ANDERSON MŌRI & TOMOTSUNE

COMPETITION LAW LEGAL UPDATE

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Contents

I. Summary of the Conclusions of the JFTC's Review of the Proposed Acquisition of Slack Technologies, Inc. by Salesforce.com, inc.

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On July 1, 2021, the Japan Fair Trade Commission (the "JFTC") announced the results of its review of the proposed acquisition (the "Acquisition") of Slack Technologies, Inc. ("ST") by Salesforce.com, inc. ("Salesforce"). The JFTC reached the conclusion that the outcome of the Acquisition is unlikely to substantially restrain competition in any particular fields of trade ("The JFTC Reviewed the Proposed Acquisition of Slack Technologies, Inc. by salesforce.com, inc." dated July 1, 2021; the "Conclusions"). We hereby present the Conclusions as an example of the JFTC's review of conglomerate business combinations, as follows:

1. Overview of Products and Services

1. CRM Software

Salesforce offers CRM software[1] as a SaaS offering type[2], and each such software has integration

[1] CRM software means software for customer relationship management, which enables centralized management of information related to all customer connections, such as marketing and customer support, as well as business efficiency through features including automated customer communication.

[2] In a SaaS offering type, the system is operated and managed on a server environment built by another company, and the user accesses such server in order to use the software.

functions with third-party applications, etc. Salesforce offers a variety of CRM software, primarily for (i) sales, (ii) customer service, (iii) marketing, and (iv) e-commerce, each of which has functions tailored to the specific purposes it is used for.

2. Business Chat Services

ST primarily offers Slack, business chat services for internal use. With Slack, customers can use chat, video and voice call functions, integration functions with third-party applications and certain others.

2. Market Definition

1. CRM Software

The JFTC defined the market for CRM software as “SaaS CRM software for sales”, “SaaS CRM software for customer service”, “SaaS CRM software for marketing” and “SaaS CRM software for e-commerce” in Japan, as well as “SaaS CRM software as a whole” in a layered manner. In making such determination, the JFTC took into consideration certain factors, including the fact that the main functions of each type of CRM software differ according to its purpose of use and both demand-side substitutability and supply-side substitutability between each type are limited, while multiple types of CRM software are provided as a package. In addition, as for the differences in implementation methods, although a certain degree of substitutability was recognized between a SaaS offering type and other offering types, since Salesforce has a high market share in SaaS CRM software and in order to conduct a thorough review, the JFTC defined the market only for the “SaaS” offering type.

2. Business Chat Services

While also referring to hearings with users and internal documents of the Parties (meaning groups of the parties to the Acquisition and companies that have already formed joint relationship with each of the parties to the Acquisition as the ultimate parent company; hereinafter the same), the JFTC defined the market for “business chat services” in Japan because business chat services have little or limited demand-side substitutability and supply-side substitutability with: (i) consumer communication services in terms of security and business model, etc.; (ii) e-mails in terms of functions, applications and existence of unified standards, etc.; and (iii) voice call and video conference services for companies in terms of differences in core functions, etc.

3. Determination of Existence of Substantial Restraint of Competition

Since there is no competitive or vertical relationship between the CRM software offered by Salesforce and business chat services provided by ST, the JFTC conducted a review to determine whether the Acquisition would result in a substantial restraint on competition, based on the premise that it falls within the category of conglomerate business combinations.

1. Mechanism of Restraint of Competition in the Acquisition (Theory of Harm)

In its review of the Acquisition, the JFTC considered the following 4 main mechanisms for restraint of competition.

First, the JFTC pointed out that the actions of one of the parties to the Acquisition may cause market foreclosure and exclusion from the market for services provided by the other party. Specifically, such actions of one of the parties include the following: (i) one of the parties blocks API[3] connections or reduces API interoperability for other suppliers of services offered by the other party (the "API Blocking"); or (ii) one of the parties provides users with services offered by the other party in combination with its own services (the "Combination Offering").

Next, (iii) competitors' confidential information is shared among the Parties and is used to their own advantage, potentially resulting in a situation whereby competitors are put at a competitive disadvantage and causing market foreclosure and exclusion.

Finally, (iv) there are potential adverse effects, including that, following the Acquisition, the Parties may gain a competitive advantage through the accumulation of data.

2. Market Foreclosure and Exclusion from the Business Chat Services Market

The JFTC considered the possibility of market foreclosure and exclusion from the business chat services market caused by the API Blocking or the Combination Offering of Slack by Salesforce from the perspective of ability and incentive.

First, the JFTC considered the following points from the perspective of ability, and denied the ability of Salesforce to cause market foreclosure and exclusion through the API Blocking or the Combination Offering of Slack:

(i) With respect to both SaaS CRM software as a whole and SaaS CRM software for marketing, Salesforce's market share is below approximately 35% and there are several strong competitors;
(ii) With respect to SaaS CRM software for sales, SaaS CRM software for customer service and SaaS CRM software for e-commerce, competitors have a market share of approximately 10% or higher, and there is also a competitive pressure from on-premise market[4] which is a neighboring market;
(iii) CRM software and business chat services are not mutually essential functions, but can rather be used independently and there has been no real progress in the use of integration functions between

[3] API (Application Programming Interface) is a mechanism to make the functions, data and the likes of certain software available through other software.

[4] The JFTC pointed out that various types of on-premise CRM software suppliers have competed with Salesforce during specific business negotiations.

them;

(iv) CRM software is used by only some of a user's departments, including sales departments, and business chat services adopted by each department may also be different, limiting the scope of the impact of the API Blocking by Salesforce as well as the use of integration functions; therefore, the scope of foreclosure effect of the API Blocking is extremely limited; and

(v) Even in the event of the API Blocking by Salesforce, there are ways for users to integrate various types of CRM software offered by Salesforce with business chat services other than Slack.

In addition to the extremely limited foreclosure effect of the API Blocking and the Combination Offering of Slack by Salesforce, competitors and users recognize that one of the core values of Salesforce's business is the realization of a high level of convenience through integration functions. Since each of said actions in violation of this core value would present Salesforce with significant business continuity and reputational risks, the JFTC denied its incentive to cause market foreclosure and exclusion by either of said actions.

3. Foreclosure and Exclusion from the CRM Software Market

With respect to ST, the JFTC also considered the possibility of market foreclosure and exclusion from the CRM software market caused by the API Blocking and the Combination Offering of CRM software from the perspective of ability and incentive.

First, from the perspective of ability, the JFTC denied the capabilities of ST to cause market foreclosure and exclusion through the API Blocking and the Combination Offering of CRM software, taking into consideration Section 3, 2 (iii) above as well as the following:

(i) ST's market share is likely to be below approximately 15% and users introduce different business chat services for each department or several business chat services;

(ii) The API Blocking by ST affect only a small number of users who use only a single business chat service and integrate it with CRM software, and the scope of the foreclosure effect of the API Blocking is extremely limited; and

(iii) Even in the event of the API Blocking by ST, there are ways for users to integrate business chat services provided by ST with CRM software other than those of Salesforce.

In addition to the extremely limited foreclosure effect of the API Blocking and the Combination Offering of CRM software by ST, competitors and users recognize that one of the core values of ST's business is the realization of a high level of convenience through integration functions. Since each of said actions in contrary to this core value causes ST to face significant business continuity and reputational risks, the JFTC denied the incentive to cause market foreclosure and exclusion by either of said actions.

4. Possibility of Sharing of Confidential Information

In order to integrate CRM software with business chat services provided by each of the Parties, it suffices to open up the API. It is unlikely that confidential information material for competition would be exchanged during the course of such process; therefore, the JFTC denied the possibility of sharing of competitors' confidential information among the Parties.

5. Availability of Accumulated Data

Finally, following the Acquisition, both parties are required to obtain consents or instructions from users with respect to the availability of the accumulated data, particularly in order to use highly confidential data pursuant to the relevant agreement or terms of use and, in addition to the fact that the parties have taken certain measures to prevent arbitrary use of such data (such as encryption and access control), there is no concrete assumption at this time that the combination use of the data accumulated through CRM software and business chat services would create significant business value; therefore, the JFTC reached the conclusion that the potential for adverse effects, including that the Parties may gain a competitive advantage, is rather small.

4. Conclusion

Following a consideration of the above-mentioned matters, the JFTC issued a notice to the effect that it will not issue a cease and desist order with respect to the Acquisition. Upon determining whether the outcome of the Acquisition would substantially restrain competition, the JFTC presented an example of a mechanism for restraint of competition in the IT industries and clarified its approach to the analysis thereof. We believe the JFTC's review and analysis in this particular case may provide suggestions for the ongoing review of conglomerate business combinations (especially in the IT industries).

II. Trends in Enforcement of the Act against Unjustifiable Premiums and Misleading Representations (the "Act")

Yusuke Nakano

On July 21, 2021, the Consumer Affairs Agency (the "CAA") published a press release entitled "The Operational Status of the Act against Unjustifiable Premiums and Misleading Representations and Efforts to Ensure Proper Representations, etc. in FY2020" (the "Operational Status").

In addition, around the end of each month, the CAA publishes a monthly press release entitled "Trends in the Number of Legal Measures Taken under the Act against Unjustifiable Premiums and Misleading Representations and Summary of Cases for Which Measures Were Taken", with the latest issue released in October 2021 reflecting information through September 30, 2021 (the "September Monthly Release").

This article outlines trends in the enforcement of the Act, focusing on an introduction of the topics discussed in these press releases. The CAA's FY2020 refers to the period commencing April 1, 2020 through March 31, 2021.

1. Status of Handling Alleged Violations of the Act

According to the Operational Status, while the number of "new cases", which excludes cases carried over from the previous fiscal year, increased from 280 to 289 between FY2019 to FY2020, the number of cases that were investigated decreased from 492 to 440. The "new cases" are classified into "*ex officio* cases", "tipping", and "self-reporting", and it is noteworthy that the number of *ex officio* cases has more than doubled, going from 44 to 95. The number of cease-and-desist orders (limited to those issued by the CAA) and surcharge payment orders decreased from 40 to 33 and from 17 to 15, respectively, both slightly down compared with FY2019. Considering the fact that the CAA's activities are likely to have been under a certain level of constraint due to the COVID-19 pandemic, it is fair to state that enforcement in FY2020 was no less vigorous than FY2019. In addition, the statistics section on the first page of the September Monthly Release confirms that, since FY2017, the number of cease-and-desist orders was maintained at 30 or higher per year and the number of surcharge payment orders, introduced in FY2016, has remained in the 10 to 20 range.

The ratio of "cease-and-desist orders" to the "investigated cases" in each of the most recent three (3) fiscal years as indicated in the Operational Status, when rounded to the nearest whole number, is 8%.

The total amount of surcharge payment orders issued in FY2020 was 1,172.38 million yen, with two cases of 552.74 and 374.78 million yen being significant while the 15 remaining amounted to less than 100 million yen each. In addition, in FY2020, one (1) implementation plan for refund policy was approved. According to the list of approved refund policies published by the CAA, the total number of approved refund policies since the introduction of surcharge payment orders is still limited to four (4) and the system for the reduction of the surcharge amount by implementing refund policies (Article 10 of the Act) is seldom used. In terms of the sequence of a cease-and-desist order and a surcharge payment order for a particular case, the CAA works on the former first, and, in the eighteen (18) surcharge payment orders recorded in the September Monthly Release, the interval between the two surcharge payment order and the cease-and-desist order for the same case ranged between 185 days (just over 6 months) to 1427 days (about 47 months), with the average being 566 days (just below 19 months).

According to the Operational Status, during the prior 3 fiscal years, the CAA determined not to issue a surcharge payment order despite a cease-and-desist having been issued in 44 cases. Such conclusions may be due to the following:

- ✓ While violations of Article 5, Item 1 (representations which misleadingly give significantly superior images to goods or services) and Item 2 (representations which misleadingly give significantly more advantageous images to goods or services) of the Act are subject to surcharge payment orders,

violations of Item 3 (other misleading representations) (main clause of Article 8, Paragraph 1 of the Act) – which were the subject matter in these cases – do not trigger such order;

- ✓ The violating business operator did not fall within the category of a person having failed to exercise due caution (proviso to Article 8, Paragraph 1 of the Act); and/or

- ✓ A surcharge payment order could not be imposed because the calculated amount of the surcharge was equal to or lower than 1.5 million yen.

According to the September Monthly Release, a total of 45 cease-and-desist orders have been issued by prefectural governors since December 2014. This amounts to approximately 20% of the total number of cease-and-desist orders issued by the national government during the corresponding period (229). In addition, cease-and-desist orders issued by prefectural governors may give rise to surcharge payment orders issued by the CAA. Hence, enforcement by prefectural governors should not be taken lightly. Tokyo Metropolis, the highest populated prefecture, ranks second as to the number of cease-and-desist orders with 7 cases, while Kanagawa, the second most populated has none. Osaka Prefecture, with the third largest population, ranks at the top with 13 cases while as many as 33 other prefectures do not have any cases. It, therefore, seems that enforcement rates vary among prefectures. The CAA's website shows a chart that serves as a reference with respect to the delegation of authority between the CAA and prefectural governors in relation to the Act (Article 33, Paragraph 11 and others of the Act).

2. Response to Misleading Representations Claiming Preventive Effects against COVID-19

The Operational Status states that "in response to the situation where misleading representations claiming preventive effects against COVID-19 were seen while the virus spread, we actively worked to ensure the properness of such representations". It later emphasizes that the CAA conducted emergency monitoring of advertisements, etc. on the Internet, and 21 of the 33 cease-and-desist orders issued by the CAA in FY2020 were in connection with misleading representations regarding effects, such as disinfection or sterilization, of the products being advertised. This energetic reaction seems to have contributed, to a certain extent, to the rapid increase in the number of *ex officio* cases.

In addition, Exhibit 1 of the Operational Status and the September Monthly Release indicate a number of enforcement cases within this category. Such cases include not only products directly claiming to be effective against the COVID-19 virus, but also those claiming to remove other viruses, bacteria and floating particles or carrying problematic labels regarding chlorine or alcohol concentration. Article 7, Paragraph 2 of the Act shifts the burden of proof as to certain claims allegedly falling under Article 5, Item 1 (representations which misleadingly give significantly superior images to goods or services) to the business operators and the phrase "(Article 7, Paragraph 2 applied)" in Exhibit 1 of the Operational Status is mentioned with respect to a considerable number of products of this kind.

3. Enforcement in an Integrated Manner with the Health Promotion Act

As highlighted in the Operational Status, since the advertising and promotion of health food products – which are increasingly popular – actively conducted using the Internet and other media may, at times, constitute a violation of either, or both, of the Act and the Health Promotion Act, the CAA is enforcing the two in an integrated manner.

The CAA's "Points to Note Concerning Health Food Products under the Act against Unjustifiable Premiums and Misleading Representations and the Health Promotion Act", was fully revised on June 30, 2016 and the agency continues putting effort into disseminating these guidelines. In addition, the CAA has been monitoring advertisements of food products on the Internet and recently announced it had requested improvement of representations in cases that may violate Article 65, Paragraph 1 of the Health Promotion Act (Prohibition of Exaggerated Representations). Five (5) corresponding press releases were issued on March 10, 2020, March 27, 2020, June 5, 2020, February 19, 2021 and June 25, 2021, listing the effects indicated in the advertisement, but without any mention of the products' or business operators' names. The majority of the cases were related to health food products.

In addition, in FY2020, the CAA gave administrative guidance in 17 cases and issued cease-and-desist orders in two (2). It appears that the CAA goes no further than giving requests or guidance where it is sufficient to do so, but issues cease-and-desist orders for more severe cases. In the two (2) cases that resulted in cease-and-desist orders, the representations were made in a manner that created the impression that (i) the products would enhance immunity and treat or prevent diseases simply by ingesting them, and (ii) the products would contribute to significant weight loss due to the effects of the ingredients contained therein. In both cases, the burden of proof was shifted to the business operators.

4. Undoing Representations

The Operational Status lists 21 cases in which evaluations were made on so-called "undoing representations" (typically, this refers to reservations, such as "a registration fee is required separately" to a main claim such as "¥5,000 per month, all-inclusive", but there are various types, including general reservations like "certain restrictions may apply"). All press releases for such 21 individual cases include a section entitled "Undoing Representations".

This list is included in the Operational Status because undoing representations continues to be a significant issue from a practical point of view. The principal document to reflect on the CAA's views on undoing representations is the "Investigation Report on the Actual Status of Undoing Representations" published on July 14, 2017. Two (2) documents published in May and June of 2018, which are referenced in the Operational Status, are also useful.

5. Status of Handling Cases regarding Premiums

According to the Operational Status, in FY2020, as in previous years, while administrative guidance was given in 11 cases (as compared with 18 in FY2019), there were no cease-and-desist orders issued by

the CAA in connection with cases involving premiums. Though there is a misconception that there are no enforcement activities in cases involving premiums, one should note that the CAA does provide at least administrative guidance with respect thereto.

Also, a recent example of enforcement by prefectural governors is the cease-and-desist order issued by the Governor of Osaka Prefecture against Sankei Shimbun Co., Ltd. and two others (March 19, 2019). Sankei Shimbun's Osaka sales office was found to have been acting in violation of the premium regulations under the Act even after the cease-and-desist order was issued. This case has been drawing attention from a compliance perspective (press release by Sankei Shimbun Co., Ltd. dated July 9, 2021).

III. June 30, 2021 Court Ruling on the Pharmaceutical Bid-Rigging Case

Atsushi Yamada / Tono Sugita

1. Criminal Accusation against Antimonopoly Violation

With respect to violations of the Antimonopoly Act, the Japan Fair Trade Commission (the "JFTC")[5] has a policy of filing criminal accusations and seeking criminal penalties for cases it considers as vicious and severe violations of the Antimonopoly Act, which are deemed to have broad influence on people's lives, and cases committed by firms or industries that are repeat offenders or do not abide by cease and desist orders, where administrative measures do not satisfy the purposes of the Antimonopoly Act.

Not many criminal accusations are filed with respect to cases violating the Antimonopoly Act; only 24 criminal accusations were filed by the JFTC since the Antimonopoly Act was enacted in1947 to date (as of July 31, 2021)[6]. The most recent was the bid-rigging case in 2018 in connection with the construction of the Maglev Chuo Shinkansen whereby Taisei Corporation, together with three other companies and their respective employees, were charged with bid-rigging. On October 22, 2018 and March 1, 2021, the court found them guilty, imposed fines of up to 250 million yen against the 4 companies and sentenced 2 of their employees to a 18-month prison term each (suspended for 3 years).

Recently, a criminal accusation was filed in a bid-rigging case concerning pharmaceuticals with a conviction being issued on June 30, 2021. An overview of the case is provided below.

2. Overview of the Case and Court Ruling

1. Overview of the Case

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[5] "The Fair Trade Commission's Policy on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Antimonopoly Violations" (first issued on October 7, 2005; revised on December 16, 2020) (https://www.jftc.go.jp/en/legislation_gls/210312.pdf)

[6] For an overview of previous cases, see https://www.jftc.go.jp/dk/dk_qa_files/hansokuitiran.pdf (Japanese only).

(1) Background

In 2016 and 2018, the Japan Community Health care Organization (the "JCHO") conducted public tenders to order certain pharmaceutical drugs to be used at 57 hospitals and long-term care facilities run by it nationwide. In the public tenders bidding for the contracts to supply such drugs, three major pharmaceutical wholesalers and seven individuals employed by these wholesale companies who were in charge of bidding and price negotiations with respect to drug supply contracts ordered by the JCHO, repeatedly colluded to pre-determine the winning bidders. The JFTC filed a criminal accusation against these three companies and seven individuals, alleging that their activities fell within the category of "unreasonable restraints of trade" (i.e. bid-rigging) in violation of Article 89, (1), (i) and Article 3, and Article 95, (1) (i) of the Antimonopoly Act and Article 60 of the Penal Code.

(2) Company that was not the subject of a criminal accusation

In addition to the three companies (the "Accused Companies") mentioned above, there was another company involved in the bid-rigging. The prosecution's opening statement mentioned that four major pharmaceutical wholesalers, including the Accused Companies, were engaged in these activities. The largest company in the industry, which was not subject to the criminal accusation, was also subject to on-site investigations as were the other three, however, in the end, the JFTC did not take any further action against this fourth company.

The Antimonopoly Act sets forth a leniency program[7] whereby if an enterprise that had been involved in cartels or bid-rigging voluntarily reports the violation to the JFTC, surcharges are waived or reduced. The JFTC's policy[8] is not to file criminal accusations against "the first enterprise that independently reported facts subject to the immunity from the surcharges and provided materials before the investigation start date". Presumably, the company that was not charged in this case was the first to report its involvement under the leniency program before the JFTC opened the investigation, and therefore, the JFTC did not file a criminal accusation against it.

(3) Court Ruling

On June 30, 2021, the Tokyo District Court found all the accused parties guilty and imposed a 250 million yen fine on each company. It also sentenced two former officials of those companies to a 2-year prison term (suspended for 3 years) and five former officials to 18-month prison term (suspended for 3 years).

2. Acts in Question

(1) Factual Basis of the Criminal Accusation

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[7] See https://www.jftc.go.jp/en/policy_enforcement/cartels_bidriggings/about_leniency.pdf.

[8] See note 1 above.

In filing the criminal accusation, the JFTC claimed that the Accused Companies had agreed in advance to determine the winning bidders and bid at prices that would allow the pre-determined companies to win the aforementioned drug supply contracts. By conspiring to restrict each other's activities when bidding for such contracts and actually carrying their scheme through, the Accused Companies caused, contrary to public interest, "a substantial restraint of competition in the field of trade". Therefore, the JFTC concluded that such activities fell within the "unfair trade restrictions" prohibited under Article 3 of the Antimonopoly Act.

The specific facts stated by the JFTC are as follows (please note that the company which has not been charged due to circumstances described in 1. (2) above is treated as a violating party below for explanatory purposes):

The Accused Companies were all pharmaceutical wholesalers. The seven individuals being criminally accused were employed by the Accused Companies, engaging in bidding and price negotiations for drugs supply contracts ordered by the JCHO.

Five out of the seven accused individuals, along with others who belonged to companies operating in the same business sector and engaged in similar activities, conspired with employees of four of the companies, including the Accused Companies, to engage in the bid-rigging associated with their line of business.

On May 27, 2016, the JCHO announced that it would launch a public tender for each category of drugs that were classified according to pharmaceutical manufacturers and usages. Early in June 2016, the accused individuals met at rental meeting rooms in Tokyo to discuss the contracts to supply drugs to 57 hospitals operated by the JCHO. They agreed in advance, through meetings and interviews to (i) set a rough allocation rate among the four companies, (ii) pre-determine the winning bidders for each category of drugs in a manner consistent with the agreed upon allocation rate, and (iii) bid at prices that would allow the pre-determined companies to actually win the bids.

The Accused Companies have engaged in similar bid-rigging in 2018, with six out of seven accused individuals mentioned above being involved. Hence, the majority of the accused individuals were engaged in large-scale bid-rigging activities twice – in 2016 and 2018. The situation was the same in 2018, whereby the Accused Companies and the individuals, together with other companies and in conspiracy with other employees of the Accused Companies, pre-determined the winning bidders for the contracts to supply drugs to 57 hospitals operated by the JCHO.

(2) Grounds for Determining Fines and Sentences

The Tokyo District Court found the factual basis of the accusations to be true.

With regard to deciding the severity of sentences, it was pointed out in the "reasons for judgment" that:

the number of drugs which were the subject of the drug supply contracts added up to as many as 350 categories; the scale was significant as the total amount of sales through the bids exceeded 140 billion yen, and; the prices at which drugs were sold to the medical institutions were kept high due to the acts in question, which could in turn affected the Japanese National Health Insurance drug price. Considering all of the above, the Tokyo District Court concluded that the bid-rigging activities were "vicious and serious, and would have a wide spread influence on people's lives". The court also noted that, despite the companies had been issued surcharge payment orders for similar bid-rigging activities in the past, violations continued to be repeatedly committed. On the other hand, since the accused individuals did not enjoy any personal gains, cooperated with the JFTC and the Prosecutors' Office investigations and showed remorse throughout the investigations and court hearings, the court suspended their prison terms.

Based on the ruling against the Accused Companies, the court seems to have weighed heavily the fact that the concerned bid-rigging (predetermined bidding) activities were "vicious and serious, and would have a wide spread influence on people's lives". The court ruling with respect to the seven accused individuals seems to follow the precedents established in other cases concerning violation of the Antimonopoly Act, whereby all of the individuals' imprisonment sentences come with suspension. In the case at hand, the court suspended the prison terms in consideration of circumstances, such as the fact that the individuals did not personally benefit from the activities.

3. Significance of the Court Ruling

As mentioned in 1 above, criminal accusations in cases concerning violation of the Antimonopoly Act are limited to those deemed to be vicious and serious and the number thereof is extremely small as compared to cases involving administrative action. The 250 million yen fine imposed on each company in this case was the second largest in connection with criminal cases related to the violation of the Antimonopoly Act, showing its significance and seriousness[9].

In this case, the same employees were involved in multiple bid-rigging activities. For example, five employees were involved in bid-rigging activities in 2016 and six employees in 2018, with four of them involved in both. The scale of the bid-rigging activities was large, as on two occasions the total amount of winning bids exceeded approx.140 billion yen. According to the JFTC, it filed the accusation because of the severity of the following facts: the drugs involved in the bid-rigging were socially indispensable to support the health of people and caused a significant impact on all citizens who pay premiums under the health insurance system; the bid-rigging in question was vicious and serious and deemed to have wide spread influence on people's lives, and; some of the Accused Companies had already been subject to JFTC action in the past. The court is deemed to have reached the abovementioned sentencing based on the same grounds. The JFTC stated that filing the criminal accusation in this case "will have great significance in preventing bid-rigging and price cartels in the future". However, as a matter of fact, the JFTC has long been committed to focus on law enforcement against bid-rigging and price cartel cases

[9] The 2002 amendment raised the maximum fine on corporations from 100 to 500 million yen.

which have a significant impact on the peoples' lives and to strictly take measures against them. It has been actively filing criminal accusations when a case is deemed vicious and serious. In conclusion, this case reaffirms the JFTC's continued commitment for a strict stance on bid-rigging and price cartels.

IV. Recent publications

- *Merger Remedies Guide - Fourth Edition (Japan chapter)*
  Nov 2021 (Vassili Moussis, Yoshiharu Usuki, Kiyoko Yagami, Ryoichi Kaneko) Law Business Research Ltd
  Original PDF here

- *Overview of the Amendment to the Franchise Guidelines and Practical Response*
  Jul 2021 (Takeshi Ishida, Yuki Nishino) Business Houmu, September 2021 issue

- *Getting the Deal Through - Pharmaceutical Antitrust 2021 (Japan Chapter)*
  Jul 2021 (Yusuke Nakano) Getting the Deal Through - Pharmaceutical Antitrust 2021
  Original PDF here

- *'Chambers Global Practice Guides' on Cartels 2021 - Law & Practice*
  Jun 2021 (Shigeyoshi Ezaki, Vassili Moussis, Yoshiharu Usuki, Takeshi Ishida) Chambers and Partners
  Original PDF here

- *Market Intelligence -CARTELS IN JAPAN- 2021*
  May 2021 (Shigeyoshi Ezaki, Vassili Moussis, Takeshi Ishida) LEXOLOGY Getting The Deal Through : Market Intelligence
  Original PDF here

- *GCR Insight - The Asia-Pacific Antitrust Review 2021(Japan Chapter: Merger Control)*
  Apr 2021 (Hideto Ishida, Takeshi Suzuki) GCR Insight - The Asia-Pacific Antitrust Review 2021
  Original PDF here

- *GCR Insight - The Asia-Pacific Antitrust Review 2021(Japan Chapter: Cartels)*
  Apr 2021 (Hideto Ishida, Atsushi Yamada) GCR Insight - The Asia-Pacific Antitrust Review 2021
  Original PDF here

- *Lexology Getting The Deal Through - Dominance 2021 (Japan Chapter)*
  Mar 2021 (Atsushi Yamada, Yoshiharu Usuki) Getting the Deal Through - Dominance 2021
  Original PDF here

- *Analysis of recent movements and the complaint filed US DOJ et al. against Google based on Article 2 of Sherman Act*
  Jan 2021 (Etsuko Hara) Business Houmu (Vol.21 No.3)

- *Market Intelligence - Merger Control 2020 – Japan*
  Jan 2021 (Yusuke Nakano, Vassili Moussis, Kiyoko Yagami) Law Business Research Ltd.
  Original PDF here

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