



JAPAN LEGAL UPDATE

Antitrust

Partial Amendments to the "Guidelines Concerning Distribution Systems and Business Practices Under the Antimonopoly Act"

On May 28, 2016, the Japan Fair Trade Commission announced that it had concluded its draft of the partial amendments to the "Guidelines Concerning Distribution Systems and Business Practices Under the Antimonopoly Act" ("Distribution Guidelines"). The amendments are based on the Implementation Plan for Regulatory Reform decided by Cabinet Decision on June 30, 2015, and they revise the criteria for conduct to fall within the so-called "safe harbor" under the Distribution Guidelines.

The Distribution Guidelines describe criteria and provide examples, with respect to distribution and business practices in Japan, of conduct that prevents free and fair competition and therefore violates the Antimonopoly Act.

Part I of the Distribution Guidelines relates mainly to transactions concerning producer goods and capital goods, and Part II relates mainly to transactions concerning the distribution process through which consumer goods reach customers. The Distribution Guidelines state that non-price related vertical restrictions—such as restrictions on distributors' trading partners, restrictions on the products that may be handled by distributors, restrictions on the distributors' sales territories, and prohibitions on mail order sales and other types of methods of sales—will be illegal if these restrictions could result in new market entrants experiencing difficulty in securing alternative distribution channels or could cause price stagnation. However, those restrictions would be unlikely to violate the Antimonopoly Act if a firm other than an "influential firm in the market" were to: (i) restrict trading partners from dealing with competitors, (ii) restrict distributors from handling competitive products, or (iii) strictly restrict partners in respect of permissible sales territory.

Before the amendments, whether a firm was "influential in the market" was indicated by its possession of a market share of 10 percent or more or by its occupying a position within the top three firms in the market. Therefore, in general, where a firm was not deemed as "influential in the market," its restrictive conduct would not be illegal; such a position had been widely considered as a "safe harbor." However, there had been criticism that the safe harbor would not apply to a firm occupying a top three position in the market even if it possessed less than a 10 percent market share.

In the amendment, the market share criterion for the safe harbor was increased from

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possession of a market share of less than 10 percent to possession of 20 percent or less, and the market position criterion was abolished. Thus, under the new safe harbor criteria, if a firm has a 20 percent or less market share, then certain non-price related restrictive conduct will, in general, not be illegal. Accordingly, even if a firm has the top position in a market, the safe harbor will still apply as long as such firm has a market share of 20 percent or less.

Corporate

Enactment of an Amendment to the Act on Specified Commercial Transactions and an Amendment to the Consumer Contract Act

On May 25, 2016, an Amendment to the Act on Specified Commercial Transactions and an Amendment to the Consumer Contract Act were enacted, and the amendments were promulgated on June 3, 2016. The Amendment to the Act on Specified Commercial Transactions will come into force on a date provided by cabinet order that will be within one and a half years from June 3, 2016. The Amendment to the Consumer Contract Act will come into force on June 3, 2017, except for a provision regarding the obligation of consumers who have exercised their right of rescission to return purchased items to a seller. For an outline of the amendments, please see the [April 2016 issue of this Update](#).

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