

Mr Kazuhiko Takeshima
Chairman
Fair Trade Commission
6-B Chuo Godo Chosha
1-1-1 Kasumigaseki, Chiyoda-Ku
Tokyo, Japan 100-8987

February 25, 2008

Dear Chairman Takeshima,

RE: PROPOSED CHANGES TO JAPAN'S ANTIMONOPOLY ACT

We are writing to express our members' concern about the modifications proposed by the Japan Fair Trade Commission (JFTC) to the Japanese Antimonopoly Act (AMA). BUSINESSEUROPE concerns are centred on the modification of the procedural provisions contained in the AMA, its consequences on the investigatory powers of the JFTC and the possible violations of due process rights which would arise from it.

Regulation which governs different national markets becomes more and more important as trade and economy develop globally. Both Nippon Keidanren and the U.S. Chamber of Commerce have already expressed their concern on this issue and BUSINESSEUROPE – representing 39 national business federations from 33 countries including the 25 EU Member States – supports their concerns. Similar investigatory procedures in the U.S. and in the European Union provide for a high level of due process rights and – in our view – a strongly developed economy as Japan should not break away from well-established international best practices.

Taking in consideration that the envisaged system provides for an increased capacity for the JFTC to punish anticompetitive behaviour and unfair trade practices, we believe that particular attention should be devoted when establishing its investigative powers and regulating defence rights for companies.

In this context, BUSINESSEUROPE welcomes the JFTC's move, made public by the press, to modify its appeals system concerning its decisions on bid-rigging and cartels in order to allow accused companies to take their complaints directly to court. According to the proposal, the hearings system would apparently be kept for other antitrust violations, with the only modification that the hearings would be held before – rather than after – the decision. As a consequence, companies would at least see their right to be heard respected. Nevertheless – in our understanding of what is being made public by the press – this means that the JFTC is proposing to keep an internal administrative appeals system, in which it would be prosecutor and judge at the same time.

Furthermore, from a general point of view, if the suggested procedure were to be adopted, it would appear unbalanced, with the enterprises involved being partially unable to assert their basic defence rights. Some specific aspects of the proposed investigation procedure should therefore be revised. As a consequence to the proposed amendments, indeed:

- Defendants' attorneys will not be allowed to be present at examinations;
- Access to documents, especially regarding records of examinations or other statements, will not be guaranteed;
- The right against self-incrimination will not be awarded;

Additional concerns might also arise when considering further aspects related to private enforcement:

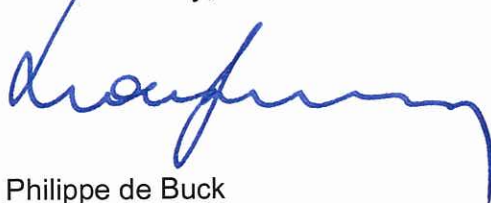
- The newly proposed measures are not clear about the handling of documentary evidence. In this regard, BUSINESSEUROPE believes that disclosure in private actions should be avoided, as it would entail obvious risks related to the harm consequent to disclosure of important confidential information on companies;
- For the same reasons, the introduction of a "group lawsuit system" allowing consumer organisations to lodge injunction suits against parties involved in JFTC investigations or prosecutions should be carefully evaluated. In our understanding, this would put at risk the confidentiality of the above mentioned sensitive business information.
- Likewise, BUSINESSEUROPE also supports the view that special rules, allowing litigants in private injunction suits over unfair trade practices to ask Courts to issue document production orders for a broader range of documents (than those in usual civil lawsuits), should be avoided.

On the subject, BUSINESSEUROPE supports the suggestion of the U.S. Chamber of Commerce for a comparative study focused on the analysis of the operative practices adopted by competition authorities in other jurisdictions.

In consideration of a market becoming ever more global, BUSINESSEUROPE believes that quality standards regarding operational procedures for competition authorities should converge to an equally high level of fairness, respect for due process and basic defence rights. BUSINESSEUROPE hopes that – in the process of proposing the modifications to the AMA – JFTC will duly take into considerations the present comments, together with the suggestions already put forward by the U.S. Chamber of Commerce and Keidanren.

We remain at your disposal for any further matter.

Yours sincerely,



Philippe de Buck