

AKTUELLE RECHTSENTWICKLUNG RECENT LEGAL DEVELOPMENTS

Forthcoming Legislation

Hiroshi Oda

PROPOSED AMENDMENTS TO THE ANTI-MONOPOLY LAW (COMPETITION LAW)

The Japan Fair Trade Commission (JFTC) published the report of its study group on the review of the Anti-Monopoly Law (AML) and invited comments in October 2003.¹ Based upon the report and the comments, the JFTC published a document entitled “Basic Thoughts on the Amendment of the AML”. The JFTC is in the process of preparing the bill for the amendment.

The gist of the proposed amendments covers areas such as the review of the surcharge system, the introduction of the leniency system, the granting of the power of criminal investigation to the JFTC, and the review of regulations on monopoly and oligopoly.

1. Review of the Surcharge System

The current system of surcharges is intended to force companies involved in certain kinds of cartels to surrender the profits earned by the cartel. The maximum amount is six percent of the turnover. Compared with the sanctions available in other countries, this amount has been criticized as too low in relation to the EU, where the maximum amount of sanctions can reach € 20 million or ten percent of the turnover (*e.g.*, criticism by OECD). The amendment would change the nature of this system from the surrender of unlawful profit to a system of sanctions that would collect the amount regarded as the loss caused by the breach of law. This will accompany a higher amount of surcharges. The scope of application of surcharges will be expanded (at present, it covers price cartels and some cartels which affect the prices), and the amount will be aggravated for repeated violations. The Japan Federation of Economic Organizations is against this proposal, particularly on the grounds that this would comprise double jeopardy because, in addition to surcharges, a criminal penalty would be available.

1 Cf. <www.ftc.go.jp>; see also *Nikkei*, October 29, 2003.