

Pharmaceutical Antitrust

Contributing editors

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**GETTING THE
DEAL THROUGH**

36 When does pricing conduct raise antitrust risks? Can high prices be abusive?

As the prices of drugs are highly regulated in Japan (at least at the most downstream level) (see question 2), it is unlikely that any pharmaceutical company would try to set high prices that may be challenged under the AMA. While OTC drugs are not subject to regulatory control, it is unlikely that demand for a particular OTC drug is so high that sellers thereof would try to set abusively high prices.

37 To what extent can the specific features of the pharmaceutical sector provide an objective justification for conduct that would otherwise infringe antitrust rules?

There has not been any case reported in which courts or the JFTC took the specific features of the pharmaceutical sector into account when examining an antitrust issue. However, in a case referred to in

question 21, the JFTC accepted the parties' statement that the medical drugs at issue had to be able to be supplied in a prompt and stable manner, even in cases of large-scale natural disasters. In this case, the JFTC might have implicitly taken the specific features of the pharmaceutical sector into account. It is difficult for the specific features of the pharmaceutical sector to provide an objective justification for hard-core cartels, but they could be taken into consideration to a certain extent, especially in the cases of certain categories of collaboration among competitors and vertical restraints (those that are subject to rule-of-reason review) and merger clearances.

38 Has national enforcement activity in relation to life-cycle management and settlement agreements with generics increased following the EU Sector Inquiry?

Not applicable.

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