

2017 ICN Cartel Workshop - Mini-Plenary #9:

SANCTIONS FOR COMPETITION LAW INFRINGEMENTS

I. General

1. Can your NCA impose sanctions or does it have to refer the case to a governmental body or to a judicial court?

The JFTC has the authority to impose surcharge payment orders as administrative sanctions. If the JFTC files criminal accusations with the Prosecutors General and then the public prosecutor prosecutes, criminal penalties could be imposed by a judicial court.

II. Monetary sanctions on companies:

2. Are monetary sanctions on companies established as a maximum percentage of the company's turnover or as a maximum lump sum?

The surcharges (administrative sanctions) is calculated automatically by multiplying the sales amounts of relevant products or services (3 years at a maximum) by calculation rates as determined according to operation scales and business categories. As for criminal sanctions, the maximum amount of fines is stipulated.

3. Is there a standard method for calculating sanctions, and if so, is this method public?

The formula for calculating surcharges (administrative sanctions) is stipulated in the Antimonopoly Act (AMA) and its enforcement orders and has been made public.

The other hand, criminal sanctions are decided by judge's own decision within the range that provided in the penal provisions.

4. What role is attributed in the determination of the amount of the fine to (a) the value of sales of the company in the market to which the infringement relates; (b) total turnover of the company; (c) the fact that the company belongs to a group (parental liability)?

The surcharges are calculated on the basis of (a) the sales amounts of the company in the market to which the infringement relates. So that (b) total turnover of the company and (c) the fact that the company belongs to a group are not attributed in the surcharge calculation.

5. What other factors are taken into account when determining the amount of the fine?

In the surcharge calculation, the JFTC takes Early termination, Repeated violation and Leading entrepreneur into account.

[Surcharge calculation rates]

● **Cartels and bid riggings**

• **Large enterprises**

		Early termination	Repeated violation/Leading entrepreneur
Manufacturing, etc.	10%	8%	15%
Retail	3%	2.4%	4.5%
Wholesale	2%	1.6%	3%

• **Medium and small enterprises**

		Early termination	Repeated violation/Leading entrepreneur
Manufacturing, etc.	4%	3.2%	6%
Retail	1.2%	1%	1.8%
Wholesale	1%	0.8%	1.5%

● **Private monopolization**

	Control type	Exclusionary type
Manufacturing, etc.	10%	6%
Retail	3%	2%
Wholesale	2%	1%

● **Unfair trade practices**

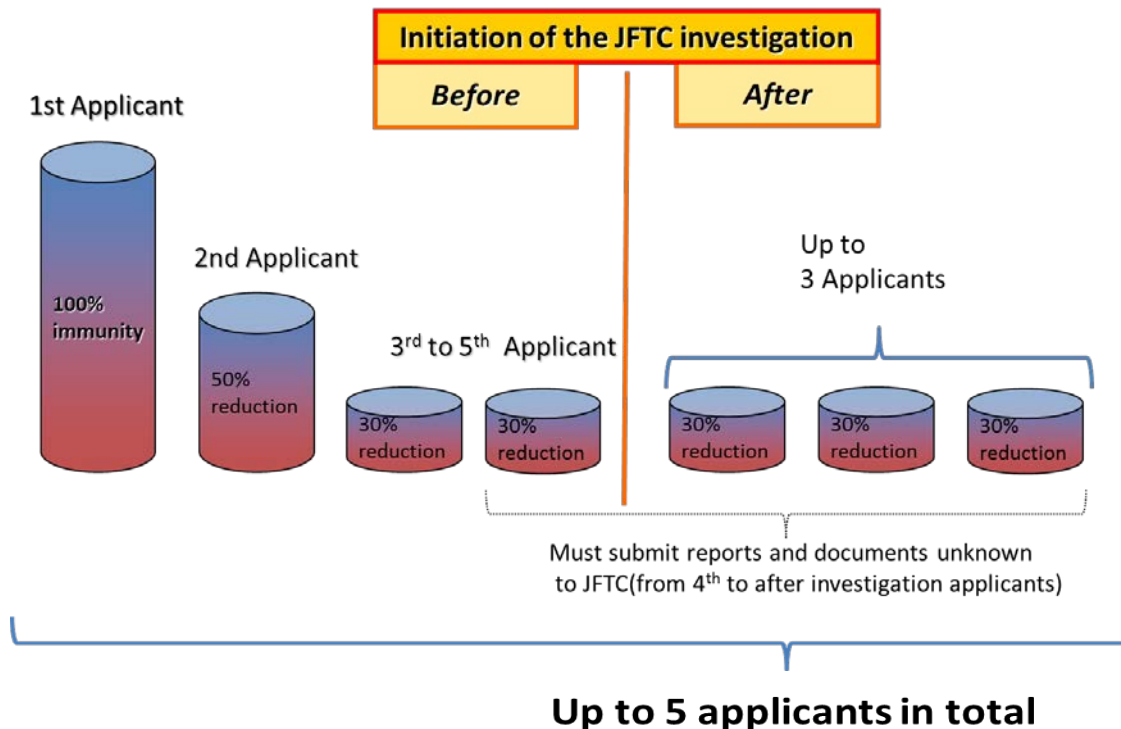
	Concerted refusal to trade, Discriminatory pricing, Unjust low price sales, Resale price restriction *Levied against the second offence of the same type of violation within ten years	Abuse of superior bargaining position
Manufacturing, etc.	3%	1%
Retail	2%	
Wholesale	1%	

6. Are leniency and/or settlement reductions foreseen?

Leniency reductions are foreseen.

The more rapidly they make such report to the JFTC before its initiation of investigation, the more surcharges they are exempted. This system applies to a total of 5 applicants on a first-come-first-

served basis including reports on such illegal cases after initiation of investigation. And the reduction rates are completely fixed by application orders as follows.



7. Does the fact that a company has a compliance program affect the level of the sanction?

No, it doesn't affect the level of the surcharges.

8. Does your NCA explain in detail how the fines have been calculated in each case?

In the hearing procedures which the JFTC implements at the end of investigations, the JFTC explains how they have committed the violation facts based on evidences. The surcharges are calculated automatically by multiplying the sales amounts of relevant products or services by fixed calculation rates as determined according to operation scales and business categories.

III. Other types of sanctions on companies:

9. Independently of whether national law defines it properly as a sanction, is there a provision of debarment of companies from public contracts when they infringe competition law?

No, the AMA does not have such a provision. However, each procurement agency formulates guideline individually about suspension terms from bidding measures, etc. in the case company infringes the competition law.

10. In case it does exist, is debarment applicable when the company incurs in any competition law infringement or only in particularly grave infringements (e.g. cartels or bid rigging cases)?

It varies from procurement agency to procurement agency.

11. Are there criminal sanctions applicable to companies for competition law infringements (i.e. do legal entities have criminal liability)?

Yes, criminal penalties could be imposed against violation of the AMA.

12. Are leniency and/or settlement reductions —in case they exist— also applicable to debarment and/or criminal sanctions?

The JFTC announces its basic policy that we will not file an accusation against the first leniency applicant who reports us before initiation of investigation.

IV. Sanctions on individuals:

13. Can employees/managers be sanctioned for competition law infringements committed by their company?

Yes, criminal penalties could be imposed on them against violation of the AMA.

14. Are sanctions on individuals limited to monetary sanctions or is disqualification foreseen as well (as either an administrative or criminal sanction)? Can individuals be criminally indicted for competition law infringements?

A person who actually engages in private monopolizations, cartels or bid-riggings shall be punished by imprisonment with work for not more than five years or by a fine of not more than five million yen.

15. In case they are foreseen, are sanctions on individuals limited to certain types of employees/managers?

No, criminal sanctions are not limited to certain types of individuals.

16. Do certain additional requirements have to be met to impose a sanction on an individual (e.g. a particular involvement in the infringement) or is the infringement by the company sufficient for the individual to be sanctioned for it?

No, there are not additional requirements on that.

17. Are leniency and/or settlement reductions on sanctions on individuals —in case they exist— also applicable to debarment and/or criminal sanctions?

The JFTC announces its basic policy that we will not file an accusation against the first leniency applicant who reports us before initiation of investigation, and many procurement agencies formulate provisions to shorten the suspension term.

(With regard to violation of the Antimonopoly, settlement procedure is not introduced in Japan.)

V. Judicial review:

18. Can the sanctions imposed by the NCA be reviewed by judicial courts?

Entrepreneurs dissatisfied with surcharge payment orders can appeal to the court asking for revocation. In the absence of substantial evidence for decision or in the case of breach of the Constitution, the court repeals such decision.

19. Is the role of the courts limited to reviewing the decision of the NCA or do courts have full jurisdiction, and therefore they can decide the opportune sanction in each case, and even increase the sanction imposed by the NCA.

The court has full jurisdiction to review the decision of the JFTC.

20. In practice, how often do courts review the level of the sanction imposed by the NCA.

The 5 lawsuits for revocation of original administrative disposition were filed to the court in FY 2016.

VI. Damages

21. Are follow-on claims for damages usual in your jurisdiction?

In the past five years, within the range recognized by the JFTC, 3 cases of damages claims were filed based on Article 25.

22. If so, does the NCA (a) take into account the potential claims when setting the level of the sanctions? (b) intervene in the process of awarding damages?

The JFTC does not take into account the potential damage claims on calculating surcharges.

VII. Final

23. Briefly describe any specificity and/or recent development regarding sanctions in your jurisdiction that you consider particularly relevant.

2005

The introduction of a Leniency Program

The increase in the Surcharge Rate

2009

The Expansion of types of conduct subject to surcharges to
exclusionary type of private monopolization and certain types of
unfair trade practices