

Proposed Amendment to Anti-Monopoly Act

Numerous amendments have been proposed to update the Japanese Anti-Monopoly Act (AMA). We will briefly discuss two of the proposed amendments which focus on the calculation of fines and the reduction of fines due to immunity or amnesty (also referred to as "leniency") as a result of a company suspected of violating the AMA cooperating in good faith with an investigation.

The Japanese Government has proposed establishing a system by which fines will be calculated based on the extent which a company under investigation for suspected violations of the laws prescribed in the AMA has cooperated with the Japan Fair Trade Commission (JFTC) during the investigation. While full amnesty remains unchanged for the first firm to cooperate prior to the start of an investigation by the JFTC, a new maximum and a minimum rate of fine reduction would be established for subsequent firms which agree to cooperate prior to the start of an investigation by the JFTC. (Table 1)

Order of Application to Cooperate	Current Fine Reduction	Proposed Minimum Fine Reduction	Proposed Maximum Fine Reduction
1 st	100%	100%	100%
2 nd	50%	20%	60%
3 rd - 5 th	30%	10%	50%
6 th -	0%	0%	45%

Table 1: Reduction in fines based on the order at which firms agree to cooperate prior to the start of an investigation.

A new maximum and a minimum rate of fine reduction would also be established for the first and subsequent firms which agree to cooperate after the start of an investigation by the JFTC. (Table 2)

Order of	Current Fine	Proposed Minimum	Proposed Maximum
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Application to Cooperate	Reduction	Fine Reduction	Fine Reduction
1 st – 3 rd	30%	10%	30%
4 th –	0%	5%	25%

Table 2: Reduction in fines based on the order at which firms agree to cooperate after the start of an investigation.

The bill also proposes extending the time period to 10 years (currently 3 years) prior to the start of the investigation in which a company's behavior and transactions may be investigated. In addition, an increase in the fines associated for companies and organizations which actively seek to hinder or obstruct an investigation has been proposed.

It is hoped that should this bill be enacted, companies who find themselves potentially in violation of the AMA will be more agreeable to cooperating with investigations in exchange for a considerable reduction in the fines which would be levied if they were to not assist in or actively oppose the investigation.