

Conference; Competition Policies as Instruments of Social and Economic Development  
– Asian Perspectives

# Competition Policy in Japan

## Differing policies, Different Approaches

### - *Protection of SMEs* -

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The views expressed in this paper are my own and not necessarily reflect  
the views of the Japan Fair Trade Commission.

1. Ensure rigorous and efficient enforcement of the AMA  
The JFTC continues stringently and actively countering price-fixing cartels and bid-riggings, which have a serious impact on the lives of people.
2. Adequately regulate the practices that may unjustly cause disadvantages to SMEs, such as abuses of superior bargaining positions and violations of the Subcontract Act.
3. Promote competitive environment in the market where enterprises autonomously engage in competitive business activities  
The JFTC makes more efforts to promote corporate compliance culture with the AMA.
4. Promote international liaison with foreign competition authorities through various cooperation frameworks, bilateral or multilateral  
The JFTC makes contributions to these agendas that are expected as Japanese competition authority.

- **99.7% of enterprises** in Japan is the Small & Mediums.
- **70% of employees** in Japan is for the Small & Mediums.
- **50% of all added value in manufacturing industry** is made by the Small & Mediums.
- **70% of all sale in retail industry** is made by the Small & Mediums.

(Source) White Paper on Small and Medium Enterprises 2011

## <Art. 19>

No enterprises shall employ unfair trade practices.

- Concerted Refusal to Trade (Art. 2⑨i)
- Discriminatory Pricing (Art. 2⑨ii)
- Unjust Low Price Sales (Art. 2⑨iii)
- Resale Price Restriction (Art. 2⑨iv)
- Abuse of Superior Bargaining Position (Art. 2⑨v)

- Cease and Desist Order (AMA Art.20)
- Surcharge Payment Order (※)

  - Concerted Refusal to Trade (AMA Art. 20-2)
  - Discriminatory Pricing (AMA Art. 20-3)
  - Unjust Low Price Sales (AMA Art. 20-4)
  - Resale Price Restriction (AMA Art. 20-5)
  - Abuse of Superior Bargaining Position (AMA Art. 20-6)

- ※ The practices other than abuse of superior bargaining position shall be the subject of surcharge only if the enterprises conduct the same kind of practices within 10 years.
- Civil damages claims (AMA Art.25 and Civil Code Art. 709)

## Definition (AMA Art.2 (9) v)

Taking any act specified in one of the following, unjustly in light of the normal business practices by making use of **one's superior bargaining position** over the other party:

(a) Causing the said party in regular transactions (including a party with whom one intends to have regular transactions newly; the same shall apply in (b) below) to purchase goods or services other than the one pertaining to the said transactions

(b) Causing the said party in regular transactions to provide for oneself money, services or other economic benefits

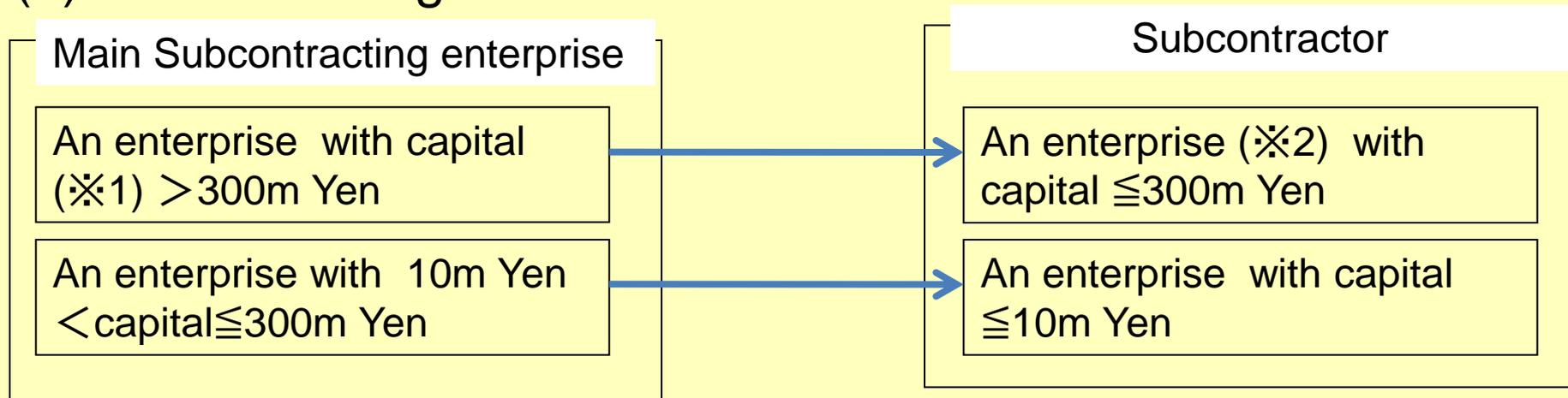
(c) Refusing to receive goods pertaining to transactions from the said party, causing the said party to take back the goods pertaining to the transactions after receiving the said goods from the said party, delaying the payment of the transactions to the said party or reducing the amount of the said payment, or otherwise establishing or changing trade terms or executing transactions in a way disadvantageous to the said party

# Abuse of Superior Bargaining Position (Actual case )

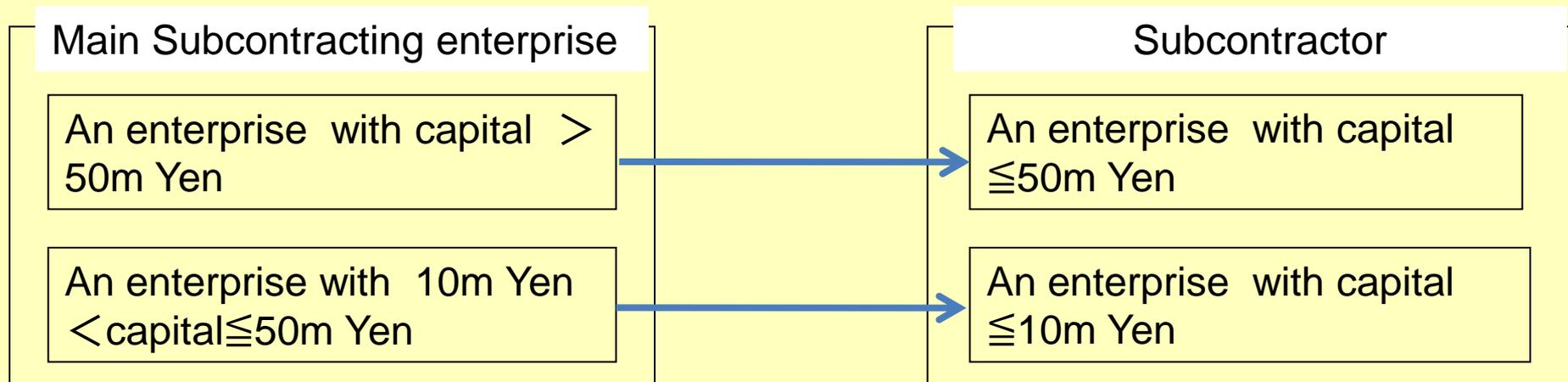
- Cease-and-desist order and surcharge payment order of about 4.05 billion yen against EDION Co. (Feb 2012).
- EDION is the second largest retailer in Japan for electric household appliances.
- EDION caused the suppliers who were in bargaining positions inferior to it, to dispatch their employees of the total number of no less than 11,172 in order to have them engage in works such as conveying, taking out its goods and a series of preparations works for the grand opening and remodeling of EDION stores, without consent for dispatching conditions and without paying for the dispatched employees.
- Such behavior constitutes “abuse of superior bargaining position” against its suppliers.

- “Dual structure of the economy” - a high productivity sector comprised mainly of large enterprises and a low productivity sector comprised of SMEs exist side by side.
- A large gap exists between two of them in aspects such as capital intensity, productivity, technology and wage levels and large enterprises use SMEs as subcontractors.
- SMEs that engage in transactions with large enterprises are often exploited by large enterprises, and may encounter economic hardship. In Japan, a typical example is where small and medium subcontractors suffer from delay in the payments of subcontract proceeds by large “parent” enterprises” and this has long been a problem in Japanese society.
- In 1956 the Subcontract Act was enacted which serves as a supplementary law to the AMA or the article of superior bargaining position.

## (1) Manufacturing or other contract



## (2) Information-based product creation contract or a service contract



※1 The word of “capital” in this slide means “capital or total contributions”.

※2 “Enterprise” in Subcontractor section includes “individual”.

## <4 obligations of main subcontracting enterprises>

1. Deliver documents (Art. 3)
2. Prepare and preserve documents (Art. 5)
3. Decide the date of payments (Art. 2-2)
4. Pay an interest for delay (Art. 4-2)

## <11 prohibitions of main subcontracting enterprises (Art. 4)>

1. Refuse to receive the work products
2. Fail to make payment
3. Reduce the amount of subcontract proceeds
4. Take back the goods

////// ETC



- Even if a subcontractor suffers disadvantage as a result of violation of the Subcontract Act by the parental enterprise, the subcontractor cannot be expected to actively provide information with the JFTC because they fear the possibility of reprisals from the parental enterprises.
- To uncover suspected violations of the Subcontract Act, the JFTC regularly sends questionnaires to parental enterprises and subcontractors and demands reports.
- The number of such document-based inspections has increased consistently every fiscal year, and in FY2012, the JFTC conducted document-based inspections of 214,000 subcontractors.
- The JFTC actively engaged in promotional and educational activities, as it is essential that parental enterprises and subcontractors understand the content of the Subcontract Act, in order to try to prevent violations of the Subcontract Act.

- Recommendation (Art. 7) or administrative guidance to stop the illegal conduct
- The contents of the recommendation are ceasing of illegal conducts, recovery from the unfavorable conducts that they did to their subcontractors such as paying the reduced amount and taking preventive measures and so on.
- The JFTC is actively enforcing the Subcontract Act.
- In FY2012, the JFTC issued recommendations in 16 cases, and issued administrative guidance in a record number of 4,550 cases.

- Recommendation against the Japanese Consumer Co-operative (Sept. 2012)
- The Japanese Consumer Co-operative is the company to supply products to the member consumer co-operatives and asks its subcontractors to produce its private brand foods and others.
- Although its subcontractors did not have any obligation, the Japanese Consumer Co-operative asked its subcontractors to reduce the amount of subcontract proceeds in total about 2 billion 563 million yen.
- After the JFTC's investigation started, the Japanese Consumer Co-operative compensated for the reduced proceeds to the subcontractors.
- The JFTC recommended preventive measures to the Japanese Consumer Co-operative.

- First, the cartel regulation is the first priority for every competition authority but sometimes it is difficult to conduct cartel enforcement for various reasons.
- Competition authorities could and should continue activities which contribute to the development of the economy of the country and the living of the people, which may help survival of the competition authority in its hardship.
- Secondly, excessive intervention on the pretext of supporting SMEs should be avoided.
- The Subcontract Act regulates only specified transactions between enterprises with capital exceeding the amount prescribed by the law and entrepreneurs with capital of not more than the said amount, and is not the kind of legislation that regulates transactions between large enterprises and SMEs as a whole.

Thank you for your kind attention !



Japan Fair Trade Commission  
(<http://www.jftc.go.jp/en/index.html>)