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Competition Inspections in 21 Jurisdictions

A Practitioner's Guide

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Foreword by Paul Nihoul

JAPAN

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Introduction

1. The Anti-Monopoly Act of Japan (“AMA”) affords the Japan Fair Trade Commission (“JFTC”) the primary jurisdiction over competition issues (and particularly allegations of violations of the AMA that require competition inspections). The JFTC’s investigation bureau always tries to collect information on potential cases through various measures, including acceptance of leniency applications, tip-offs, requests for formal investigation from victims, and so on, and picks up appropriate cases when it takes the view that the launch of a formal investigation is warranted. So as not to create any opportunity for the target companies to destroy documents or data, the JFTC’s dawn raid is typically unannounced. The JFTC has the power to decide at its discretion to order on-site inspections without prior judicial authorisation, and there is no limitation to the scope of the inspection by the investigators under Article 47, paragraph 1, items 3 and 4 of the AMA. Therefore, the investigators may inspect any place within the business, including the legal department and back-office functions, as long as they reasonably consider such searches to be necessary for investigating the alleged violation. Private homes and cars owned by officers or employees may also be subject to dawn raids, to the extent relevant evidence is reasonably expected to be found there.
2. Before the Covid-19 pandemic, the JFTC conducted dawn raids actively in a wide range of infringement cases, including cartels, private monopolisation and unfair trade practices, around ten times per year. While the JFTC appears to have refrained from conducting dawn raids due to Covid-19 restrictions, in particular during the state of emergency, the JFTC has recently resumed conducting dawn raids after the state of emergency was lifted. Therefore, it is fair to say that the preparedness for dawn raids by the JFTC should be important for companies doing business in Japan.
3. Since most investigation cases, in particular those involving foreign companies, are administrative investigations, the explanations herein will focus on administrative investigations except where a particular reference to criminal investigations is made.
4. We note that the laws and practices in Japan in terms of competition inspections are considerably different from those in Europe or the United States. In addition, in terms of the practice of competition agencies to launch simultaneous multi-jurisdictional investigations across continents and whose implications can be potentially very significant, the JFTC is typically the first competition authority to conduct dawn raids, largely due to it being located in one of the earliest time zones. Since dawn raids in Japan typically start within a few hours from midnight, European time, trying to coordinate between the European headquarters and the Japanese subsidiary as to how to respond to the dawn raid may put the Japanese subsidiary in a highly disadvantageous position. This is because in Japan any reduction of the fine available through a post-raid leniency application depends partly on how quickly such leniency application is filed. Further, the initiation

of the determination procedure (see section 4.1 below) must be requested by the closure of the dawn raid (typically in the evening, Japan time, which is early in the morning, European time). Therefore, we would emphasise the necessity for upstream preparedness to counter the time difference disadvantage that international companies headquartered within different time zones may face in the case of a dawn raid of their Japanese subsidiary.

1. Nature and Scope of Competition Inspections

1.1. Enforcement and Investigation Powers

5. Under the AMA, the JFTC is entitled to decide at its discretion to order on-site inspections without prior judicial authorisation. The JFTC has its own investigation divisions as part of its investigation bureau, and the JFTC officials who work for such divisions undertake dawn raids and subsequent investigations as investigators.
6. Apart from dawn raids, the JFTC has the power to order requests for information that need to be responded to by the companies being investigated. It is common practice for the JFTC to request companies to submit relevant documents from time to time. The JFTC may also deliver “Reporting Orders” and “Production Orders” in a timely manner to secure precise information on the alleged violation in preparation for issuing a cease-and-desist order and surcharge payment order. The JFTC typically asks officers and employees of the raided companies (or other interested parties) to appear for voluntary interviews, and is also entitled to order an interrogation procedure if interviewees do not cooperate with a voluntary interview.

1.2. Competent Authorities and Agents

7. The authority in charge of competition inspections in Japan is the JFTC. The JFTC also cooperates with the Public Prosecutors’ Office in connection with criminal cases. This is because criminal actions can only be brought against companies and/or their officers and/or employees by the Public Prosecutors’ Office, with the prerequisite of a special request for prosecution issued by the JFTC. Accordingly, it is common that a few prosecutors are seconded to the JFTC for the purpose of close communication and effective enforcement. In this regard, before launching a criminal investigation, the JFTC and the Public Prosecutors’ Office jointly conduct dawn raids with the aim of seeking to impose criminal penalties against the companies that have participated in a cartel. Before a special request is issued, the JFTC and the Public Prosecutors’ Office exchange information and discuss various issues related to a specific case at a “Referral Issues Roundtable”, which is not open to the public.

1.3. Nature of Inspection Powers

8. According to the AMA, the JFTC is entitled to conduct on-site inspections, i.e. “dawn raids”, only in connection with investigations on infringements of the AMA. The JFTC cannot conduct on-site inspections in relation to sector investigations.
9. Such on-site inspection follows Article 47, paragraph 1, item 4 of the AMA. The JFTC investigators are entitled to review and seize any materials they rea-

sonably consider necessary for their investigation under Article 47. Therefore, any documents containing confidential or proprietary information can also be obtained by the investigators.

10. The JFTC acknowledges that due process must be ensured in the exercise of its inspection powers. However, that does not mean that the JFTC pays high respect to privacy rights. In (the authentic Japanese version of) the “Guidelines on Administrative Investigation Procedures under the Anti-Monopoly Act” (“Administrative Investigation Guidelines”), the term “privacy” is used only once, but only to clarify that goods generally considered highly personal, such as personal belongings (day planners, mobile phones, etc.), may be requested to be produced if such goods are suspected of containing information useful to prove an alleged violation, and the investigator reasonably considers it necessary for the conduct of the investigation. In practice, mobile phones and personal day planners are frequently taken by the JFTC.
11. A tentative English translation of the Guidelines, which is useful for understanding the JFTC’s position on various matters discussed herein, is available at <https://www.jftc.go.jp/en/legislation_gls/20122504.pdf>.

1.4. Areas of Competition Enforcement Concerned

12. The AMA provides that the JFTC can conduct dawn raids only in relation to investigations on suspected infringements of the AMA. Such infringements cover cartels, private monopolisations and unfair trade practices, as well as mergers likely to substantially restrain competition provided under the AMA.
13. However, there has not been any case where the JFTC conducted a dawn raid in a merger case. Effective April 2021, it became easier for the JFTC to issue “Reporting Orders” and “Production Orders” in merger cases, which suggests that the JFTC will be more aggressive in exercising its power in terms of those orders and that the JFTC may continue to be reluctant to conduct dawn raids in merger cases.

2. The Legal Basis for the Inspection

14. For administrative inspections, the JFTC is not required to obtain prior judicial authorisation, but is entitled to decide at its discretion to order on-site inspections and other necessary measures specified under the AMA. More specifically, Article 47 of the AMA provides requirements for inspections to the effect that the JFTC has the power to order the inspections and other necessary measures, “in order to conduct the necessary investigation with regard to a case”. As such, the requirement is so brief and broad that the JFTC is enabled to order inspections as it thinks necessary for the investigation.
15. In practice, however, it is commonly acknowledged that the JFTC appears to conduct dawn raids only when it is convinced that an alleged company is highly likely to have violated the AMA based on evidence from, in most cases, whistleblowers, leniency applicants or victims that request the JFTC to investigate an allegation. While we believe that, based on such practice of the JFTC, the risk of

the JFTC abusing its power should be low, the legal basis and characteristics of the internal decision-making result in minimal disclosure, as explained in 3.1 below, which poses a fundamental question as to the protection of the rights of defence.

16. In the case of a criminal investigation, by contrast, the JFTC needs to obtain a prior court warrant for its on-site inspection or other compulsory measures that it wants to take. In practice, the JFTC usually decides whether it will deal with a cartel at issue as an administrative investigation or a criminal investigation at the very early stages of the proceedings. The JFTC states that it will actively proceed with a criminal investigation in respect of the most serious cases of unreasonable restraint of trade (including cartels). These are cases which are considered to have a widespread influence on people's lives, and cases involving companies or industries that the JFTC deems to be "repeat offenders" or that fail to comply with enforcement measures previously imposed, and where it therefore considers that administrative sanctions are not sufficient to fulfil the purpose of the AMA.

3. The Start of the Inspection

3.1. The Arrival of Inspectors and Notification of the Decision

ANDERSON MÖRI & TOMOTSUNE

The arrival of inspectors

WHERE?	<ul style="list-style-type: none"> Any premises used by the company (headquarters, local branch offices) Trade partners or agents of the company, trade associations etc. Homes of the individuals directly involved in the alleged cartel
WHO?	<ul style="list-style-type: none"> JFTC officials
WHEN?	<ul style="list-style-type: none"> Typically from approx. 9 a.m. to late in the evening Duration: usually 1 to 2 days

- ✓ Do not panic – avoid aggressive reactions and do not refuse entry
- ✓ Inform external lawyers before going to meet the investigators
- ✓ Try to identify ASAP (i) the scope (allegation) and (ii) the legal basis of the inspection

REFRAIN FROM COMMENTING ON THE INSPECTIONS AND ON THE CASE BY EMAIL OR ON SOCIAL MEDIA

17. In practice, it is common for investigators to visit the premises of an alleged company around the opening business hours early in the morning. The investigators usually ask for a brief meeting at the premises with company officials to take the necessary steps for starting the on-site inspections, such as explaining what they will be doing, presenting legal documents and obtaining from the company consent for the inspections. (Even in criminal inspections where the JFTC has

the power to conduct compulsory inspections, the investigators usually ask for such a meeting at the outset of the inspections to avoid confusion and conduct the inspections smoothly.¹⁾

18. At the meeting mentioned above, the investigators hand out to the company a “Notice of Alleged Facts” (“Notice”). This is a one-page document that only sets out the following: (i) the title of the case; (ii) the gist of the facts that are alleged to be in violation of the AMA; and (iii) the applicable provision(s) of the AMA. The description is brief and broad, and it does not include details such as specific dates, co-conspirators, and names of key persons. Presenting such notice, the investigators explain what they are doing in accordance with the AMA and the Administrative Investigation Guidelines, and ask for the company consent for the on-site inspection. Further, the investigators explain that any refusal without justifiable reasons should be subject to sanctions pursuant to Article 94 of the AMA. In that sense, the company is deemed to be obliged to accept and cooperate with the inspection. In practice, as the description of the Notice is brief and broad, and it does not include specific details, the Notice does not limit the scope of the JFTC’s search. This means that investigators may be entitled to review and seize any materials, including in electronic format, they reasonably think are relevant to the alleged conduct described in the Notice.
19. It is recommended that, when the JFTC arrives for the inspection, the company should verify the officers’ identities (get their business cards or verify their badges), review a copy of the Notice of Alleged Facts that has to be delivered and let the officers enter while also calling its outside counsel as soon as possible. In Japan, outside counsel can be present at the on-site inspection unless such presence affects the smooth implementation of the investigation. It should, however, be noted that there is no requirement for the inspectors to wait for the arrival of outside counsel in order for them to initiate the investigation and the JFTC will typically not wait. The JFTC also does not need to obtain consent from a parent company of the company, so it is also advisable for the company to promptly inform the parent company of the situation. It is also necessary to ask that all the employees remain calm, that they do not tamper with any document or materials, and that they do not communicate outside the company and do not leak information about the JFTC’s dawn raid without approval from the company.
20. It is also common for the JFTC to conduct dawn raids not only on a company’s head office in Japan but also on affiliated companies and/or at local branches of the company as necessary in a simultaneous fashion. Therefore, it is important to communicate closely with each of the persons responsible for affiliated companies and/or local branches so as to coordinate, to the extent possible, the response.
21. After obtaining consent from the company, the investigators get started with the on-site inspection, such as by reviewing any documents located on the site and

¹ It should be noted that on-site inspection and other dispositions under Article 47 of the AMA are indirectly enforceable in the sense that for administrative purposes, companies involved in an alleged violation are bound by the obligation to cooperate with the investigation, and the performance of the obligation is secured by the imposition of punishment (Article 94 of the AMA). This is quite different from criminal dawn raids, where the authorities may directly enforce warrants.

interviewing persons involved in the allegation. The general practice is that the investigators may allow employees and other staff on the site being investigated to continue their ordinary business except that at least one officer or employee is required to be present at the venue until the end of the on-site inspection, even late at night, and is required to provide any materials and explanations requested by the investigating officers.

22. It is common practice for companies under investigation to issue a press release during the dawn raid stating that it is true that they are under investigation by the JFTC and that they will cooperate fully with inspections, with the aim of explaining the situation to their stakeholders and reducing the number of incoming calls to confirm the dawn raid or inquire about any implications. The background to this practice is that it is quite common for dawn raids to be widely reported in the news around noon on the day of the raid(s).

3.2. Obligations Imposed on the Inspected Undertaking and Penalties Incurred for Obstruction or Lack of Cooperation

23. As mentioned above, and apart from criminal investigations, administrative investigations by the JFTC are non-compulsory, which means that the JFTC investigators cannot “forcibly” seize documents or copy data. However, any refusal, obstruction or evasion of the inspection, including spoliation of potentially relevant information, without justifiable reasons, can be subject to sanctions, e.g. a maximum of one-year imprisonment or a fine of up to JPY3 million for individual violators pursuant to Article 94 of the AMA, or fines of up to JPY200 million for an employer of an individual violator pursuant to Article 95 of the AMA.

3.3. The Premises Subject to the Inspection

24. There is no limitation to the scope of the inspection by the investigators under Article 47, paragraph 1, items 3 and 4 of the AMA. Therefore, the investigators may inspect any place within the business, including the legal department, as long as they reasonably consider such a search to be necessary for investigating the alleged violation and as long as the premises subject to inspection are consistent with what is specified in the Notice of Alleged Facts. We note that the JFTC has conducted multiple dawn raids against a single company in the same case, and the second dawn raid may typically target documents collected or created after the first dawn raid, including, without limitation, fruits of internal investigations led by the legal department or assisted by outside law firms, without paying any respect to the nature of documents typically considered legally privileged in Europe or the United States. Therefore, any internal investigations ensuing a dawn raid and the creation of contemporaneous documents post-dawn raid must be conducted with utmost caution and after consultation with experienced outside counsel (see 4.1 below).
25. It is common for the JFTC to conduct on-site inspections at not only the premises of the alleged companies but also those of their group companies, trade associations or at companies that have trade relationships with them but that may not have been involved in the allegations. As long as the JFTC reasonably considers it necessary, it could even inspect the private homes and/or private vehicles of directors and other staff members.

4. The Search, Review and Copy of Relevant Information

4.1. Searches and Copies of Documents and Data

ANDERSON MÖRI & TOMOTSUNE

Documents and data

WHAT?	<ul style="list-style-type: none"> Digital devices: computers, mobile phones for professional and private use, hard disks, USB sticks, etc. Documents: diaries used for professional and private use, accounting books and records, business cards, any other business materials, etc.
HOW?	<ul style="list-style-type: none"> Digital devices: The JFTC basically makes a copy of the data on their hard disks. JFTC officials also request copies of mailboxes and network folders directly from IT servers. Documents: The JFTC will seize original documents
LIMITS?	<ul style="list-style-type: none"> There is no limitation to the sort of documents that can be reviewed and retained by the investigators

- ✓ Please note that “attorney-client privilege” acknowledged in many common law jurisdictions is not recognised in Japan
- ✓ Insist on making a copy of important tangible documents to be seized by the investigators on the date of inspection

REFRAIN FROM DESTROYING OR TAMPERING WITH EVIDENCE, WHICH COULD LEAD TO CRIMINAL SANCTIONS

26. There is no limitation to the sort of documents that can be reviewed and retained by the investigators under Article 47, paragraph 1, items 3 and 4 of the AMA. Therefore, the investigators may be entitled to review and seize any materials, including in electronic format, which they reasonably think are relevant to the alleged conduct. Since it is impossible for the JFTC investigators to properly classify all the documents and information based upon their relevance in such a short time, what the JFTC will bring back or take copies of is typically over-inclusive.
27. It should also be noted that the JFTC may inspect and order submission of private devices (such as laptops and smartphones) and storage media of individuals found on the premises if the investigators deem those are used for professional purposes and necessary for their investigation. This practice makes the life of those who have been targeted quite challenging.
28. The JFTC first tries to obtain the relevant documents through dawn raids. After the dawn raid, the JFTC usually requests that the companies produce other relevant materials which the investigators could not seize during the dawn raids. Such requests cover electronic information located on a local computer, a host computer or in the cloud, even if such information is located in another jurisdiction. Companies are obliged to follow such requests under Article 47 of the AMA.
29. As to the way of seizure during on-site inspections, technically, the JFTC does not have the power to seize items forcibly, so in practice it would issue a “Production

Order” and have the company comply with that order. Theoretically, the JFTC could issue the compulsory “Production Order” and obligate the party being investigated to submit what might be protected under attorney-client privilege in other jurisdictions. Thus, in sum, the JFTC could essentially take away anything in the company’s possession. In response to a challenge against the seizure of communications between employees and in-house counsel (including those admitted in Japan or one or more states of the United States), the JFTC held in its ruling dated 11 May 2018 that the challenge should be rejected since privilege as invoked by the challenger was not recognised as a specific right or interest in Japan, and the relevant seizure was pursuant to Article 47, paragraphs 1 and 2 of the AMA.

30. When it comes to electronic information, in practice, the investigators during an administrative inspection tend to obtain such electronic information by means of copying it from PCs, laptops, or servers instead of confiscating them, in order to avoid interfering with business operations. The JFTC will usually copy to its hard drive all data from relevant employees’ email accounts, local PCs and servers, without conducting any keyword searches on site. The investigators will review the data after the dawn raid at their offices (any forensic search would be conducted later at the JFTC’s initiative without any consultation with the party). This is not the case, however, for criminal investigations, where in many cases PCs are seized.
31. During the dawn raids, the investigators may grant a request at their discretion from companies under investigation to make copies of documents to be seized by them, provided that the investigators determine that such documents are necessary for their daily business and provided that making copies of the documents will not affect the smooth implementation of the on-site inspection. After dawn raids, on the other hand, the companies may also request the JFTC to allow them to make copies of documents furnished to the agency by submitting a request form with a true copy of an order for submission of materials to the relevant division of the JFTC. However, this system does not mean that taking copies on the date of the raid should not be recommended since, in reality, it takes one to two weeks to actually be able to start making copies at the JFTC, and it is often true that speed is of the essence in such cases.
32. When the JFTC conducts its investigations, including dawn raids, it should follow the Administrative Investigation Guidelines, which was published in December 2015. The guidelines outline how the JFTC conducts its investigation, including the steps of on-site inspections taken by investigators.
33. As to privilege, it is important to note that, in contrast to many common law jurisdictions, “attorney-client privilege” is not codified or otherwise protected in Japan, with the limited exception where lawyers take a witness stand. The lack of such protection in Japan has been harshly criticised. In a partial response thereto, limited “attorney-client privilege” was newly introduced by way of the JFTC regulations and guidelines in December 2020. The rationale behind the introduction of this limited “attorney-client privilege” is to protect communications between companies and outside attorneys in connection with investigations against unreasonable restraints of trade, resulting in a more efficient use of the leniency system. Accordingly, this limited “attorney-client privilege” is applied only to an administrative investigation for a violation case regarding unreasonable restraint

of trade and does not apply to private monopolisation or unfair trade practices, or in criminal investigations.

34. This limited “attorney-client privilege” will only be available in the following circumstances. When an alleged company receives a “Production Order” for certain documents from the JFTC officers during a dawn raid (practically speaking, in the afternoon or evening on the date of the dawn raid), the company can request that the documents should not be subject to the order because the documents contain attorney-client communications. As mentioned in the Introduction, the need to make such a request on the day of the raid emphasises the need to coordinate promptly and efficiently with company headquarters located in different time zones.
35. Under these circumstances, the JFTC officers will issue a “Production Order” for the documents, seal the documents, and place the documents under the control of the determination officers at the Secretariat of the JFTC, which is independent from the Investigation Bureau. The company must submit a privilege log within two weeks. The determination officers will then determine whether the documents at issue satisfy the conditions for the attorney-client privilege provided under the new regulations or guidelines. If the conditions are satisfied, the documents will not be used by the JFTC for its investigation and will be promptly returned to the company.
36. Readers are encouraged to seek specific guidance from qualified Japanese lawyers for more details, since the conditions are not easy to meet, particularly for foreign companies. For example, according to the JFTC, “privileged and confidential” or “attorney-client privilege” is not appropriate labelling since such label may be put on files or e-mails that are unrelated to a suspected case of unreasonable restraint of trade.

4.2. Questions and Interviews

ANDERSON MÖRI & TOMOTSUNE

Interviews

WHEN?	<ul style="list-style-type: none"> During and after dawn raids, the investigators conduct interviews with officers or employees who can be reasonably suspected of being involved in the alleged violation
HOW?	<ul style="list-style-type: none"> Interviews are normally conducted on a voluntary basis at the business premises or at JFTC premises. Administrative Investigation Guidelines set restrictions, such as time restriction for an interview, i.e. eight hours (without break times) a day and no later than 10 p.m.
LIMITS?	<ul style="list-style-type: none"> In practice, there is no limitation to the matters that can be covered during interviews by the JFTC investigators

- ✓ Please note that in Japan lawyers are not allowed to be present at those interviews, while the JFTC may allow, on an exceptional basis, a lawyer to be present to serve as an interpreter for an employee that is not fluent in Japanese
- ✓ Answer questions in a factual and accurate manner

REVIEW ANY DRAFT STATEMENT TO BE MADE CAREFULLY BEFORE SIGNING IT

37. In practice, it is common for investigators to conduct interviews with officers or employees who can be reasonably suspected of being involved in the alleged violation, during dawn raids. Such interviews are normally conducted on a voluntary basis. Accordingly, the investigators should first explain to the interviewees that the interview is conducted on a voluntary basis by using a reference material for companies regarding the JFTC's administrative investigation procedures for alleged antitrust cases, and they will need to obtain their consent prior to starting the interview.
38. The investigators should follow the Administrative Investigation Guidelines. The Administrative Investigation Guidelines outline how interviews are conducted by investigators, such as time restriction for an interview – i.e. eight hours (without break times) a day and no later than 10 p.m. The Administrative Investigation Guidelines were amended in December 2020 to add that the person being interviewed by the JFTC shall be allowed to take a memo on the spot but only after the interview.
39. Interviews cover a wide range of matters, including market knowledge as to the alleged practices, and occasionally the JFTC will request the submission of materials either on a voluntary basis or based on a formal request in the form of a "Production Order" issued by the JFTC investigator. It is worth bearing in mind that if interviewees do not cooperate with a voluntary interview, an interrogation procedure could be ordered under Article 47, paragraph 1, of the AMA. Such interrogation is conducted by issuing an order to the officers or employees. The testifying persons who make a false statement or fail to make a statement during the interrogation procedure could be subject to punishment under Article 94 of the AMA.
40. The privilege against self-incrimination is only available in a criminal investigation of cartel conduct as opposed to an administrative investigation, where such privilege cannot be invoked.
41. In most cases, interviewing employees/witnesses and having them sign the statement that the JFTC prepares based on the interviews would be the key aspect of the JFTC's investigation (besides documentary evidence). This cannot be over-emphasised in cartel cases, where typically no or few minutes of the meetings exist. Therefore, the JFTC's goal here is to draft a statement in line with its side of the story and have the interviewee sign the statement. In egregious cases, the JFTC has already drafted a statement before the first interview. Asking the JFTC investigators to accept comments on nuances or reservations is sometimes very challenging. However, although the JFTC investigators never forcibly have interviewees sign the statement, once it is signed, it is extremely difficult to challenge the evidentiary power of the statement, so having the interviewee understand the dynamics at play here before being interviewed would be one of the key aspects of preparing for, or "to-dos" to be worked on promptly after, dawn raids.
42. It is important to note that in Japan lawyers are not allowed to be present at those interviews, while the JFTC may allow, on an exceptional basis, a lawyer to be present to serve as an interpreter for an employee that is not fluent in Japanese. This means that the JFTC will only rarely allow attorneys to be present at interviews in practice.

4.3. Night Seals

43. In practice, the JFTC does not usually use seals during its dawn raid. The background to this is that the JFTC most likely completes its dawn raid in a single business day.

4.4. Minutes

44. While the JFTC has the duty to prepare a catalogue upon seizure of possessions of the companies being investigated under the AMA, the JFTC does not prepare any minutes for the companies. Therefore, in particular at the first meeting with the JFTC at the outset of the dawn raid, it is important for the companies to draft minutes to record what the investigators say about the allegation.

4.5. Continued Inspections

45. It is common for the JFTC first to obtain documentary evidence at the alleged companies' offices in the course of dawn raids. After the dawn raids, the JFTC continues its investigation, such as by selecting relevant documents and by interviewing the persons involved in the allegations.
46. It is also usual for the JFTC to subsequently request the companies to submit relevant documents from time to time, and also to deliver a "Reporting Order" in a timely manner to secure precise information on the alleged violation in preparation for issuing a cease-and-desist order and surcharge payment order.

5. Judicial Review

47. In general, if a company is not satisfied with an administrative action by the JFTC and wants to repeal such JFTC action, it has the right to appeal to the JFTC under the JFTC Rules and/or the Administrative Appeal Act or to file a lawsuit with the Tokyo District Court under the Administrative Case Litigation Act.
48. Also, it is possible to challenge inspections in an indirect manner by filing a lawsuit to quash the JFTC orders (cease-and-desist orders and surcharge payment orders) that are issued relying on evidence collected during inspections.

Competition Inspections in 21 Jurisdictions

A Practitioner's Guide

Nathalie Jalabert-Doury

Foreword by Paul Nihoul



This is the third volume in this series. The first volume addresses inspections in France, and the second volume addresses the European Union.

Nathalie Jalabert-Doury brings together distinguished practitioners from around the world to provide an in-depth analysis of the legal and practical aspects of competition inspections across 21 major jurisdictions. Each country chapter comprises a series of questions and answers outlining the legal basis and scope of powers under relevant local legislation, the key stages of a dawn raid, the rights and obligations of a company subject to an inspection, and the prospects of judicial review. Illuminated by the expertise of the authors, the chapters outline steps which should be taken to ensure that a company facing an inspection may respond in an efficient manner while minimising legal risk.

The book is a necessary and essential guide for both in-house and outside counsel to ensure that an effective internal response strategy is put in place before being confronted with an inspection.

The jurisdictions covered include Austria, Brazil, Canada, China, the Czech Republic, the European Union, France, Germany, Hong Kong, India, Japan, Korea, the Netherlands, Russia, Singapore, Spain, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States.

Admitted to the Paris Bar, Nathalie Jalabert Doury is head of the Mayer Brown Antitrust & Competition practice in France and is a co-leader of the Firm's European Antitrust Practice.

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