

CY Japan Legal Update

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Competition

Revised Anti-Monopoly Act introducing the commitment procedure will be enforced from the date that the Trans-Pacific Strategic Economic Partnership Agreement takes effect in Japan

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The Act on the Arrangement of Related Acts Accompanying the Conclusion of Trans-Pacific Strategic Economic Partnership Agreement was enacted on December 9, 2016. The Act includes a partial revision of the Anti-Monopoly Act for the arrangement of provisions for the introduction of a system whereby a person who has received notice from the Fair Trade Commission of a suspected breach of the Anti-Monopoly Act may resolve such suspicion voluntarily by agreement with the Fair Trade Commission (“Commitment Procedure”). This revised Anti-Monopoly Act will be enforced from the date on which Trans-Pacific Strategic Economic Partnership Agreement (“TPP Agreement”) takes effect in Japan.

The Commitment Procedure introduced in the revised Anti-Monopoly Act is a structure for promoting voluntarily resolution between the Fair Trade Commission and a business operator for a suspected breach of the Anti-Monopoly Act in order to correct competition issues at an early stage and endeavor to expand the area for resolving matters in cooperative manner between the Fair Trade Commission and business operators.

The flow of the Commitment Procedure is as follows:

The Fair Trade Commission will become able to notify a business operator in writing of the outline and provisions of laws and regulations for an act which is a suspected breach of the Anti-Monopoly Act (such notice shall be referred to as an “Infringement Notice.” However, cases of price cartel and bid-rigging will be excluded from subject matter of notice. Conversely, corporate restructuring cases are included in the subject matter of notice.). A business operator who receives such notice may apply for the certification of a plan concerning measures required for elimination of the act which is cause of such suspension (“Commitment Plan”) by submitting a plan to the Fair Trade Commission within 60 days from the date of such notice upon voluntarily preparation of such plan. In order to be certified, the Commitment Plan must fully eliminate the act which is a suspected breach of the Anti-Monopoly Act and it must be expected that the commitment will be implemented with certainty. If the Fair Trade Commission certifies the plan, it will not make a cease and desist order and a surcharge payment order.

With the notification of withdrawal from the TPP by U.S. President Donald Trump, the effect of the TPP Agreement has become uncertain even in Japan, however, even if the TPP Agreement does not take effect, there is the possibility that commitment procedure will be introduced separate from the TPP Agreement, so continued attention is necessary.

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