

Summary of Issues for Administrative Investigation Procedures under the Anti-Monopoly Act

(Based on Hearing Results at the Advisory Panel on Administrative Investigation Procedures under the Anti-Monopoly Act)

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Office to Study Administrative Investigation Procedures under the Anti-Monopoly Act,
Minister's Secretariat, Cabinet Office

NOTE: This is a tentative translation. The authentic text is only available in Japanese.
See <http://www8.cao.go.jp/chosei/dokkin/index.html> for the authentic text.

Table of Contents

1. Introduction	1
(1) Background on deliberations	1
(2) Enactment of the revised Anti-Monopoly Act in 2013.....	2
(3) Holding of the Advisory Panel on Administrative Investigation Procedures under the Anti-Monopoly Act	2
(4) Soliciting opinions on the Summary of Issues (public comment)	3
2. Basic Thoughts.....	5
(1) Ensuring that a party concerned with a case defends itself sufficiently.....	5
(2) Ensuring the fact-finding ability of the Japan Fair Trade Commission	6
(3) Consistency with other administrative procedures and criminal procedures in Japan	8
(4) Comparison with systems, structures and practices in foreign jurisdictions.	9
(5) Ensuring the appropriateness and transparency of administrative investigation procedures	11
3. Issues.....	12
(1) Presence of an attorney during on-the-spot inspection.....	14
(2) Attorney-client privilege.....	15
(3) Presence of an attorney during deposition.....	17
(4) Securing verifiability of the process of deposition	20
(5) Information disclosure for appropriate claims	21
(6) Sharing knowledge of rules and practices on administrative investigation	23
Attachment 1	List of Members of the Advisory Panel on Administrative Investigation Procedures under the Anti-Monopoly Act
Attachment 2	Participants in the hearings by the Advisory Panel on Administrative Investigation Procedures under the Anti-Monopoly Act

1. Introduction

(1) Background on deliberations

In recent years, with the increased globalization of business activities by companies, economic activities are also becoming more and more diverse and complex.

The government states that as the stage on which we compete is an open world, Japan will aim to be “the easiest country worldwide in which to do business.”¹ With progress in globalization, maintaining an environment in which businesses from home and abroad can exert their originality and ingenuity through fair and free competition in the Japanese market is vitally important for our market to win confidence both domestically and internationally. As stipulated in the provisions of Article 1 of the Anti-Monopoly Act, maintaining such a competitive environment will assure the interests of general consumers and promote the wholesome development of the national economy.

To maintain such a competitive environment, it is essential to ensure strict enforcement of the Anti-Monopoly Act, which stipulates the basic rules for economic activities. The Anti-Monopoly Act prohibits activities that impede competition, such as cartels, and to ensure its effectiveness, it includes administrative orders and criminal punishment against companies involved in an alleged violation and gives investigative authority² to the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”). With an increased need to deal with international cartels caused by globalization, the role of the JFTC is becoming more and more significant. To strengthen enforcement of the Anti-Monopoly Act, a revision of the Anti-Monopoly Act has been made, including the expansion of the surcharge system, introduction of the leniency program, and introduction of compulsory investigation authority.

Because of its role, the JFTC is strongly required to be fair and transparent in enforcing and implementing the Anti-Monopoly Act. For the JFTC to be fair and transparent, it is important that a company involved in an alleged violation can defend itself sufficiently against the JFTC’s administrative investigation. The revised Anti-Monopoly Act in 2013 stipulates that the JFTC’s hearing procedure for administrative appeal will be abolished as it was pointed out that it lacked the appearance of fairness, and that appeals against administrative orders by the JFTC will be heard at a court. The revised Act also stipulates that procedures prior to issuing an administrative order by the JFTC shall be further improved and made more transparent. Meanwhile, the JFTC’s administrative investigation procedures for alleged antitrust cases (fact-finding process) were not included in

¹ Policy Speech by Prime Minister Shinzo Abe to the 183th Session of the Diet (February 28, 2013), Policy Speech by Prime Minister Shinzo Abe to the 185th Session of the Diet (October 15, 2013)

² There are methods for an investigation used in the JFTC’s administrative investigation procedures, including on-the-spot inspection, order to submit documents, keeping submitted documents at the JFTC, order to appear and to be interrogated, and order to report (Article 47 of the Anti-Monopoly Act), which have authority with indirect enforcement to indirectly guarantee performance of an investigation by punishment (Article 94 of the Anti-Monopoly Act), as well as voluntary deposition, request to report and request to submit documents, which are not based on such authority with indirect enforcement.

the revised Anti-Monopoly Act because it was considered to be more important to abolish the hearing procedure for administrative appeal immediately. Instead, the issues of the JFTC's administrative investigation procedures are stipulated in Article 16 of supplementary provisions as follows.

The investigation procedures of the JFTC will be considered from a point of view to ensure that a party concerned with a case defends itself sufficiently, in keeping with consistency with other administrative procedures in Japan. The government will aim at drawing the conclusion of the consideration within one year in principle from the promulgation of the amended act and will take appropriate measures as necessary.

(2) Enactment of the revised Anti-Monopoly Act in 2013

The partially revised Anti-Monopoly Act that includes the abolition of the JFTC's hearing procedure in the above (1) was enacted on December 7, 2013 and promulgated on December 13 through deliberations in the 185th session of the Diet (the extraordinary session). (Act No. 100 of 2013)

A supplementary resolution adopted by the House of Representatives' Economy, Trade and Industry Committee was attached to Article 16 of supplementary provisions of the revised Anti-Monopoly Act. It states that "in order to allow companies to fully exercise the right to defense under interrogation and voluntary questioning by the JFTC, the government, referring to rules and practices in other jurisdictions, should positively consider implementing the presence of an attorney and the provision of copies of deposition records, in keeping with consistency with criminal procedures and other administrative procedures in Japan." (November 20, 2013)

(3) Holding of the Advisory Panel on Administrative Investigation Procedures under the Anti-Monopoly Act

On February 12, 2014, given supplementary provisions of the revised Anti-Monopoly Act, Minister of State for a particular field Tomomi Inada decided to hold the Advisory Panel on Administrative Investigation Procedures under the Anti-Monopoly Act (hereinafter referred to as the "Advisory Panel") with a view to seeking the advice of experts. The Minister appointed Katsuya Uga, a professor at the University of Tokyo Graduate Schools for Law and Politics, as chairman of the Advisory Panel and Mr. Uga appointed Masayuki Funada, a professor emeritus at Rikkyo University, as acting chairman. (See Attachment 1 for the list of members of the Advisory Panel.)

The Minister, who organized the Advisory Panel, presented the following perspectives and points to note. (the second meeting of the Advisory Panel)

- (i) It is important to secure the right to defense for those investigated in the JFTC's administrative investigation procedure. It is also important to ensure strict enforcement of the Anti-Monopoly Act by the JFTC.
- (ii) The Advisory Panel is required to balance the JFTC's fact-finding ability with the right to defense for those investigated. It should also refer to other

administrative procedures in Japan and rules and practices from foreign jurisdictions.

The Advisory Panel has so far had six meetings with these perspectives and points to note in mind.

At the first meeting of the Advisory Panel, the members shared the points of discussion that each member thinks are necessary and discussed how they should proceed. Some members expressed the opinion that it is important to understand the reality of the JFTC's administrative investigations in hearing opinions and requests about the JFTC's administrative investigation procedures during the hearing sessions.

At the second through fifth meetings, the Advisory Panel conducted hearings with the business community (the Japan Business Federation, the National Federation of Small Business Associations and the American Chamber of Commerce in Japan), attorneys (four attorneys who have plenty of experience in serving as an agent of persons concerned in antitrust cases or are familiar with practices of the US/European competition laws), the relevant ministries and agencies (the Securities and Exchange Surveillance Commission, the National Tax Agency and the Ministry of Justice) and the JFTC. The purposes of the hearings were to understand problems and views about the JFTC's administrative investigation procedures as well as to collect information on other administrative investigation procedures in Japan and the reality in foreign jurisdictions in order to work on a detailed study of the JFTC's administrative investigation procedures. (See Attachment 2 for the participants in the hearings by the Advisory Panel)

As the question of whether compulsory investigation procedures would be studied or not was raised at the first meeting of the Advisory Panel, the chairman proposed at the second meeting that the Advisory Panel study administrative investigation procedures, which do not include compulsory investigations, with the possibility in mind that administrative investigation might shift to compulsory investigation in the process. His proposal was accepted by the other members.

And at the sixth meeting of the Advisory Panel, the members discussed issues to be studied, based on requests from those participated in the hearings.

(4) Soliciting opinions on the Summary of Issues (public comment)

The Advisory Panel decided that the issues to be studied compiled at the sixth meeting of the Advisory Panel would be released as the Summary of Issues (The responsibility for the wording lies with the Office to Study Administrative Investigation Procedures under the Anti-Monopoly Act) and opinions would be solicited from the public.

The purpose of soliciting opinions is to seek opinions about the issues presented and helpful information about future studies.

The Summary of Issues includes issues about the JFTC's administrative investigation procedures, as well as opinions and comments on each issue. It does not provide the direction for summarizing future discussions. The number of opinions quoted does not decide which is better.

The Advisory Panel will continue studying the issues, based on opinions and comments it received, and compile the results of the study by the end of this year.

2. Basic Thoughts

The Advisory Panel is to study the JFTC's administrative investigation procedures. Based on viewpoints presented in supplementary provisions of the revised Anti-Monopoly Act and the supplementary resolution as well as perspectives and points of view presented by the Minister of State for a particular field Tomomi Inada, the following perspectives and points to note that were presented in the past meetings are necessary for conducting a study.

Among opinions from the panel members and participants in the hearings in the past meetings, opinions that make perspectives and points to note more concrete and items to be considered in the Panel's study are included in each issue.

The following symbols are at the beginning of a sentence that is an opinion or a consideration from a speaker.

○: Minister of State for a particular field Tomomi Inada or the panel members

□: Participants in the hearings except for JFTC officials

■: JFTC officials

(1) Ensuring that a party concerned with a case defends itself sufficiently

[Perspective/points to note]

The administrative investigation procedures of the JFTC will be considered from a viewpoint of ensuring that a party concerned with a case defends itself sufficiently.

Opinions

- Guaranteeing due process and allowing companies to exercise the right to defense are fundamental rights for those investigated.
- The right to have an attorney should be guaranteed in the whole process of the JFTC's administrative investigation procedures.
- Legislative measures to guarantee rights of companies should be taken in the JFTC's administrative investigation procedures.
- As the leniency program and other measures have equipped the JFTC with a tool for fact-finding and the rate of surcharges have been raised since 2005, companies should be given the right to defense accordingly.
- With the abolition of the pre-order hearing procedure system for administrative appeal due to the revision of the Anti-Monopoly Act in 2005, a cease-and-desist order is issued without the administrative hearing procedures, and securing the right to defense of a party concerned in the investigative stage is becoming more important.
- Due process is required even in criminal offenses of a heinous nature, where the request for revealing the truth is extremely strong. In the anti-Monopoly Act cases as well, the request for revealing the truth is not in conflict with due process.

- Since the right to defense of a party concerned is thought to be at a low level compared with the current fact-finding ability of the JFTC, I think that the purpose of this Advisory Panel is to raise the level of the right to defense to an adequate level.
- I understand that Article 16 of supplementary provisions of the revised Anti-Monopoly Act stipulates that it is necessary to review whether the additional right to defense is essential or not, and does not stipulate that it is necessary to study how the right to defense is further introduced based on the assumption of the introduction of the additional right to defense.

Considerations

- Because the right to defense of those investigated is guaranteed in other jurisdictions, trust with the competition authorities is ensured and attorneys are willing to work with the authorities to deal with a case.
- To build mutual trust between a competition authority and attorneys, they may need to have a common goal or a common interest, such as a plea-bargain.
- The purpose and intention of the right to defense that is requested must be made clear. (For example, if the request is the presence of an attorney during deposition, for what purpose is the attorney present? If it is attorney-client privilege, what and whom is protected?)
- A defense to oppose and prevent the JFTC's undue investigation, and an active defense made by a party concerned to deny the alleged fact and assert its argument are different in the necessity of a defense and the effect on the JFTC's fact-finding ability. Therefore, the two defenses should be discussed separately.
- When the right to defense of companies is considered, it must be noted that a conflict of interest can arise between companies and their employees. (For example, an employee wants to tell the whole truth, while it might not be what his/her company wants.)
- The problem that employees cannot tell the truth about a violation of the Act because they are afraid of internal punishment should be resolved by improving the internal environment which will make it easier for employees to testify, including adjustment of internal punishment for testifying the truth between a company and its employees.
- I hear that even if testifying parties request a change to deposition records during deposition, some investigators turn down the request. There is a distrust of depositions and deposition records.

(2) Ensuring the fact-finding ability of the Japan Fair Trade Commission

[Perspective/points to note]

When discussing defense of a party concerned, it is necessary to make sure that

the JFTC's fact-finding ability is not impaired.
Strengthening investigation powers should be studied, if necessary, so that the JFTC's fact-finding ability is not affected.

Opinions

- Improvement of JFTC's administrative investigation procedures should lead to increasing the effectiveness of investigations.
- Strengthening the right to defense does not conflict with the fact-finding ability of the JFTC; rather it can lead companies to cooperate for the law enforcement.
- It may be because companies have an incentive to cooperate in investigation that the right to defense does not conflict with fact-finding in the United States. If the right to defense is introduced into Japan, which does not have such an incentive mechanism, I doubt fact-finding will work.
- If the right to defense is to be granted without providing the JFTC with a tool for fact-finding, it might cause a substantial decrease in the fact-finding ability.
- In order to further introduce a system for the right to defense, investigation powers must be strengthened from the viewpoint of global standards, although what global standards mean must be separately discussed.
- I understand the concern that strengthening of the right to defense will impair the fact-finding ability. It is useful to consider on what condition the JFTC can accept measures to secure the right to defense that are being discussed, for example, strengthening of investigation powers and an increase in budget and personnel.
- Strengthening the right to defense must be discussed at the same time as the introduction of a discretionary surcharge system and a review of the method and standard of proof to strengthen the JFTC's investigation powers.
- As for administrative investigation procedures, it is important to balance the right to defense of a party concerned with the authorities' fact-finding ability with regard to an alleged violation.
- Granting the right to defense that could impair the fact-finding ability would make it difficult to maintain confidence in the competitive order in Japan through eliminating and deterring violations of the Anti-Monopoly Act in the Japanese market.

Considerations

- As proof of existence of a cartel requires proof of communication among companies, which is a subjective element, greater importance is placed on depositions in the JFTC's investigation. The challenge is therefore to secure the voluntariness and trustworthiness of depositions.
- Based on the point by an attorney who participated in one of the hearings that subjective elements such as an agreement in a cartel can be proven by

accumulating objective evidence, it may be unnecessary to rely on much deposition records to prove violations.

- As material evidence is limited and fragmentary, depositions to bridge one piece of evidence with another are essential. Not all facts of bid-rigging, cartel and other illegal acts can be established only by material evidence.
 - Unless it is made clear that when the leniency program is applied to a company criminal prosecution of its employees is not conducted, an incentive to cooperate with the JFTC's investigation will be significantly impaired.
 - The JFTC has a clear policy not to file a criminal indictment against the first company to apply for the leniency program before the start of an investigation, as well as executives and employees who have circumstances to be treated similarly with the company concerned. The JFTC will decide on a case-by-case basis whether or not to file a criminal indictment against the second company and following companies that apply for a leniency program before the start of an investigation as well as executives and employees who have circumstances to be treated similarly with the company concerned.
- (3) Consistency with other administrative procedures and criminal procedures in Japan

[Perspective/points to note]

The JFTC's administrative investigation procedures will be considered, in keeping with consistency with other administrative procedures and criminal procedures in Japan.

Opinions

- In the United States the attorney-client privilege exists in many fields including antitrust laws. Given consistency with other fields in Japan, it will be a big problem to introduce the privilege only into the Anti-Monopoly Act.
- There are many administrative procedures in Japan that impose adverse dispositions based on facts. The modality of the JFTC's administrative investigation procedures needs to be studied as a matter of adverse disposition in general, to maintain consistency.
- The Anti-Monopoly Act has introduced the leniency program and other systems that did not exist in other fields. What is believed to be necessary should be introduced.
- When considering the right to defense, consistency with criminal procedures should also be considered. There are reasons why some rights to defense are not allowed even in criminal procedures in which a more sufficient degree of right to defense is guaranteed. It is necessary to study whether the right to defense at issue is appropriate for administrative investigation procedures.
- The introduction of the right to defense, not granted in criminal procedures which require the right to a stronger defense, into administrative investigation

procedures of the Anti-Monopoly Act will have repercussions on the Japanese legal system.

- In the Anti-Monopoly Act procedures, the nature and details of violations and approaches to international cases are different from those in other administrative investigation procedures, so the JFTC's administrative investigation does not need to maintain such consistency with other administrative investigations in both guaranteeing the right to defense and strengthening investigation powers. It is also appropriate for a study to be made without reference to criminal procedures.

Considerations

- "Consistency" does not necessarily mean "identicalness." The systems of various administrative procedures are designed according to their needs. Being different from other administrative procedures is not a problem, but whether the difference will cause negative effects or not should be studied.
- There is basically no provision granting the right to defense in discussion in other administrative procedures in Japan. Some of the other administrative procedures are different from administrative investigation procedures of the Anti-Monopoly Act because the difference between them corresponds to different features of the cases concerned.
- The leniency program under the Anti-Monopoly Act is often used, contributing to investigations. As for consistency with other administrative procedures and criminal procedures, this particularity must be taken into consideration.
- The Japanese leniency program works as a tool for getting clues as to violations, but it is ineffective in stimulating further cooperation and deterring non-cooperation.

(4) Comparison with systems, structures and practices in foreign jurisdictions

[Perspective/points to note]

The JFTC's administrative investigation procedures must be studied, referring to examples in other jurisdictions, including legal systems and the procedures and actual state of investigations by the competition authorities.

Opinions

- How global standards will be secured should be included in discussions on competition policy, although what global standards mean must be separately discussed.
- Rules of competition laws have become more internationalized, and international consistency is required.
- It must be considered that Japan has different systems and structures from those in the US or Europe, where, for example, there are plea-bargains and/or an incentive for companies to cooperate with the authorities.

- In the US and Europe, companies have an incentive to cooperate with investigation by the authorities, while in Japan companies do not seem to have one. It should be noted that requirements under substantive law and judicial precedents differ between the US or Europe and Japan, and that Japan bears a heavier burden on proof. It should also be noted that when imposing a surcharge, Japan bears a burden to prove specific anticompetitive effect.
- Differences between Japanese and US/European legal systems must be taken into consideration. They include (i) differences in incentives to cooperate in an investigation, (ii) differences in sanctions against not cooperating in and obstructing an investigation, (iii) differences in the standard of proof of violations and (iv) differences in the importance of deposition records in proof of violations.
- Japan already has a leniency program. An incentive to cooperate may be increased by not approving a surcharge reduction unless those making a later application submit new evidence and by strictly interpreting whether the evidence they submit is novel.
- The Japanese leniency program overemphasizes the speed of application and places little importance on the quality and quantity of evidence submitted. The method of deciding application order is too mechanical.
- The EU/US fine/penalty systems allow the authorities to have discretion to decide the amount of fines/penalties, and to set high level of fines/penalties. The EU/US leniency program works as a tool not only for detecting violations but for efficiently dealing with cases with the cooperation of companies under investigation because the authorities have the discretion to decide the reduction of the calculation rate, taking into account the extent of cooperation in the investigation after application and added value of evidence. Meanwhile, the Japanese surcharge system has relatively a low level of surcharges, with no discretion both under the surcharge system and the leniency program.
- A comparative review of how the lawyer disciplinary system and legal ethics work in Japan and other jurisdictions needs to be made.

Considerations

- As more and more foreign companies are entering the Japanese market, there are strong expectations at home and abroad as to the application of the Anti-Monopoly Act, for protection of due process, the transparency of application and improvement of predictability.
- In foreign jurisdictions, as seen below, there is a system to encourage companies to cooperate in investigations. There are also systems to remedy competition concerns at an early stage through the cooperation with companies and shorten the time required to settle cases. They are viewed as important tools.

- A discretionary surcharge system like the fine in EU that allows the authorities to decide the amount of a fine, taking into account the extent of cooperation and non-cooperation of companies under investigation.
 - The leniency policy as seen in the United States and the EU that allows the authorities to decide a reduction rate, taking into account time to submit evidence, and added value and contribution of the evidence to an investigation.
 - A system to remedy competition concerns efficiently and effectively by voluntary agreement between companies and the authorities, such as commitment procedure and settlement procedure in the EU as well as consent decree and consent order in the US.
- The introduction of a discretionary surcharge system and the introduction of a system to decide order of leniency status according to the added value of submitted evidence into the leniency program would raise an incentive to cooperate in an investigation (disincentive not to cooperate in an investigation). However, if an early introduction of such a system is difficult, a system should be introduced to reduce the surcharge by settlement procedure as a result of voluntary agreement between the JFTC and companies, as well as a system to take measures to recover competition without determining whether companies violate the Anti-Monopoly Act.
 - If the commitment procedure as seen in the EU is introduced into Japan, the warning system as administrative guidance that plays the same role should be abolished.
 - The commitment procedure in the EU is different from a warning system in Japan in that sanctions are imposed in violation of a company's commitment. This makes a crucial difference.
- (5) Ensuring the appropriateness and transparency of administrative investigation procedures

[Perspective/points to note]

When discussing administrative procedures, it is necessary to make sure the appropriateness and transparency of the procedures need to be ensured.

Opinions

- Improving the transparency of the JFTC's procedures will contribute to strengthening the right to defense.
- It is important for businesses to be able to see or find out what the JFTC's investigation is like, and what the terms in the Anti-Monopoly Act means.
- As the parties concerned could fail to understand that the on-the-spot investigation by the JFTC is not compulsory, the JFTC's investigators should make it clear how far they can investigate through indirect enforcement.

3. Issues

Here are opinions that show the direction on the issues and considerations from the panel members and participants in the hearings in the Advisory Panel about main issues on the right to defense of a party concerned in the JFTC's administrative investigation procedures, of which it is considered appropriate to make a study in the Advisory Panel, with provisions and the reality of practices provided.

The following symbols are at the beginning of a sentence that is an opinion or a consideration provided by a speaker.

○: Minister of State for a particular field Tomomi Inada or the panel members

□: Participants in the hearings except for JFTC officials

■: JFTC officials

[Provisions and the current practices for on-the-spot inspection]

On-the-spot inspection

The JFTC conducts on-the-spot inspections as follows.

- In conducting on-the-spot inspection, investigators of the JFTC, to persons in charge of companies to be inspected, (i) present their identification cards (Article 47, paragraph 3 of the Anti-Monopoly Act), (ii) issue a notification that includes the case name, an outline of the alleged facts and relevant laws and provisions (Article 20 of Investigation Rules), and (iii) explain provisions that stipulate the on-the-spot inspection, specifics of the on-the-spot inspection and the possible imposition of a legal sanction in case of an inspection being refused.
- In conducting on-the-spot inspection, the JFTC orders persons to submit materials that the JFTC considers are necessary for its investigation. (Article 47, paragraph 1, item 3 of the Anti-Monopoly Act) A written submission order includes a list of the materials to be submitted.

Presence of an attorney during on-the-spot inspection

There are no legal provisions recognizing or not recognizing presence of an attorney at the request of a party concerned with a case during on-the-spot inspection by the JFTC ("On-the-spot inspection" means that the JFTC enters a place of business of a party concerned and conducts inspection in accordance with Article 47, paragraph 1, item 4 of the Anti-Monopoly Act. The same shall apply hereafter.). The JFTC allows an attorney to be present as long as the on-the-spot inspection is not disturbed, but in this case it starts on-the-spot inspection without waiting for an attorney to arrive.

Attorney-client privilege

In the United States and Europe, communications between a client and an attorney are excluded from disclosure in administrative investigation procedures or discovery procedures in courts as a privilege. (This privilege is hereinafter referred to as "attorney-client privilege.")

There are no legal provisions recognizing or not recognizing this privilege in Japan. The JFTC does not guarantee this privilege in practice. Like other information, communications between a client and an attorney can be subject to an order to submit.

Copying materials to be submitted (during on-the-spot inspection)
There are no legal provisions recognizing or not recognizing copying of materials subject to submission by a party concerned during on-the-spot inspection. The JFTC allows a party concerned to read or copy materials subject to submission as long as the on-the-spot inspection is not disturbed. There is a provision in the Rules of the Fair Trade Commission about the reading and copying of seized materials. (Article 18 of Investigation Rules ³)

[Provisions and the current practices for deposition]

Deposition

The JFTC's procedure for taking depositions is as follows.

- Those subject to a deposition: Depositions of employees of a company involved in an alleged violation, employees of a client company and government officials placing an order are often taken. Sometimes, depositions from dozens of people are taken in one case.
- Place where depositions are taken: The JFTC usually asks employees of a company involved in an alleged violation to come to the JFTC's building to take a deposition. However, if testifying parties are located in a remote area, a deposition can be taken outside the JFTC building (e.g. a rental meeting room, a meeting room in a company a testifying party belongs to).
- How often and when a deposition is taken: Several depositions are often taken from the same person.
- Method of recording a deposition: The JFTC usually compiles what a testifying party voluntarily told as monologue-style deposition records, reads them to the testifying party and lets the party to read them before requesting the party to sign and affix his/her seal. However, sometimes the JFTC does not put what he/she told on record immediately, placing the contents of several depositions together on record.
- Method of recording interrogation: The JFTC usually compiles the contents of interrogation in a question-and-answer format of interrogation records, reads them to a testifying party and lets the party to read them before requesting party to sign and affix his/her seal.

Presence of an attorney during deposition/interrogation

There are no legal provisions recognizing or not recognizing presence of an attorney at the request of testifying parties during interrogation ⁴ and voluntary deposition by the JFTC. (hereinafter collectively referred to as "deposition") The JFTC does not recognize this in practice. Except during deposition, however, testifying parties may consult an attorney or report the contents of depositions to an attorney and get advice.

³ Rules on Administrative Investigations by the Fair Trade Commission. (Fair Trade Commission Rule No. 5 of 2005)

⁴ Interrogation of a party concerned with a case or a witness under Article 47, paragraph 1, item 1 of the Anti-Monopoly Act

Securing verifiability of the process of deposition

There are no legal provisions recognizing or not recognizing audio or video recording of the process of taking depositions by the JFTC. The JFTC does not recognize this in practice.

Issuing copies of deposition records to testifying parties when deposition records are taken

There are no legal provisions recognizing or not recognizing issuing copies of deposition records to testifying parties when deposition records are taken. The JFTC does not recognize this in practice. However, the revised Anti-Monopoly Act in 2013 (unenforced) stipulates that certain deposition records are subject to copying in pre-order procedures.

Note taking by testifying parties during deposition

There are no legal provisions recognizing or not recognizing note-taking by testifying parties during deposition. The JFTC does not recognize this in practice.

[Other provisions for administrative investigation procedures and current practices]

Ways to ensure the appropriateness and transparency of administrative investigation procedures

Those subject to the measures taken by an investigator (Article 47 of the Anti-Monopoly Act) can appeal against the JFTC if they are dissatisfied with the measures. (Article 22 of Investigation Rules)

Publication of systems and guidelines for investigation into alleged violations of the Anti-Monopoly Act

The JFTC's website provides general information on regulations under the Anti-Monopoly Act. Rules on Administrative Investigations by the Fair Trade Commission (Fair Trade Commission Rule No. 5 of 2005) stipulate the main points about administrative investigation procedures, but the website does not provide detailed information on administrative investigation procedures (the right to defense of a party concerned such as the involvement of an attorney during on-the-spot inspection, the content of investigation such as the range of materials that are requested for submission at on-the-spot inspection)

- (1) Presence of an attorney during on-the-spot investigation
(See p. 12 about provisions and the current practices)

Opinions

- It should be stipulated that, when conducting an on-the-spot inspection, the JFTC notify a party concerned that it may appoint an attorney and be accompanied by an attorney, and that the JFTC does not conduct on-the-spot inspection before the attorney arrives at the inspection site.
- It is important for an attorney to be present during on-the-spot inspection and check what documents the JFTC will seize or if it seizes more than necessary.

- If the JFTC cannot start on-the-spot inspection before an attorney arrives, employees could destroy evidence while waiting for an attorney to arrive. They could also make contact with other companies involved in an alleged violation, which could make the destruction of evidence easier.
- The JFTC does not have to wait for the arrival of an attorney to conduct on-the-spot inspection, but at least investigators should be obliged to notify a party concerned that it can call an attorney.
- As on-the-spot inspection is not conducted behind closed doors and does not require any special knowledge of an attorney, there is no need for presence of an attorney or to inform a party concerned that it can call an attorney.

Considerations

- Owing to a shortage of attorneys who are familiar with the Anti-Monopoly Act, even if it is recognized that the JFTC cannot start on-the-spot inspection before an attorney arrives, it is doubtful that it would really work.
- If the JFTC cannot start on-the-spot inspection before an attorney arrives, the investigation could be obstructed, for example, by destroying evidence, before the start of the inspection. So balancing the effectiveness of on-the-spot inspection with presence of an attorney at the inspection site is required.

(2) Attorney-client privilege

(See p. 12 about provisions and the current practices)

Opinions

- With attorney-client privilege not guaranteed in Japan, if companies provide information in compliance with order to report or order to submit by the JFTC, the foreign competition authorities might regard them as waiving the attorney-client privilege. Such privilege should also be granted in Japan.
- If a company appoints an attorney to conduct an in-house investigation or legal assessment on possible violations, and the results could be seized and used by the JFTC as evidence against it, or as material for questioning by investigators during deposition, the company will be discouraged from consulting an attorney. Attorney-client privilege should be guaranteed to secure the right to defense as well as to improve company compliance.
- Since attorney-client privilege is limited to communications on legal advice between an attorney and a client, guaranteeing attorney-client privilege would not hinder the JFTC's investigation.
- If an attorney-client privilege is not granted, it will be difficult to conduct an in-house investigation intended to ensure company compliance. Similar views are presented from the business world and several attorneys at the hearings.
- There are no cases where a document that may be subject to an attorney-client privilege has constituted conclusive evidence to prove violations in the JFTC's investigation, but although a document that may be subject to an attorney-client

privilege could be evidence to prove violations, being unable to use the document as evidence will cause specific negative effects such as making it difficult to prove violations.

- Even now, in applying for leniency, a company must be conducting an in-house investigation on the assumption that it will report the results to the authorities. Lack of attorney-client privilege does not inhibit the progress of in-house investigation for fear of the results being seized by the authorities. Lack of the privilege does not cause any specific problems now, including businesses failing to communicate with an attorney.
- With no sufficient incentives to cooperate in investigation (disincentives not to cooperate in investigation) in Japan, there is much apprehension that an attorney-client privilege will be abused.
- In Japan, due to lack of a discretionary surcharge system and of tough sanctions against obstructing investigations, companies have few incentives to cooperate in investigation. Guaranteeing an attorney-client privilege might therefore impair the JFTC's investigation.
- In Japan, where legislative consideration is needed owing to a lack of formation of precedents on an attorney-client privilege, the introduction of an attorney-client privilege only into the Anti-Monopoly Act procedures might pose a serious problem because this issue should be considered in a wide range of fields.
- The purpose of the right to consult with an attorney in Japanese criminal procedures⁵ is almost the same as that of the attorney-client privilege in the US and European jurisdictions. The same logic can be applied to those who are not in custody.
- It is a wild leap to bring the right to consult with an attorney for criminal suspects or defendants who are in custody into a discussion about the possible introduction of an attorney-client privilege into administrative procedures.

Considerations

- In discussing attorney-client privilege, the definition and scope of the privilege must be made clear.
- In Europe, treatments of in-house and external attorneys to handle attorney-client privilege differ from country to country. To which attorneys attorney-client privilege is granted is left up to individual jurisdictions.
- In the United States, some court decisions show that attorney-client privilege is not waived when a company is ordered to submit by the government authorities. And the JFTC has not provided materials it collected to the foreign authorities.

⁵ "For defendants to receive effective and appropriate assistance from lawyers, it is essential for defendants and lawyers to communicate freely without investigation agency knowing, so that defendants can provide lawyers with necessary and sufficient information and lawyers can offer appropriate advice to defendants." (Kagoshima District Court Judgment, March 24, 2008, p.27 of Law Cases Reports No. 2008)

(3) Presence of an attorney during deposition
(See p. 13 about provisions and the current practices)

Opinions

- Presence of an attorney during deposition is necessary for confirmation of the rights testifying parties have, the legal consequences of the contents of depositions, defense against loaded questions and an accurate response to legal questions.
- Even though testifying parties requested change in the deposition records, investigators sometimes turned down the request. It is inefficient to spend much time checking in the JFTC's hearing procedure if deposition records are an accurate reflection of what parties testified voluntarily. Accepting presence of an attorney during deposition will lead to not only securing the right to defense but improving the efficiency of law enforcement.
- To compensate for a lack of legal knowledge, an attorney should be present to give advice about the meaning of deposition records to testifying parties and at least when making deposition records.
- To guarantee the appropriateness of the process of taking depositions, an attorney must be present so that a third party can verify the consistency of the process of taking depositions with deposition records.
- If the purpose is to record depositions objectively and accurately to verify the process of taking depositions, it can be an objective third party, not necessarily an attorney that should be present.
- Since deposition is in principle voluntary, the JFTC must stop questioning to allow a testifying party to meet an attorney if he/she asks to do so. However, if the JFTC practically does not allow the meeting, it might be like the testifying party is detained as a matter of practice and deviate from voluntary administrative procedures.
- During deposition, the JFTC investigator requests a testifying party to refrain from making contact with people outside except during a break, and obtains his or her consent. In principle, the JFTC investigator does not restrict testifying parties to make contact with people outside during a break, which is taken in an appropriate manner.
- Presence of an attorney during deposition could lead to intervening in questions by investigators, obstructing smooth deposition. There are examples of attorneys who instructed a company involved in an alleged violation to take an uncooperative response.
- When an attorney is present during deposition and offers inappropriate advice to a testifying party, one possible way to impose sanctions on the attorney is for the bar association to take disciplinary action against him or her.

- As it is now beneficial for employees not to tell the truth about a violation to avoid internal punishment, an attorney will give advice in that manner. Presence of an attorney, whether an attorney for companies or an attorney for employees, would prevent investigators from obtaining statements from employees about their experiences.
- Given that a conflict of interest can arise between a company and its employees, when presence of an attorney is accepted, an attorney who takes an employee's side should be allowed to be present. The modality of the cost burden also needs to be studied.
- Presence of an attorney for companies, not an attorney for employees during deposition of employees may cause a chilling effect on employees because what they said during deposition will be fully conveyed to their company through the attorney, which might hamper the JFTC's fact-finding. In criminal procedures, presence of an attorney is significant as the privilege against self-incrimination is accepted, but it is doubtful whether presence of an attorney is of any significance in administrative procedures.
- Although presence of an attorney is accepted in the United States, stricter law enforcement is imposed there than in Japan. Therefore, I do not think that presence of an attorney will impair the fact-finding ability of the JFTC.
- As the United States has a plea-bargain system and in Europe the authorities have discretion to decide the amount of fines, a party concerned has incentives to cooperate in investigation of the competition authorities. Meanwhile, there are no such incentives in Japan, so it is questionable whether presence of an attorney will lead to fact-finding of the JFTC.
- Since applicants for leniency admit violations, I do not think that presence of an attorney during deposition of the applicants' employees will impair the investigation. And if employees of a foreign company who live in foreign countries are not allowed to have an attorney present, it will make depositions different from those taken by the foreign competition authorities, and I am afraid it will make deposition impossible from the outset.
- When the JFTC accepts applications for leniency by companies, whether domestic or foreign, the JFTC may recognize presence of an attorney on a case-by-case basis. Meanwhile, a company that secures their status of the application has no incentives to further cooperate, and during the deposition of employees of the company, the JFTC does not recognize presence of an attorney because they do not necessarily tell the truth even if the case is associated with leniency.

Considerations

- It must be noted that problems during voluntary depositions, not during interrogation as indirect enforcement, are pointed out.

- It is necessary to discuss issues on presence of an attorney by making clear whom the attorney defends, taking into consideration the roles of an attorney who defends a company and an attorney who defends an employee.
- In my experience of being present during deposition in a foreign jurisdiction, presence of an attorney who defends an employee during deposition creates an environment where the employee feels comfortable testifying.
- A shortage of attorneys familiar with the Anti-Monopoly Act is pointed out. Even if presence of an attorney is recognized, it is doubtful that it would really work.
- Even if presence of an attorney is recognized, I am afraid that it will be unfair because only large companies can pay attorney's fees, which are expensive for small- and medium-sized businesses.
- In the United States, if attorneys disrupt questions by the authorities during their presence, they will be charged with contempt of court. Presence of an attorney could be accepted only if a similar system like this is introduced.
- In the Legislative Council of the Ministry of Justice, some members supported presence of an attorney during the questioning of suspects. But others were against the idea because it might fundamentally change the way of taking deposition or interrogation, and significantly impair its function, and the Council did not reach a specific consensus on it.
- Testifying parties may consult an attorney except during deposition. Currently, undue questioning is not conducted even when an attorney is not present during deposition. Among 102 court judgments on litigation aiming to rescind a JFTC decision⁶, there were 11 cases in which the voluntariness and trustworthiness of deposition records became an issue owing to undue questioning. But in any judgment, the voluntariness and trustworthiness of deposition records have never been denied.
- The JFTC says that the voluntariness and trustworthiness of its deposition records have never been denied, but as the process of taking depositions, conducted behind closed doors, is not audio or video recorded, and the voluntariness and trustworthiness of its deposition records cannot be verified.
- Testifying parties are requested to sign and affix their seal without providing sufficient opportunity to correct or check the accuracy of deposition records prepared by the JFTC investigators.
- According to the JFTC's investigation rules, if testifying parties request some changes in deposition records, their request must be included in the deposition records. However, there are some cases where the rule is actually not observed.

⁶ Among litigation aiming to rescind a JFTC decision, lawsuits filed by those who are not the addressees of decisions and suits relating to the Act against Unjustifiable Premiums and Misleading Representations are excluded.

- Deposition records are what testifying parties themselves testified voluntarily and testifying parties check the accuracy of the records before signing and affixing their seal. If testifying parties request some changes in a draft of deposition records, their request, after the JFTC investigators make sure their intent of the request, is reflected in the draft. The JFTC will not have a story on them.

(4) Securing verifiability of the process of deposition
(See p. 14 about provisions and the reality of practices)

Opinions

- A third party must verify the consistency of the process of taking depositions with deposition records. Audio and video recording of the process of deposition is one of the effective means.
- As is the case with the US and European systems, audio and video recording of the whole process of deposition conducted behind closed doors will provide an effective tool to ensure the transparency and appropriateness of an investigation. It should be urgently proceeded with the study.
- Since deposition is in principle voluntary, if a testifying party requests recording and videotaping of the process of the depositions, including bringing a digital voice recorder, the JFTC must allow this request. However, if the JFTC in practice does not allow this request, it might be undue restrictions on the action of the testifying party and deviate from voluntary administrative procedures.
- One possible way to avoid conflict over the voluntariness and trustworthiness of deposition records is to introduce the system of audio and video recording on some part of the process of deposition, for example, reading of deposition records. In this case, however, after identifying what the problem is with a deposition, it is necessary to carefully study the effectiveness of audio and video recording of only part of the process and how much it can prevent negative effects.
- The JFTC understands that discussions about transparency of interrogations in the Legislative Council of the Ministry of Justice focus on detention cases. The JFTC does not take anyone into custody for questioning. There is little need for monitoring or to make it easier to prove voluntariness.

Considerations

- With no means of verification, there were cases where the voluntariness of deposition records was contested during the administrative hearing procedures for many years. If the process of taking depositions had been recorded and videotaped, the issue would have been solved immediately. I believe it is inefficient to spend a lot of time contesting the voluntariness of deposition records.
- In any case where the voluntariness of deposition records was contested and decisions and rulings were issued, the voluntariness of deposition records is

just one of the issues, and there have been no previous cases in which this issue alone was contested.

- To ensure the voluntariness and transparency of a deposition, the following aspects of deposition procedures must be improved.
 - Loaded questions are often asked and long hours of depositions are sometimes taken.
 - Long hours of depositions wear down a testifying party, letting the JFTC take deposition records as it wishes.
- There are deposition records of different testifying parties which are, word for word, the same for the most part.
- Since administrative disposition is not imposed on individual employees as a result of the JFTC's investigation, the JFTC tries to persuade them to tell the truth even if it is against their company's interests. It also gives them time for breaks and allows them to consult their company or an attorney before/after deposition. Therefore, voluntariness will not be in question with regard to depositions.
- Since the JFTC takes depositions from employees at several companies involved in alleged violations, it does not rely on only a few depositions. The JFTC does not include fake stories in deposition records and use them as evidence because it takes depositions with reference to clues or evidence available at the time.
- It is doubtful that it is more difficult to find out the truth in the JFTC's administrative investigation procedures than in criminal procedures in which questioning is recorded and videotaped on a trial basis. Unlike in the case of organized crime in criminal cases (for example, gang-related crimes), it is difficult to imagine any risk to lives and bodies of testifying parties in the Anti-Monopoly Act cases.
- In the Anti-Monopoly Act cases, where companies are the subject of illegal conduct, audio or video recording of interrogations would discourage testifying parties from testifying to protect their company and superiors or for fear of retaliation from co-conspirators and adverse effect on future business, causing a chilling effect. The JFTC would not be able to use a method of eliciting information about co-conspirators on condition of not recording the deposition.

(5) Information disclosure for appropriate claims

- a. Copying of materials to be submitted (during on-the-spot inspection) (See p. 13 about provisions and the current practices)

Opinions

- Since not only regular work but also the exercise of the right to defense in the following procedures are affected, copying of all the materials that a company requested to be copied should be accepted on the day of on-the-spot inspection.

- The problem with having documents kept at the JFTC during on-the-spot inspection is that documents needed immediately for regular work can also be kept at the JFTC and the inspection and copying of the documents later will affect such work. This problem can be solved to some degree if copying all the documents is allowed at on-the-spot inspection.

b. Issuing copies of deposition records to testifying parties when deposition records are taken (See p. 14 about provisions and the current practices)

Opinions

- To confirm alleged facts and ensure the full exercise of the right to defense, copies of deposition records should be issued to testifying parties immediately after deposition records are taken.
- It is necessary to be able to verify whether deposition records are an accurate reflection of the contents of depositions of testifying parties. Issuing copies of deposition records immediately after a deposition is one means of verification.
- If copies of deposition records are issued immediately after deposition records are taken, testifying parties can use them so that they can tell the same story. Also, employees involved in violations would not tell the truth against their company's interests because the contents of depositions would be immediately conveyed to their company so that they would be afraid of internal punishment.
- There is a difference in the chilling effect on employees between (i) employees who do not testify for fear of future internal punishment due to their involvement in a violation of the Anti-Monopoly Act and (ii) those who do not testify because they are instructed to remain silent by their company involved in an alleged violation. These should be discussed separately.

Considerations

- The JFTC may be concerned that the contents of depositions of employees will be immediately conveyed to their company immediately, but since companies can copy deposition records in pre-order procedures at the latest, the JFTC's concern cannot be the reason why issuing copies of deposition records is not allowed.
- Copies of deposition records, if issued in the investigation stage, have different meanings, compared to the case where they are issued in the pre-order procedures stage. In the investigation stage, fact-finding is ongoing and if copies of deposition records are issued, it is highly likely that an arrangement beforehand to tell the same story will be made.

c. Note taking by testifying parties during deposition (See p. 14 about provisions and the current practices)

Opinions

- Testifying parties should be allowed to take notes on the contents of depositions so that they can consult an attorney after the deposition and respond to it effectively.

- If testifying parties try to take notes, they may focus on taking notes and fail to respond sincerely to investigators' questions and taking notes may often stop investigators from questioning. Also, notes taken by testifying parties can make it easier to arrange beforehand to tell the same story.
- (6) Sharing knowledge of rules and practices on administrative investigation
(See p. 12ff about provisions and the current practices)

Opinions

- It is pointed out that the explanation of legal foundation on on-the-spot inspection is inadequate, so the JFTC should explain it adequately and make clear maximum permissible limit for those investigated.
- The description in a list of materials subject to a submission order should be determined item by item.
- A list of materials subject to a submission order is made by investigators and persons in charge of companies to be inspected so that the materials can be identified.
- The range of materials subject to a submission order should be limited to documents relating to the alleged fact.
- The JFTC orders persons to submit materials that the JFTC considers are necessary for its investigation. The JFTC does not order them to submit materials that are considered to have nothing to do with an alleged violation. Materials with a high level of privacy (notebooks, etc.) are sometimes included because they contain business information.
- To apply for leniency program, a company needs to conduct a fact-finding in-house investigation. Depositions should not be taken by the JFTC from persons subject to a fact-finding in-house investigation on the day of the on-the-spot inspection because it limits their time and affects their work.
- Depositions on the day of on-the-spot inspection are an important opportunity to obtain statements based on memories of testifying parties, and depositions are taken with their consent. In the first place, the application for leniency program should be made in advance when a violation is discovered in an in-house investigation. Investigations by the JFTC should not be restricted for the convenience of such application. Investigators give consideration in some ways or other.
- In my experience of serving as an attorney for a company, I often hear that during deposition investigators force testifying parties to testify based on the story they initially had, repeatedly summon them and not take depositions that they did not like.
- As deposition takes for many hours and over a long period, which places excessive strain on testifying parties, the procedure of deposition should be made quicker and less burdensome.

- A deposition is usually finished during office hours, but depositions after office hours are taken with the consent of testifying parties.
- During a voluntary deposition, the JFTC needs to explain to testifying parties beforehand that the deposition is voluntary and they can make contact with people outside such as an attorney. It is necessary to ensure that all investigators follow this during actual deposition.
- In violations of the Anti-Monopoly Act, disposition for a violation of the Anti-Monopoly Act of which one knows nothing, the so-called false charge, is not imposed by the JFTC's unfair investigation.
- To prevent excessive depositions by the JFTC and ensure the right to defense of testifying parties, the right to silence and the privilege against self-incrimination should be granted to testifying parties.
- Since individual employees are not held criminally responsible in an administrative investigation and deposition records made in an administrative investigation are not used as evidence in compulsory investigations, the privilege against self-incrimination does not need to be guaranteed.
- Leniency status should not be lost just because of the exercise of the right to silence and the privilege against self-incrimination should not lead to not applying the leniency program.
- Even if employees of a company applying for leniency say in a deposition that they do not remember anything about what investigators asked or that they do not admit to the alleged fact of violations, it is not the case that the provisions of leniency cannot be applied to the company. Also, investigators do not coerce them by saying that such a thing may happen.
- Considering the complaints about trouble concerning administrative investigations and the requests for improvement, the JFTC should prepare checking systems to prevent problems in investigation procedures from occurring.
- The establishment of a system to appeal against voluntary deposition procedures should be considered.
- A system to check what questions from investigators mean and what answers to them mean is needed. A question-and-answer manual on investigations should be made public.
- During deposition, the JFTC listens to what testifying parties really experienced and figures out if the companies concerned violated the Anti-Monopoly Act, based on what they said. If the JFTC inform them about what answers to questions from investigators will lead to them being found to violate the Anti-Monopoly Act, it is not appropriate since it will keep violations hidden.

- In order to promote the improvement of voluntary compliance of small- and medium-sized businesses, resulting in enhancement of their social credibility, the JFTC is expected to inform these companies of its investigation procedures.
- It is thought that, like in Europe, the publication of the JFTC's manual would increase the transparency of procedures in Japan.
- The disclosure of sensitive information on investigation procedures (investigation techniques, etc.) is not appropriate since it could lead to violations being kept secret and affect the JFTC's investigation.
- It would be difficult to publish the manual, but the JFTC should consider the disclosure of its standard procedures.
- Some ministries and agencies have already disclosed their basic guidelines for investigation procedures. From the viewpoint of consistency with other administrative procedures, the JFTC must make efforts toward some form of visibility.

Considerations

- As for inspection or investigation procedures, the Antitrust Manual of Procedures is posted on the website of the European Commission, and the Antitrust Division Manual is on the website of the United States Department of Justice.
- In the United States and Europe, sensitive information on investigation techniques is not revealed in the manuals. In Japan, investigation procedures, on-the-spot inspections, questioning and confidentiality are stipulated in laws and rules. The JFTC, if necessary, explains further information on individual cases to companies to be investigated.
- As media sometimes reports on-the-spot inspections on the day of on-the-spot inspection, it is doubtful that the JFTC manages information properly.
- The JFTC does not provide information about on-the-spot inspections for the media.

List of Members of the Advisory Panel on Administrative Investigation Procedures
under the Anti-Monopoly Act

(As of February 28, 2014)

Chairman	Katsuya UGA	Professor, the University of Tokyo Graduate Schools for Law and Politics
Acting Chairman	Masayuki FUNADA	Professor emeritus, Rikkyo University
	Kaoru AOYAGI	Professor, Nihon University Law School
	Takeyoshi IMAI	Professor, Hosei University Law School
	Masaru OIKAWA	Head of Policy Promotion Department, National Federation of Small Business Associations
	Yoichiro OSAWA	Editorial Writer, the Yomiuri Shimbun Tokyo Head Office
	Toshihiro KAWAIDE	Professor, the University of Tokyo Graduate Schools for Law and Politics
	Chihiro KAWASHIMA	Chief of Policy Bureau, Japanese Trade Union Confederation
	Yasuko KOUNO	Director-General of the Secretariat, National Liaison Committee of Consumer Organizations
	Miki SAKAKIBARA	Competition Law Panel member, Committee on Economic Law, KEIDANREN (Japan Business Federation) , Attorney
	Fumio SENSUI	Professor, Kobe University Graduate School of Law
	Takehisa NAKAGAWA	Professor, Kobe University Graduate School of Law
	Yumiko MIMURA	Professor, Aoyama Gakuin University School of Business
	Masahiro MURAKAMI	Professor, Seikei University Law School
Kimitoshi YABUKI	Attorney	

Participants in the hearings by the Advisory Panel on Administrative Investigation
Procedures under the Anti-Monopoly Act

The 2nd Meeting (March 27, 2014)

Yasuhisa ABE	Director, Business Infrastructure Bureau, KEIDANREN (Japan Business Federation)
Kazuyuki YABATA	Head of the Maebashi Metal-Working Factory Complex Association (National Federation of Small Business Associations)
Jay Ponazecki	President, The American Chamber of Commerce in Japan (ACCJ)
Hiromitsu MIYAKAWA	Chairman of Competition Policy Task Force Committee, The American Chamber of Commerce in Japan (ACCJ)

The 3rd Meeting (April 11, 2014)

Toshiaki TADA	Attorney
Vassili Moussis	Attorney (Registered foreign lawyer)
Shiro SHIDA	Attorney

The 4th Meeting (April 23, 2014)

Tetsuya NAGASAWA	Attorney
Shuichi SONODA	Director, Coordination Division, Secretariat, Securities and Exchange Surveillance Commission
Tetsuro SHIGETO	Director of Taxation Management Division, Taxation Department, National Tax Agency
Hiroshi YAMAMOTO	Director of Criminal Affairs Division, Criminal Affairs Bureau, the Ministry of Justice
Kazuto HOSAKA	Counselor, Director of the Criminal Legislative Division, Criminal Affairs Bureau, the Ministry of Justice

The 5th Meeting (May 14, 2014)

Masaru MATSUI	Director General, Economic Affairs Bureau of General Secretariat, JFTC
Hiroo IWANARI	Counselor, Secretariat of General Secretariat, JFTC
Masayuki YAMAGUCHI	Director, Planning Office, Investigation Bureau of General Secretariat, JFTC
Naohiko KOMURO	Senior Planning Officer, Investigation Bureau of General Secretariat, JFTC