

JFTC: Criminal prosecutions of bid-rigging involving pharmaceutical products

December 2020

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On December 9, 2020, the Japan Fair Trade Commission (“JFTC”) brought criminal accusations with regard to bid-rigging involving pharmaceutical products ordered by the Japan Community Healthcare Organization (“JCHO”). Three pharmaceutical wholesalers and seven individuals were indicted.

According to news media, on November 27, 2019, the JFTC conducted dawn raids against four pharmaceutical wholesalers—Alfresa Corporation (“Alfresa”), Mediceo Corporation (“Mediceo”), Suzuken Co., Ltd. (“Suzuken”) and Toho Pharmaceutical Co., Ltd. (“Toho”)—on suspicion of bid-rigging involving pharmaceutical products ordered by the JCHO. The JCHO is an incorporated administrative agency established in 2014 that has 57 hospitals, 26 geriatric healthcare facilities and six nursing schools. It provides medical and nursing care all over Japan. The JFTC reportedly initiated its criminal investigation with suspicion that the four wholesalers agreed to bid-rigging with respect to pharmaceutical products ordered by the JCHO since it was established in 2014.

Further, on October 13, 2020, the JFTC and the Tokyo Prosecutors’ Office jointly conducted dawn raids against those four pharmaceutical wholesalers.

On December 9, 2020, the JFTC announced that it referred the accusations to the Public Prosecutor General of Japan against Alfresa, Suzuken and Toho, and seven individuals. On the same day, those companies and individuals apparently were indicted. Mediceo and its employees apparently were not indicted, and reportedly applied for leniency.

Under the Japan Anti-Monopoly Act (“AMA”), the JFTC has authority to conduct administrative and criminal investigations for unreasonable restraint of trade (e.g., bid-rigging and cartels). Usually, the JFTC conducts administrative investigations, but it uses its criminal investigative authority; for example, hard-core cartel cases that are malicious and serious and are expected to have a broad impact on the livelihood of citizens, and/or cases in which the purpose of the AMA cannot be achieved by administrative measures, such as repeated violations.

The JFTC refers a criminal investigation case to the Public Prosecutor General of Japan when it finds the case is worthy of criminal indictment. Usually, the case is indicted by a public prosecutor on the same day the JFTC refers the case to the Public Prosecutor General of Japan.

Criminal penalties for unreasonable restraint of trade (e.g., bid-rigging and cartels) under the AMA are:

- (i) For individuals, (a) up to five years of imprisonment, (b) up to five million yen (¥5,000,000) (approximately US\$48,000) of fines, or (c) both (a) and (b).
- (ii) For companies, up to 500 million yen (¥500,000,000) (approximately US\$4.8 million).

In addition to criminal penalties, the accused companies would be subject to administrative sanctions, including surcharge payments (*i.e.*, administrative fines) and cease-and-desist orders.

The JFTC has a policy that it does not accuse against the first applicant for leniency before an initiation of the investigation and employees of such company. According to news media, Mediceo is a first leniency applicant and therefore it was excluded from the accusation.

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