (Band 1)
Ranked Lawyers : (Competition / Antitrust) [Hideto Ishida](#) [Yusuke Nakano](#) [Vassili Moussis](#)
[Etsuko Hara](#)
Link [here](#)

- ◆ The Legal 500 Asia Pacific 2023
Antitrust and Competition (Tier 1)
Leading Individual: [Yusuke Nakano](#) [Vassili Moussis](#)
Link [here](#)

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