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Japan: settlements remain a crucial option for companies in JFTC cartel investigations

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Japan: settlements remain a crucial option for companies in JFTC cartel investigations

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IN SUMMARY

A formal commitment procedure, introduced in the 2018 amendment to Japan's Anti-Monopoly Act, allows the Japan Fair Trade Commission (JFTC) to settle investigations without issuing a formal infringement finding, bringing its practices more in line with those of the European Union and the United States. This procedure offers companies the opportunity to avoid administrative fines and potential follow-on litigation, while also expanding the JFTC's ability to address complex cases. As a result, the number of settlements has increased compared to cease-and-desist orders.

Recent cases – including those involving foreign companies and their subsidiaries in Japan, such as Google and Amazon Japan – highlight the JFTC's active and strategic extraterritorial use of settlements.

DISCUSSION POINTS

- The JFTC's commitment procedure and its impact on how antitrust investigations are resolved
 - Companies negotiating commitments with the JFTC to avoid formal infringement findings and fines
 - The scope of commitments and potential implications for follow-on litigation in settlements
 - The introduction of a cooperation discount system providing incentives for companies to cooperate in cartel investigations
 - Recent cases involving foreign companies such as Amazon Japan and Google
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REFERENCED IN THIS ARTICLE

- JFTC's cease-and-desist order and order to pay administrative fine (30 March 2023) in the *Kyushu Electric Power* case
 - JFTC's settlement decision (10 September 2020) in the *Amazon Japan* case
 - JFTC's announcement of the termination of its investigation (10 October 2018) in the *Airbnb* case
 - JFTC's settlement decision (22 April 2024) in the *Google* case
 - JFTC's settlement decision (22 July 2025) in the *Visa* case
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INTRODUCTION

Recent amendments to the Anti-Monopoly Act (AMA),^[1] which took effect on 30 December 2018, gave the Japan Fair Trade Commission (JFTC) powers to formally accept voluntary commitments from companies suspected of having infringed the AMA.^[2] The amendment will allow the JFTC to terminate its formal investigations, which are typically opened by surprise inspections, without reaching a formal finding of infringement and thus without any risk of being appealed by the companies to judicial courts. The introduction of this

formal commitment procedure has brought the JFTC's powers in line with those of other competition authorities in the European Union and the United States. Based on the JFTC's guidelines published in 2018 (the Commitment Guidelines),^[3] the procedure appears to follow almost the same course as that in the European Union and the United States.

Japanese antitrust specialists anticipate that the introduction of the formal commitment procedure has made it easier for the JFTC to pursue a broader range of cases than was previously possible, in particular as the JFTC now has a more comprehensive range of choices in concluding its investigations. This flexibility is likely to facilitate the JFTC's ambition to take on more investigations involving complex theories of harm, including online platform business and digital advertising. The commitment procedure was applied to two cases in financial year 2019, six cases in financial year 2020, two cases in financial year 2021 and three cases in financial year 2022.^[4] The number of settlement cases is far greater than the number of cases concluded by formal cease-and-desist orders, and therefore settlement has become an important option for companies under the JFTC's investigations.

COMMITMENT NEGOTIATION

If the JFTC decides to invite companies under investigation for commitment negotiations, it will notify this intention in a written letter to the companies, setting out an overview of the JFTC's concerns.^[5] Companies have 60 days from notification to offer commitments.^[6]

The JFTC will have sole discretion as to whether it initiates the procedure. In practice, however, companies under investigation are allowed to proactively approach the JFTC to explore the possibility of commitment negotiations.

APPLICABILITY OF COMMITMENT PROCEDURE

The Commitment Guidelines made it clear that the following cases will not be eligible for the commitment procedure.^[7]

- hardcore cartels (ie, bid rigging and price-fixing);
- a repeated offence (a second anticompetitive conduct within 10 years); or
- an infringement that is malicious and thus should be subject to criminal penalties.

In practice, therefore, the commitment procedure will be applied to the first offender of non-cartel single-firm conduct (eg, abuse of superior bargaining position^[8] and resale price maintenance^[9]).

MARKET TEST

The JFTC may conduct a market test^[10] and seek comments on proposed commitments from the public to determine whether they are sufficient to address the JFTC's concerns and are capable of being implemented in practice. Having said that, a market test is not mandatory as it is in the European Union, and the JFTC has not yet provided additional guidance in its Commitment Guidelines on the circumstances in which a market test would be appropriate or necessary.

REQUIREMENT FOR COMMITMENT OFFER

To be accepted by the JFTC, an offer of commitments by companies under investigation must be both sufficient to address the JFTC's concerns and feasible enough to be implemented in practice.^[11]

The Commitment Guidelines indicate that there are cases where reimbursements of damages to companies affected by an infringement would be appropriate and abuse of superior position is listed as an example for that.^[12] As the JFTC cannot order reimbursement to companies if it has issued a formal cease-and-desist order, this reimbursement by way of negotiated commitment would be worth noting from the viewpoint of enhancement of victim relief.

PUBLICATION OF COMMITMENT DECISION

When the JFTC takes a commitment decision, it announces the decision and provides a concise summary of the commitments, which is usually a document of several pages. This decision does not amount to a finding of any infringement, which would mean that the JFTC's decision would be unlikely to be useful to plaintiffs in follow-on damages litigation.

SETTLEMENT IN CARTEL CONDUCT CASES

Cooperation Discount System

Amendments to the AMA that took effect on 25 December 2020 introduced a cooperation discount scheme^[13] by way of agreement with the JFTC for cartel and bid rigging cases by amending the JFTC's leniency regime, which the JFTC introduced in 2006.

In the negotiations, the applicant explains the contents of the materials and report that it intends to submit under the cooperation discount scheme. The JFTC then assesses the extent to which the applicant would contribute to the investigation (discussed below), suggests a reduction rate range and asks for the applicant's consent. Upon reaching an agreement, the applicant submits the reports and materials to the JFTC.

As part of its obligation to cooperate with the JFTC's investigations, the applicant needs to respond to the JFTC's additional requests and submit supplemental materials and reports as requested.

Process For Negotiating Cooperation Discount

To be eligible for the cooperation discount, a company first needs to file a leniency application and then an application for negotiation within 10 days of the receipt of confirmation from the JFTC that the leniency application has been accepted.^[14]

Since an application for negotiation can only be submitted by a company that has filed a leniency application with an adequate amount of report information and evidence, the JFTC's guidelines on the cooperation discount require a company to submit a sufficient leniency application.

The applicant explains the contents of materials it intends to submit under the cooperation discount and enters into agreement on the range of reduction rate.

As it plans to enter into agreements with companies at a very early stage of its investigations, the JFTC suggests a range for the reduction rate,^[15] rather than offering a specific reduction rate,^[16] and asks for the applicant's continued cooperation with its investigation.

OPTIONS FOR NEGOTIATING COMMITMENTS AND DISCLOSURES

Non-cartel Conduct Cases

The Commitment Guidelines provide examples of possible remedies, including.^[17]

- commitment to cease suspected conduct;
- notification to customers and users of cessation of the alleged conduct;
- maintenance of a competition law compliance programme;
- withdrawal of, or revisions to, terms and conditions with customers;
- divestiture of business; and
- financial restitution for alleged victims.

Companies will typically be required by the JFTC to submit annual reports for three consecutive years that set out the status of implementation of the agreed commitments.

The commitment system can be beneficial for investigated companies in that they can avoid formal declarations by the JFTC of its findings of infringements and accompanying administrative fines, and thus can potentially escape follow-on litigation by alleged victims. Having said that, we should be careful of the risk that the JFTC may endeavour to secure a broader scope of potentially anticompetitive conduct even if it does not have sufficient evidence to demonstrate a violation, in which case the companies under investigation would likely end up offering broader and excessive commitments, which may include compensation for damage to victims.

Companies under investigation, therefore, need to carefully consider the pros and cons of entering commitment negotiations with the JFTC to minimise financial and reputational damage.

Announcement of commitment decisions by the JFTC include descriptions of potentially anticompetitive conduct, which may help plaintiffs in follow-on damages litigation to demonstrate infringements in a civil court. Companies will therefore need to proactively engage with the JFTC before publication to make sure that the publication does not lead to an implicit finding of infringement.

Cartel Conduct Cases

The Cooperation Guidelines^[18] make it clear that the JFTC will use the following criteria to assess the extent of an applicant's contribution and determine the reduction rate:^[19]

- the degree of specificity and detail of the report and materials;
- whether the report and materials include all relevant information that would contribute to the investigation; and
- whether the evidence submitted by the company supports the contents of the report.

As to the degree of specificity of the report, the Cooperation Guidelines list various factors, including the following, as information that contributes to the JFTC's investigations:^[20]

- goods or services targeted in the violation;
- manner of the violation;
- participants of the violation;
- duration of the violation;
- status of implementation of the violation; and
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volume of affected commerce, which will be a basis for calculating administrative fines.

Based on these factors, the JFTC will determine the degree of an applicant's contribution to the investigation using three categories: low, medium or high.^[21] For example, companies that applied for the cooperation discount after the JFTC's inspections would receive 5, 10 or 20% discounts based on their degree of contribution. It is therefore necessary for companies to negotiate with the JFTC by offering their plan of cooperation in detail, so that they can secure the maximum reduction rate.

STRATEGIES TO MANAGE FINES OR MONETARY PAYMENTS

Non-cartel Conduct Cases

Under article 25 of the AMA, any party found by the JFTC to be engaging in unfair trade practices or private monopolisation will be requested to compensate those injured by said party after the JFTC's cease-and-desist order becomes final. Courts will rely on the JFTC's findings in its judgments and the defendant cannot challenge these findings.

A party may therefore wish that the JFTC terminate its investigation through a commitment proceeding rather than a cease-and-desist order. This is because, if the JFTC terminates its investigation through a commitment decision, the parties can escape a finding of a violation of the AMA because commitment decisions will not refer to the fact that the AMA was violated by the party.

Cartel Conduct Cases

To manage and minimise administrative fines, it is necessary for companies under investigation to proactively discuss with the JFTC the scope of investigations and findings of infringement. Although applicants for the cooperation discount are required to cooperate with the JFTC's investigations, this does not necessarily mean that the applicants will be required to admit to all infringements that the JFTC claims to exist. The applicants therefore should maintain communication with the JFTC's investigators to better understand what the JFTC's fact-finding will be, and raise issues promptly to avoid excessively broad findings of infringements and increased administrative fines.

In addition to administrative fines, parties found by the JFTC to be engaged in cartels and bid rigging are liable to indemnify those injured by such parties under article 25 of the AMA after a cease-and-desist order or an order to pay an administrative fine has been finalised. Although plaintiffs can also file damages suits under article 709 of the Civil Code before the JFTC's orders become final, the plaintiff needs to prove the defendant's infringements. The courts will rely on the JFTC's findings in the order under article 25 of the AMA and the defendant cannot challenge these findings. Discussions with the JFTC as to the scope of infringement will therefore be necessary to minimise monetary payments arising from civil damage claims.

Notable Cartel Case

On 29 September 2023, Kyushu Electric Power publicly disclosed that it initiated legal proceedings in the Tokyo District Court seeking the annulment of both the cease-and-desist and surcharge payment orders issued by the JFTC.^[22] Kyushu Electric Power explained during a press conference that, following an internal investigation, Kyushu Electric Power

found no concrete and direct agreement between Kansai Electric Power and Kyushu Electric Power.

The JFTC found that Kyushu Electric Power and Kansai Electric Power agreed not to bid for lower electricity rates in public tenders, resulting in a ¥2.7 billion administrative fine for Kyushu Electric Power. Kyushu Electric Power applied for leniency after being raided by the JFTC and successfully agreed with the JFTC to a 30% discount on the surcharge payment order, while Kansai Electric Power applied for leniency before the raid and successfully escaped from administrative fines.^[23]

Under the AMA, no article prevents a leniency applicant from challenging the JFTC's finding of violation. This case is noteworthy in that a leniency applicant appealed to judicial courts by completely denying the existence of cartel agreement with competitors, although it previously confessed to the JFTC in its leniency application of its participation in the cartel agreement.

MEASURES TO MANAGE NON-MONETARY SETTLEMENT REQUIREMENTS

Non-cartel Conduct Cases

Companies that have settled with the JFTC through commitments will in practice be required to annually report the status of implementation of the commitments for three consecutive years from the date of the decision.

The Commitment Guidelines do not specify monitoring trustees and there has been no case to date where monitoring trustees have been appointed, which contrasts sharply with practice in the European Union where monitoring trustees plays a crucial role in the enforcement of commitments.

In cases of failure to comply with commitment decisions, the JFTC is unable to penalise companies that have failed to comply with their commitments. In these cases, the JFTC can only revoke its commitment decision and resume its earlier investigation.^[24]

Cartel Conduct Cases

Companies that have received a cease-and-desist order from the JFTC will in practice be required to annually report the status of implementation of the commitments for three consecutive years from the date of the commitment decisions.

The AMA does not specify monitoring trustees and there has been no case to date where the monitoring of trustees was appointed pursuant to the JFTC's commitment decisions.

Failure to comply with a cease-and-desist order is subject to criminal sanctions,^[25] although there has been no such case to date.

SPECIAL SETTLEMENT CONSIDERATIONS WHEN THE SETTLING PARTY IS A FOREIGN ENTITY

The JFTC has recently been actively investigating foreign entities' anticompetitive conduct, and all cases have been settled, either by informal settlements or, after the introduction of the formal commitment procedure at the end of 2018, by formal commitments.

Illustrative examples include the *Airbnb* case in 2018, the *Amazon Japan* case in 2020 and the *Google* case in 2024. These cases are a clear indication of the JFTC's appetite for

investigating foreign entities and their local subsidiaries, which foreign companies should take note of in operating businesses in Japan.

Amazon Japan

In the *Amazon Japan* case, the JFTC inspected Amazon Japan's offices located in Tokyo in March 2018, with a suspicion that the company had been abusing its superior position over suppliers of goods sold by Amazon Japan to consumers on its website.

According to the JFTC's announcement of the commitment decision dated 10 September 2020,^[26] Amazon Japan had made various requests to suppliers whose business position was inferior to its own. Suppliers had been asked to reduce the sales price to Amazon Japan without any reason other than to improve the company's profitability. Notwithstanding that there were no reasons attributable to the suppliers, Amazon Japan had been returning excess goods to the suppliers without justification.

Amazon Japan offered a proposal for commitments that included cessation of the above demands and payment of ¥2 billion to 1,400 suppliers. The JFTC accepted this commitment offer as sufficient.

Airbnb

In the *Airbnb* case, the JFTC inspected Airbnb Japan's offices located in Tokyo in November 2017, with a suspicion that Airbnb had been unduly foreclosing competing operators of accommodation and vacation rental platforms, and that the conduct may have amounted to private monopolisation or unfair trade practices, both of which are prohibited under the AMA.

According to the JFTC's announcement of the termination of its investigation dated 10 October 2018,^[27] Airbnb had concluded contracts with operators of booking management services concerning the use of application programming interface software (an intermediary that enables data coordination among software via the internet) and access to Airbnb's booking data, which actually included restriction on the booking management services operators' sharing of data with operators of accommodation and vacation rental platforms that had been competing with Airbnb.

Airbnb informally offered voluntary measures, which included cessation of the above-mentioned restrictions, and the JFTC accepted this offer as sufficient. As this investigation was closed before the formal commitment procedure became effective, a commitment decision was not available to the JFTC.

Google

The JFTC announced on 22 April 2024 that Google restricted Yahoo's ability to provide search advertising services on mobile devices.

Yahoo! Japan, a large Japanese digital platform, receives technology support from Google Inc for its search engine and search-linked advertising system. The JFTC concluded that the provision of this technology was not a problem under the law in 2010.

However, the business alliance with Yahoo! Japan and Google was subsequently transformed into something different from the original business collaboration. More specifically, Google demanded that Yahoo! Japan not serve search-linked advertisements using Google's technology to smartphone-oriented websites in 2014, so Yahoo! Japan has

not been able to distribute search-linked advertisements thereafter. When the JFTC became aware of this, it launched an investigation against Google in 2022, which resulted in a settlement with the JFTC in 2024, as Google offered to take corrective measures. The JFTC concluded its investigation without issuing a cease-and-desist order and instead accepted Google's commitment offer.^[28]

This announcement marks the first instance of the JFTC taking legal action against Google by way of a commitment procedure. Notably, Google offered to engage an external expert to oversee compliance with the AMA to ensure Yahoo! Japan can continue its service.

Visa

According to the JFTC's announcement dated 22 July 2025^[29], Visa was found to have potentially excluded competing credit card payment network service providers in Japan in an unjustifiable manner. In response to this concern, Visa proposed a commitment plan to the JFTC, which accepted the proposal and terminated the investigation proceedings.

Visa had offered preferential interchange fee rates to credit card issuing companies that transmitted transaction data within a specified timeframe from the date of authorisation. However, Visa determined this authorisation date exclusively by using transaction identifier data from its own network. This effectively meant that credit card issuers wishing to benefit from the preferential fee rates could be compelled to cease using credit payment networks other than Visa's and instead use Visa's network.

The commitment plan proposed by Visa to the JFTC includes measures allowing credit card issuing companies to receive preferential rates even when using payment networks competing with Visa (for a period of five years), as well as the appointment of an independent third party to monitor compliance with the entire commitment.

Endnotes

- 1 Act No. 54 of 1947, as amended. [^ Back to section](#)
- 2 Until December 2018, the JFTC lacked the official power to end investigations by accepting commitments from parties and could therefore resolve cases in principle only through findings of infringement, by either issuing cease-and-desist orders or imposing fines. However, in cases where a company voluntarily ceases the act under investigation, alternative measures such as warnings and terminations of investigation are also used. These alternative measures have been used even after the formal commitment procedure comes into effect. [^ Back to section](#)
- 3 https://www.jftc.go.jp/en/legislation_gls/antimonopoly_rules_files/policies_concerning_commitment_procedures.pdf. [^ Back to section](#)
- 4 Summary of Annual Report of the JFTC (April 2022 – March 2023), https://www.jftc.go.jp/en/about_jftc/annual_reports/2022.html. [^ Back to section](#)
- 5 Articles 48-2 and 48-6 of the AMA. [^ Back to section](#)

- 6** Articles 483 and 487 of the AMA. [^ Back to section](#)
- 7** Paragraph 5 of the Commitment Guidelines. [^ Back to section](#)
- 8** For example, Amazon applied for the commitment procedure (see the explanation in 'Measures to manage non-monetary settlement requirements') on 10 September 2020. [^ Back to section](#)
- 9** For example, ICHIRAN, the famous ramen shop in Japan applied for the commitment procedure on 19 May 2022, https://www.jftc.go.jp/en/about_jftc/annual_reports/2022.html. [^ Back to section](#)
- 10** Paragraph 7 of the Commitment Guidelines. [^ Back to section](#)
- 11** Paragraph 3 of article 483 and paragraph 3 of article 487 of the AMA. [^ Back to section](#)
- 12** Paragraph 6(3) of the Commitment Guidelines. [^ Back to section](#)
- 13** Article 75 of the AMA. [^ Back to section](#)
- 14** Article 14 of the Rules on reporting facts and submission of supporting materials in relation to reduction in or release from surcharges (the JFTC Rule No. 3 of 2 September 2020). [^ Back to section](#)
- 15** Paragraph 2 of article 75 of the AMA. [^ Back to section](#)
- 16** Paragraph 1 of article 75 of the AMA. [^ Back to section](#)
- 17** Paragraph 6(3) of the Commitment Guidelines. [^ Back to section](#)
- 18** https://www.jftc.go.jp/en/legislation_gls/201225002.pdf. [^ Back to section](#)
- 19** Paragraph 4(1) of the Cooperation Guidelines. [^ Back to section](#)
- 20** Attachment of the Cooperation Guidelines. [^ Back to section](#)
- 21** Paragraph 4(3) of the Cooperation Guidelines. [^ Back to section](#)
- 22** https://www.kyuden.co.jp/press_h230929-1.html. [^ Back to section](#)
- 23** <https://www.jftc.go.jp/en/pressreleases/yearly-2023/March/230330.html>. [^ Back to section](#)
- 24** Articles 48-5 and 48-9 of the AMA. [^ Back to section](#)
- 25** Item 3 of article 90 of the AMA. [^ Back to section](#)

- 26 <https://www.jftc.go.jp/en/pressreleases/yearly-2020/September/200910.html>. ^ [Back to section](#)

- 27 <https://www.jftc.go.jp/en/pressreleases/yearly-2018/October/181010.html>. ^ [Back to section](#)

- 28 <https://www.jftc.go.jp/en/pressreleases/yearly-2024/April/240422.html>. ^ [Back to section](#)

- 29 [https://www.jftc.go.jp/en/pressreleases/yearly-2025/July/250722.html bsp](https://www.jftc.go.jp/en/pressreleases/yearly-2025/July/250722.html bsp;); ^ [Back to section](#)

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