

Detecting Cartels and Gathering Information for Investigations

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Introduction

Investigation without Leniency Programs...

- For jurisdictions not using leniency programs (including Japan currently), obtaining evidence that indicates conspiracy between participants of cartels is quite important, especially at the early stage of investigations.
- Dawn raids are also an important step for developing investigative leads.

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The Legal Structure against Cartels in Japan

- Definition of Unreasonable Restraint of Trade (Sec.2(6))
....Cartel, Bid-rigging
- Prohibition of Unreasonable Restraint of Trade (Sec.3)
- Rules on Investigations and Hearings of the JFTC
- Cases (hearing decision & court decision)



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Investigation Proceedings

Beginning of Cases



- Report of Violation by the Public
- Detection of Violation by the JFTC's own Authority

Investigation



- Dawn Raids (On-the-spot Inspections)
- Orders to Report
- Interviews of Suspects

Decision of Measures



- Recommendation of Elimination Measures
- Surcharge Payment Order
- Criminal Accusation

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Beginning of Cases

Report of Violation by the Public

The JFTC, upon receipt of such a report, shall make necessary investigations with respect to the case.
(Sec.45(2))

- Generally the JFTC conducts supplementary research in these cases.



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- Legal requirements for filing a complaint do not exist. (anonymous oral reporting is also possible)
- Where any submitted report specifies facts in writing in accordance with the JFTC's Rules, and when the JFTC decides to take, or not to take, appropriate measures with respect to the case referred to in the report, the JFTC shall promptly notify that effect to the person who made the report. (Sec.45(3))

Next Slide: Requirements of the Rules

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Sec.91(1) of Rules on Investigations and Hearings of JFTC:

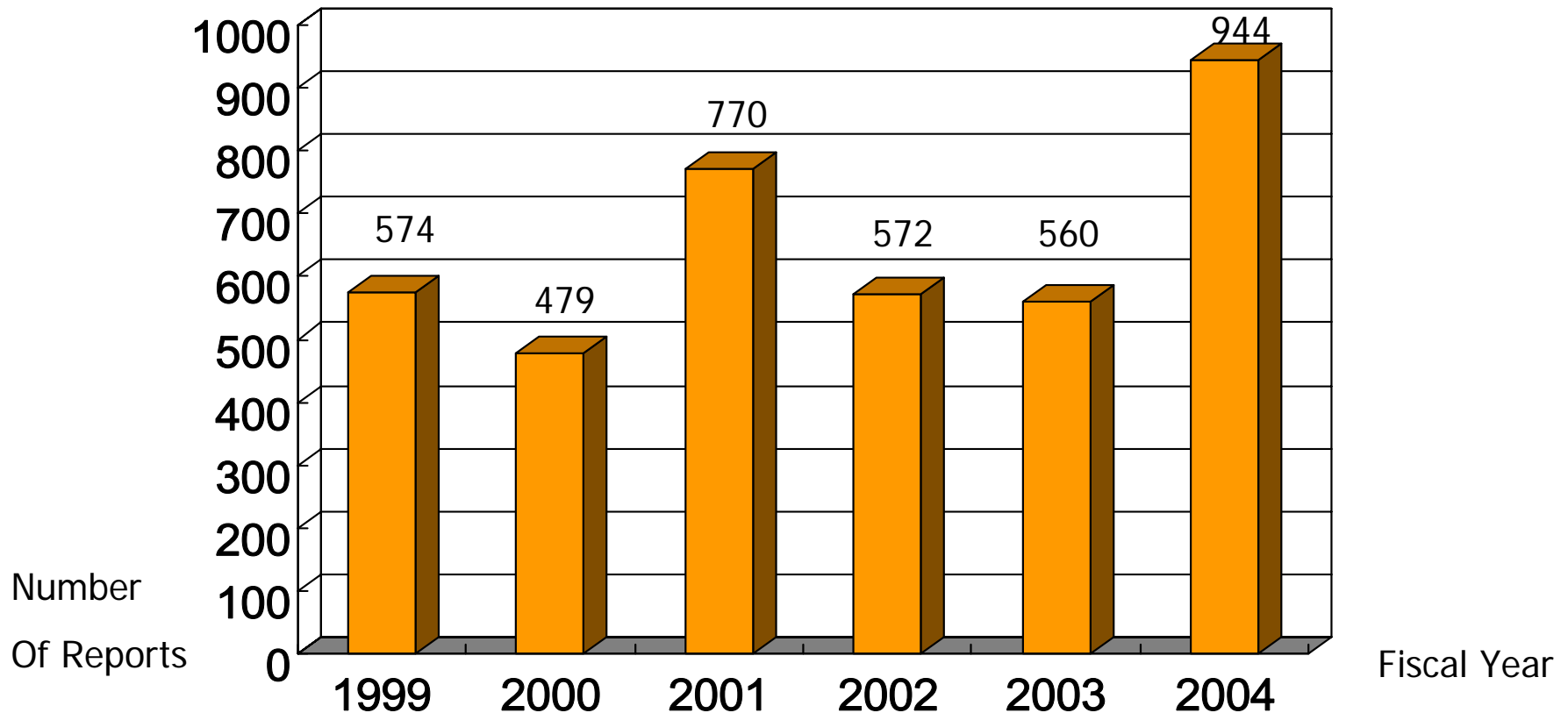
A notice shall be given, where a report was made by a document stating the matters indicated as follows:

- (i) Name or title and address of a reporting person
- (ii) Name or title of a person who commits or has committed a violation
- (iii) Details of the activity, time, place and other facts of a violation

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Number of Reports of Violation including Cartel Cases by the Public

(Excluding Reports from Procurement Agencies)



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Available Information from Complainants

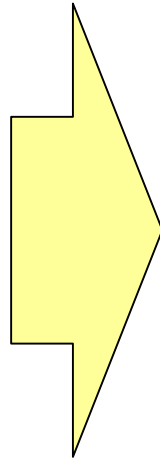
Consumer

Competitor

Employee

Customer

Procurement Agency



[Cartel Case]

1. Parties participating in the cartel agreement
2. Geographical region targeted by the price-fixing
3. Duration of implementation of the price-fixing

[Bid-rigging Case]

1. Parties participating in the bid-rigging
2. Details of rules for selecting an expected bid winner

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Keep Confidential and Anonymous

- The JFTC keeps all reports confidential, and treats the information with circumspection.
- Nevertheless, complainants often make reports anonymously.
- In order to share information and keep anonymity, the JFTC uses the following tools:
 - (1) Reporting by E-mail like “hotmail”
 - (2) Using the Electric Reporting System on the JFTC’s website

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Electric Reporting System on the JFTC's website :

- This website enables complainants to report with the maximum information-security.
- If the JFTC cannot contact a complainant who reported without indicating his/her E-mail address, name or address, the complainant can access a particular BBS for continuous communication by using the password issued by the JFTC.

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Information from Public Agencies

- In the case of bid-rigging, information from the procurement agencies is very important.
- In FY 2003, the number of reports from procurement agencies is reached over 1,000.

Possible information for clarifying the situation of bid-riggings

1. Name of a construction site
2. Scheduled day of a bid
3. Persons offering information to the procurement agency
4. Contents of information
5. Result of the bid
6. The procurement agency's reaction to the result

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Coordination with Procurement Agencies

- Since 1993, “the Conference of Liaison Officers with the JFTC regarding a Bid of Public-works” has been held every year in order to prevent bid-riggings by sharing information and strengthening partnerships between the JFTC and procurement agencies.
- In FY 2003, 38 notifications through formal procedure of the Act for Promoting Proper Tendering and Contracting for Public Works (Act No.127, 2000) were filed, from procurement agencies to the JFTC.
- The JFTC offers lecturers and materials to procurement agencies in order to help them to check bid-rigging, and to gather proper evidence of bid-rigging in their procurements’ process.

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Issues on Information from Procurement Agencies

- The report information is often inadequate to find out basic continuous rules of bid-rigging which exist behind individual conduct.
- In the past, procurement agencies often revealed the existence of bid-rigging conduct, which gave an opportunity for participants of the violation to hide and destroy evidence in relation to the violation.
- Because the participants of bid-rigging questioned by the procurement agencies can easily foresee the subsequent JFTC's investigation, it gives them an opportunity to hide and destroy evidence regarding the violation.

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Other Information Available for Analysis

- Except for information from the complainant, the following information is useful for developing investigative leads:

- (1) Information reported in the past, sometimes by other persons, which is similar to the reported cases
 - This is very useful especially when the JFTC is unable to get in contact with a complainant because of an anonymous report.
- (2) Related people who are introduced by a complainant
 - These persons often provide more useful and reliable information than the complainant.
- (3) Some kinds of publicly available information
 - Trade papers, web information and toll information services are important sources.

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Analysis on Information from Complainants

[Cartel case]

It is crucial for judging the effectiveness of a cartel to check price trends by using data from technical data books published by specialists or trade associations.

[Bid-rigging case]

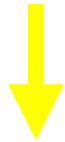
It is important for ensuring the authenticity of information and effectiveness of a bid-rigging to analyze the consistency with rules of the bid-rigging.

Information of the result of a bid is readily available on the website of each procurement agency or by using disclosure procedure provided in the Law Concerning Access to Information held by Administrative Organs (Japanese FOIA).

- 1,100 consumers who are designated as monitors by the JFTC occasionally report the product's price.

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Report of Violation by the Public



- reported by mail, E-mail, telephone, FAX and others methods

Classification and Analysis on Information



- there is a strong suspicion of committing violation

General Secretariat's decision



- submitting the case-report to the JFTC

The Commission's decision



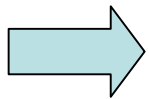
- considering dawn raids (On-the-spot Inspections)

Full-scale Investigation

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Important Tips for Dawn Raids

- (1) Unexpected
- (2) Simultaneous and Extensive
- (3) Thorough Preparation for Maximizing the Effectiveness of Dawn Raids



- Depriving the suspects of time to hide or destroy evidence is key factor for successful Dawn Raids.
- Dawn raids have to be initiated simultaneously against all participants.

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In the Future

Leniency Program: Useful Tool for Detecting Cartels

- A leniency program has been introduced in many jurisdictions, which seems very helpful in uncovering hard core cartels that would otherwise go undetected.
- A leniency program was introduced by the last amendment of the Antimonopoly Act on April 2005. (The Amended Act comes into effect on January 4, 2006.)
- The JFTC expects the leniency program to be one of the most useful tools to detect hard core cartels.