

## **International exchange of information between Competition Authorities**

### **Update on recent bilateral developments in Japan**

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#### **1. The effort for bilateral information exchange in Japan**

In recent years, as the internationalization of business activities develops, there have been more and more cases where violation of competition laws of more than one jurisdiction is concerned or situations where the enforcement activities by the competition authority of one country affect the interests of other countries. In order to deal with such situations, the needs for internationalization of enforcement activities and for the strengthening of cooperation among competition authorities have been grown up.

Under such circumstances, the Japan Fair Trade Commission (JFTC) has challenged exposure of an international cartel, is working the information exchange with partners.

#### **2. Agreement concerning cooperation on anti-competitive activities**

The Government of Japan and the government of the United States of America signed “Agreement between the Government of Japan and the Government of the United States of America concerning Cooperation on anticompetitive Activities” in October 1999. Japan concluded a similar agreement with the European Community in July 2003 for establishing closer cooperation in enforcement of Anti-monopoly laws.

Japan is now engaged in negotiations for the conclusion of a cooperation agreement on competition issues with Canada. And the JFTC

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and Australian Competition and Consumer Commission commenced study on the possibility of a formal cooperation agreement on competition issues between Japan and Australia.

Contents of the Agreement between the government of Japan and the European Community are as follows

(1) Notification

The competition authority of each party shall notify the competition authority of the other party with respect to the enforcement activities that the notifying competition authority considers may affect the important interest of the other party

(2) Cooperation

The competition authority of each party shall render assistance to the competition authority of the other party in its enforcement activities to the extent consistent with the laws and regulation of the party rendering the assistance and the important interests of that party

(3) Coordination

Where the competition authorities of both parties are pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities

(4) Request for Enforcement Activities

If the competition authority of a party believes that anticompetitive activities carried out in the territory of the other party adversely affect the important interests of the former party, such competition authority may request that the competition authority of the other party initiate appropriate enforcement activities

(5) Consideration of Important Interests of the Other Party

The competition authority of each party shall give careful consideration to the important interests of the other party throughout all phases of its enforcement activities

Based on this Agreement, communications under this Agreement may be directly carried out between the competition authorities of the Parties and detailed arrangements to implement this Agreement may be made between the competition authorities of the Parties. (Article11)

However, they are the so-called first generation agreement, and the information, which can be mutually offered, is still restricted as the following reasons.

This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in each country and within the available resource of their respective competition authorities. (Article 10)

And Japanese Antimonopoly-Act forbids personnel of the Fair Trade Commission divulging of trade secrets of entrepreneurs, which came to their knowledge in the course of their duties. (Sec.39 Antimonopoly-Act of Japan)

### **3. Other cooperation between the JFTC and other competition authorities**

The JFTC has been engaged in regular consultations and exchange of views with American competition authorities over 26 years, its European counterparts over 23 years, and other countries' competition authorities. The JFTC has built up good relationship with the other partners' competition authorities.

And the JFTC has also conducted exchanges of views between investigators who handle anti-competitive cases with its American and European counterparts over several years. We are trying to build good relationship between both authorities' investigators.

### **4. International cartel cases in Japan**

The international cartel cases to which the JFTC carried out investigation recently are Graphite Electrode case (1999) and Vitamin case (2001). In both cases, we could not issue recommendations as legal measures but warnings as administrative guidance. Among these, the outline of Vitamin case is as follows.

After having investigated suspected violations of the Antimonopoly law against vitamin manufacturers, the JFTC issued warnings April 5, 2001 that Daiichi Pharmaceutical Co., Ltd. and Eisai Co., Ltd. may have violated the Antimonopoly Act for the following each reason and should refrain from the following each conduct described below:

(Vitamin B5)

Daiichi, under the initiative of F Hoffman La-Roche AG (hereinafter "Roche"), was suspected of fixing each basic sales share of Vitamin B5 based on the result of each sales for the last three years in the world market at the

meeting with Roche and BASF AG (hereinafter "BASF") in February 1991. And since that, by holding the meeting with Roche and BASF every year and so on, Daiichi was suspected of allocating the volume of Vitamin B5 to be sold by each of the three companies a year in the world market and 7 regional markets such as Japanese region based on that sales share and prospective demand growth rate, and had implemented this agreement until 1999.

(Synthetic Vitamin E)

Eisai, under the initiative of F Hoffman La-Roche AG (hereinafter "Roche"), was suspected of fixing each basic sales share of Synthetic Vitamin E based on the result of each sales for the last year in the world market at the meeting with Roche, BASF and Rhone-Poulenc SA in January 1991. And since that, by holding the meeting with Roche, BASF and Rhone-Poulenc SA every year and so on, Eisai was suspected of allocating the volume of Synthetic Vitamin E to be sold by each of the four companies a year in the world market and 4 regional markets such as Asian and Oceanic region including Japanese market based on that sales share and prospective demand growth rate, and had implemented this agreement until 1998.

In this case, the JFTC obtained initial information from the U.S. competition authority before the signing of the Japan-U.S. Antimonopoly Cooperation Agreement. After the signing the Agreement, the JFTC obtained lots of relevant information from the U.S. and EC authorities. The information from the U.S. and EC authorities were helpful for us to carry out our investigation, but it was too late to get enough evidence on starting our investigation. The JFTC could not find enough evidence from the Japanese companies after the other competition authorities' investigation against them had already been in progress.

## **5 The Future Subject**

The JFTC started an investigation into a new case with the U.S. and EC competition authorities this year. In particular, the US Department of Justice, the European Commission, Canadian Competition Bureau and the JFTC carried out the surprise inspections at the same day. We find that it is very important to share confidential information at the initial step of investigation. We are considering how to exchange information with

counterpart authorities actively under the obligation to preserve trade secrets after starting the investigation.

We will be able to utilize the system of information exchange more effectively, if we have the high investigation skills, leniency program and the high level penalty equal to the other parties. In October 2002, the JFTC established a Study Group consisting of experts and scholars to examine the following four important issues concerning enforcement systems of the Antimonopoly Act.

First: Review of current surcharge system from the perspective of enhancing effectiveness of the Act,

Second: Introduction of the Leniency program,

Third: Review of investigation powers, including the introduction of the power to obtain search warrant, and

Fourth: Review of regulation related to monopolies and oligopolies.

These issues are now under examination, but our chairman emphasize that our foremost priority remains in the establishment of the enforcement of the Antimonopoly Act that would gain the acclaim of foreign countries.

We especially expect the introduction of the leniency program that provides important measures in cases without enough evidence. And we expect that the cooperative relationships with other countries' competition authorities pressure the violators to offer leniency.

We look forward in the future to using the network of cooperation to develop closer ties with the competition authorities of the other parties, and to play our part in the surveillance and elimination of international cartel activities.