

New Bill: Expansion for Leniency and Fines under the Japan Anti-Monopoly Act

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The bill to amend the Anti-Monopoly Act (the “AMA”), that includes reform of leniency system, has passed on June 19, 2019. New leniency system will be effective no later than from December 25, 2020.

After the bill becomes effective, the leniency system will be reformed, including that a limit for number of leniency applicants will be abolished. Now, the Japan Fair Trade Commission (“JFTC”) will have certain discretion to award an additional discount for reduction of surcharge (i.e., administrative fine) when a leniency applicant cooperates with the JFTC investigation. The surcharge (i.e., administrative fine) will likely be increased based on the amended methods for surcharge calculations. In addition, criminal penalties for obstruction of investigations by the JFTC will be more severe. Further, in connection with the new bill, the introduction of quasi-“attorney-client privilege” has been decided.¹ This article will focus on the reform of the leniency procedure.

Current Leniency System

Under the current leniency system, up to five companies can be awarded leniency, including for those who applied before and after the initiation of the JFTC investigation. The percentage of reduction from surcharge (i.e., administrative fine) varies depending on timing and rank. When leniency is applied before an initiation of the JFTC investigation, the first applicant is awarded full immunity, the second applicant is awarded 50% reduction, and the third, fourth and fifth applicants are awarded 30% reduction, respectively. When it is applied after an initiation of the JFTC investigation, up to three companies are awarded 30% reduction, respectively. The percentage of the surcharge reduction is fixed as described above, and the JFTC does not have discretion, even when the leniency applicant cooperates with the investigation.

New Leniency System

After the bill becomes effective, a company may be awarded additional reduction in accordance with degree of cooperation with the JFTC investigation. For example, when a company applied leniency at the second place, and cooperates with the investigation, it can be awarded up to 40% reduction, in addition to 20% reduction (i.e., a total of up to 60% reduction). How the JFTC considers and/or evaluates an applicant’s cooperation is not clear from the bill, but it plans to issue guidelines that explain about how the JFTC will evaluate evidence submitted by a leniency applicant when it considers whether or not, and what degree of cooperation is provided by the leniency applicant.

Under the new leniency system, a limit for the number of companies to be awarded leniency will be abolished. For example, a company who applies leniency at sixth place, may still be able to be awarded up to 45%

¹ The JFTC Press Release (June 19, 2019) in Japanese is available at https://www.jftc.go.jp/houdou/pressrelease/2019/jun/190619_1.html

reduction (5% + 40%) when it applies before the initiation of the JFTC investigation and when the JFTC awards additional reduction in accordance of the applicant's cooperation.

The Reduction of Surcharge (*i.e.*, Administrative Fines) under the New Leniency System

Initiation of Investigation	Ranking	Reduction	Additional Reduction in accordance with Cooperation
Before	1st	Immunity	N/A
	2nd	20%	+ Up to 40%
	3rd-5th	10%	
	6th	5%	
After	Up to 3 companies(*)	10%	+ Up to 20%
	Others	5%	

(*) This category is applicable only when the applicant's ranking is fifth or above, including the applicants before the initiation of the investigation.

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