



公正取引委員会
Japan Fair Trade Commission

NO COMPETITION, NO GROWTH

Procedure and Techniques of Case Investigation in Japan

APEC Training Course
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Outlines

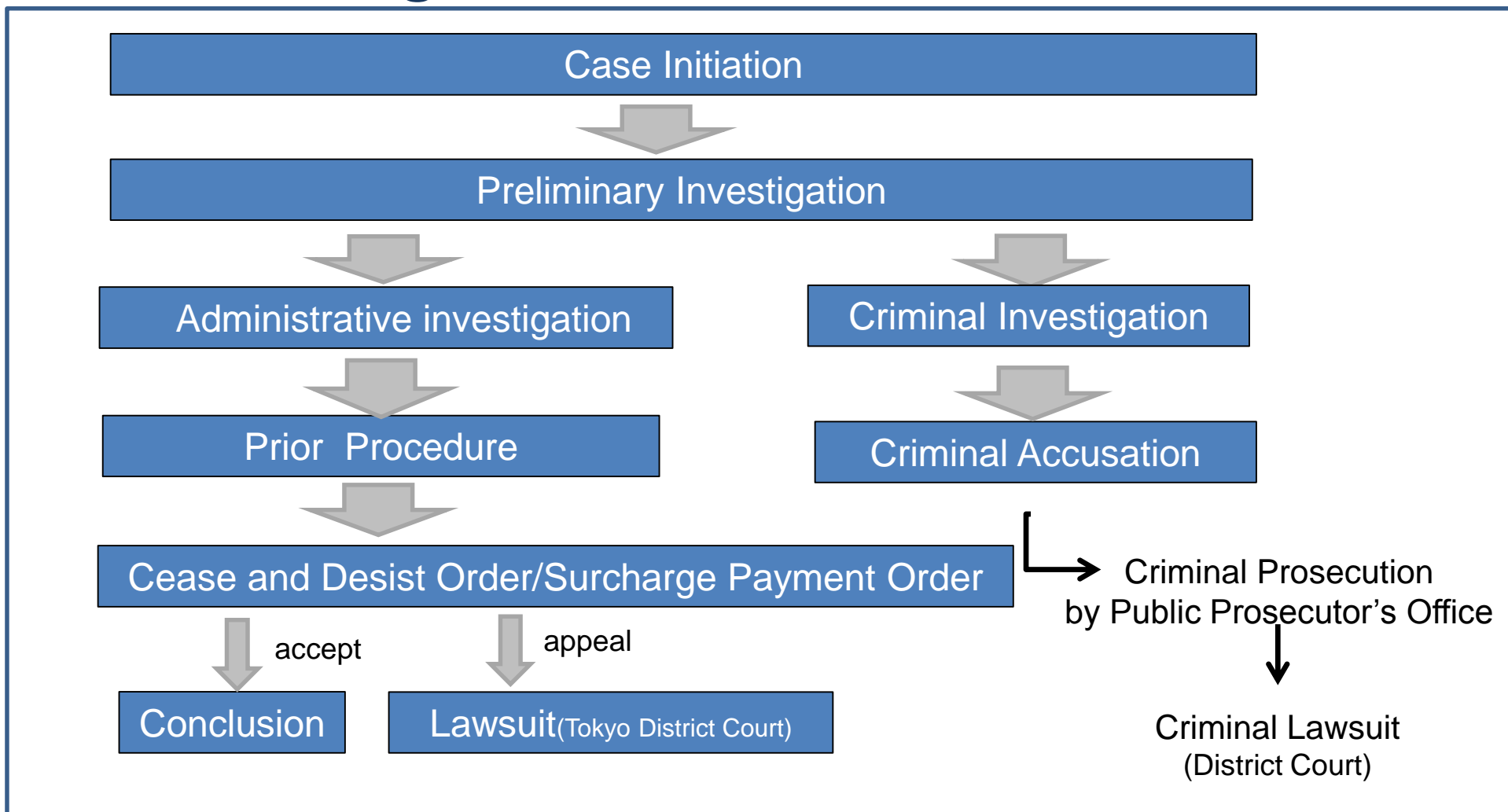
- 1. Investigation Procedure**
- 2. Overview of Recent Enforcement**



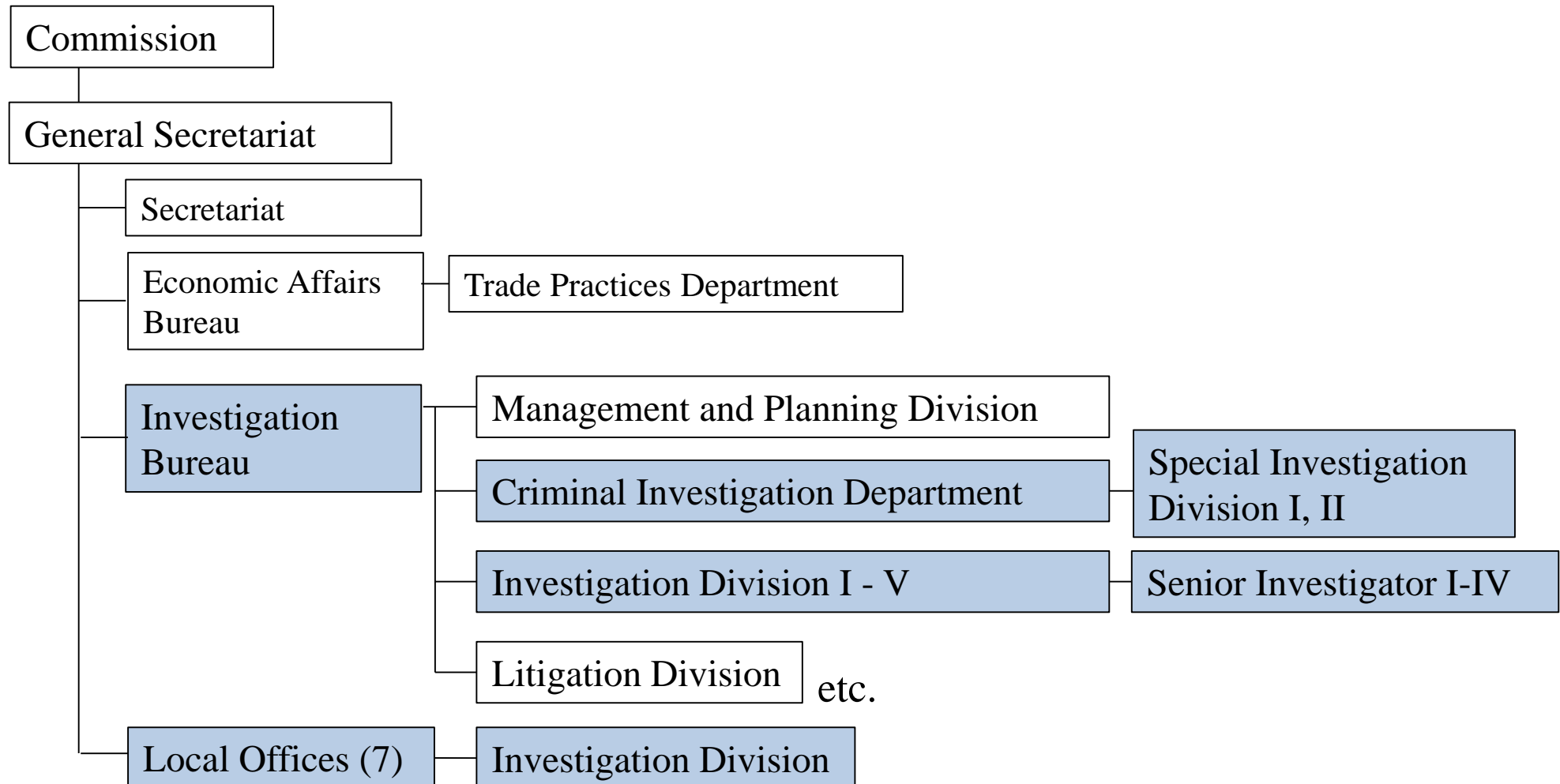
1. Investigation Procedure



Investigation Procedure Flow in JFTC

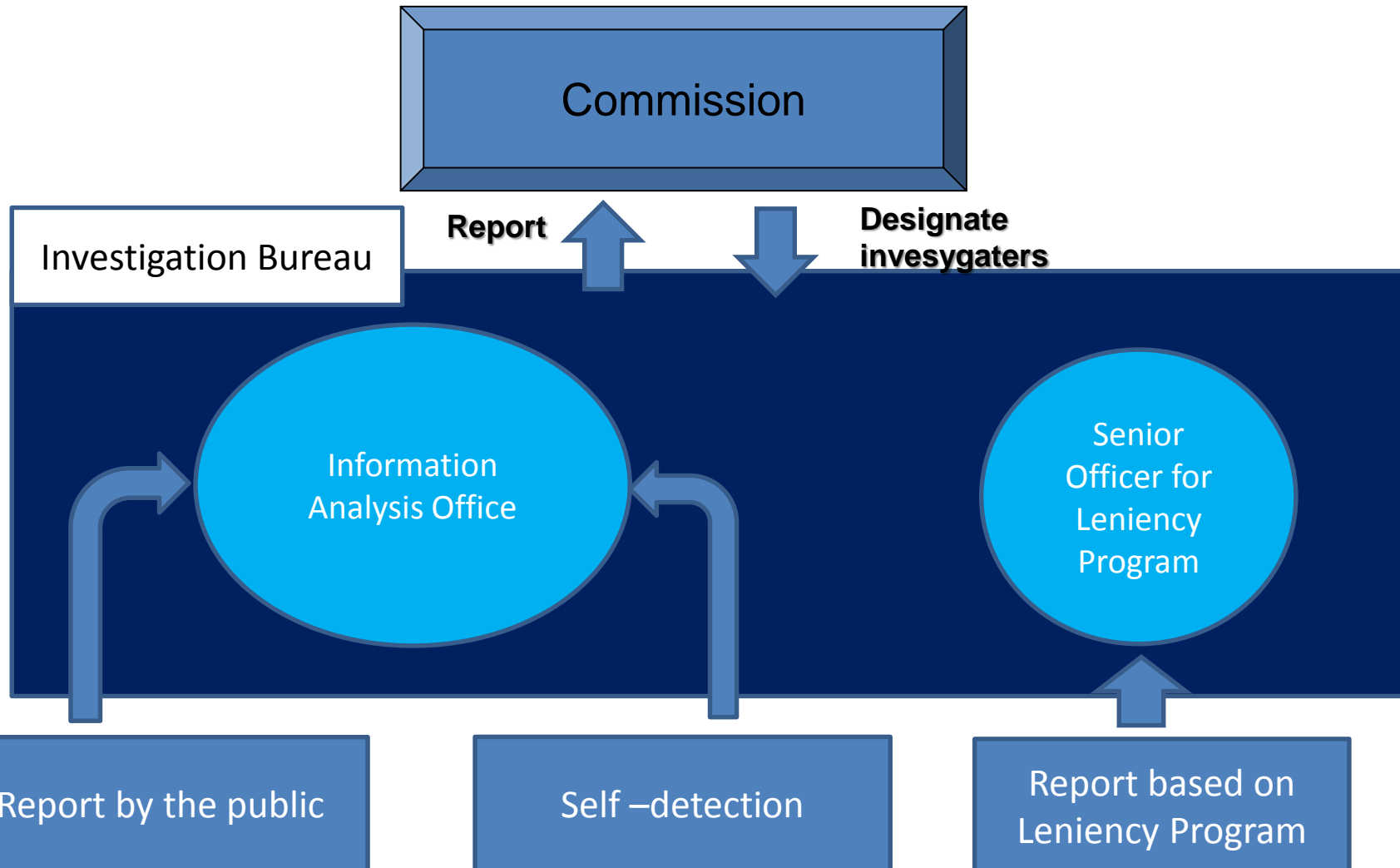


(1) Investigation Organization



- Investigation is carried out by total 445 staff members in Investigation Bureau and Local Offices (as of March, 2015)

(2) Case initiation ~ Preliminary investigation



(2) -1 Case Initiation

- Report by the public (Notification)

FY	2010	2011	2012	2013	2014
The number of notification	10,769	8,759	9,819	7,243	6,886

- Self – detection (JFTC’s own information collection)
- Report based on Leniency Program etc

(2)-2 Leniency Program

If entrepreneurs participating in price cartel or bid rigging independently submit reports on the violation and related materials, the surcharge is exempted or reduced as follows:

1) Before the investigation start date

- (a) the first entrepreneur → 100% reduction
- (b) the second entrepreneur → 50% reduction
- (c) the third to fifth entrepreneurs → 30% reduction

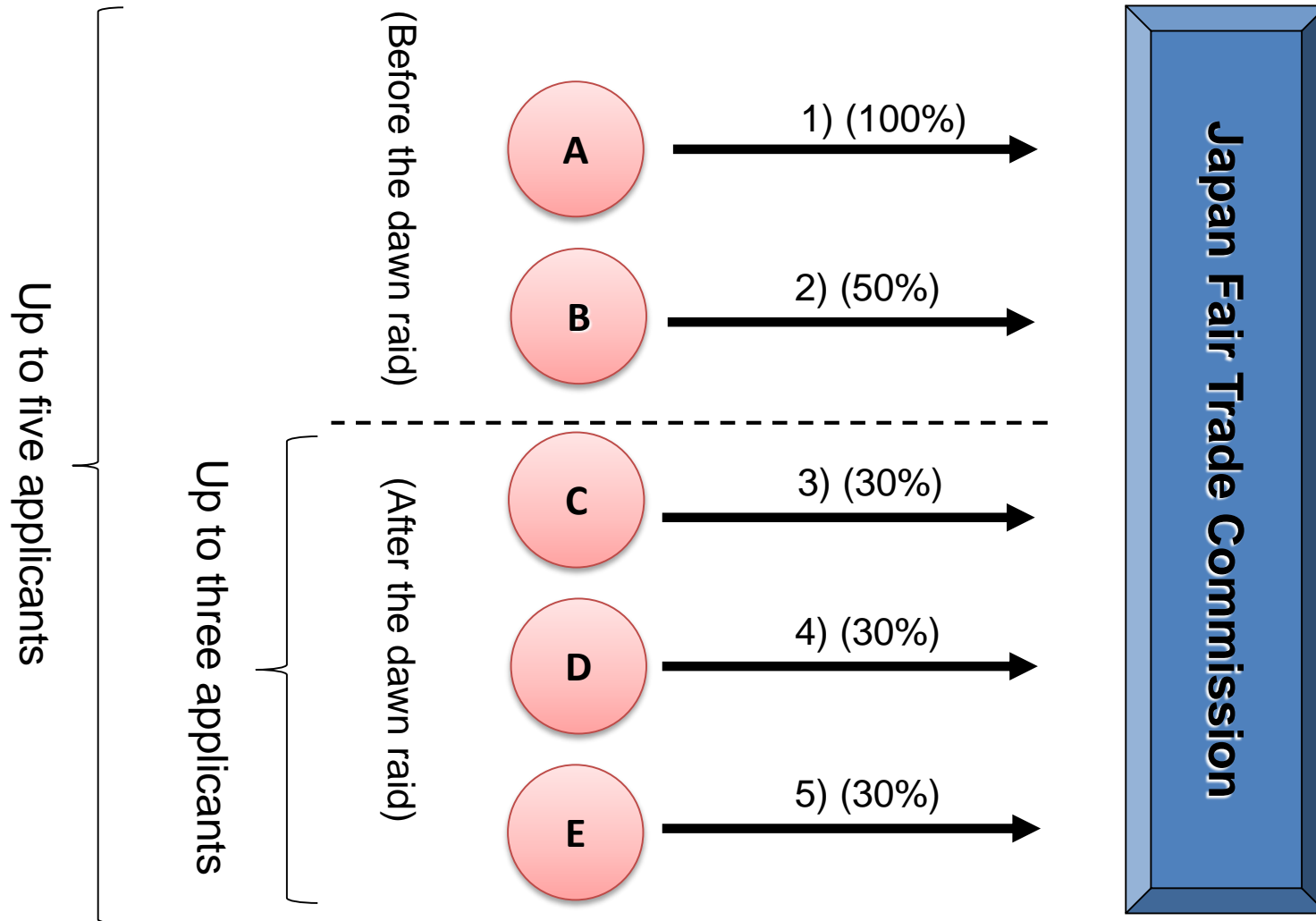
2) After the investigation start date

no more than three entrepreneurs and within five entrepreneurs in total with the above 1) → 30% reduction

(number of applications)

Fiscal year	2010	2011	2012	2013	2014
The number	131	143	102	50	61

Leniency Program(overview)



- 1st applicant before the dawn raid could enjoy immunity from criminal accusation.

(3) Preliminary Investigation

Suspected violation is detected



Inspect and review the detailed contents, credibility and background



Report to commission



launch formal investigation

(4) -1 Formal Investigation (Administrative Investigation)

Authority of JFTC

1) On-the-spot inspection

The JFTC may enter business offices etc. of suspected violators etc. and inspect conditions of business operation and property, books and documents, and other materials

2) Ordering to Submit Materials and Keeping them

The JFTC may order suspected violators etc. to submit evidences (books and documents) and to keep those evidences

3) Ordering Suspected Violators or Witnesses to Appear to be Interviewed, and to Report

(a) Ordering Suspected Violators or Witnesses to Appear to be Interviewed

In practice, the JFTC often ask those persons voluntary appearance for interviewing.

The investigator makes out a record of interview and the records may be regarded as an evidence to prove violation.

(b) Ordering Suspected Violators or Witnesses to Report

The JFTC often request witnesses to report not by order with compulsory authority, but in a voluntary way.

(4) -2 Formal Investigation (Criminal Investigation)

Investigators for criminal cases may question criminal suspects or witness, may inspect objections possessed or abandoned by those persons, or conduct visit , search ,or seizure by virtue of a warrant issued in advance by a judge of the competent court(AMA Article 101, 102 etc.) .

This criminal investigation authority has been introduced in 2006, to facilitate criminal accusation of vicious and serious cases.

(5) Prior Procedures (Hearing Procedure)

1) Advance notifications and explanations of Draft Orders and related issues as follows

- The content of the order to be issued**
- The facts found by the JFTC, and the application of the AMA theret**
- The evidence required to provide the bases for the facts found by the JFTC**

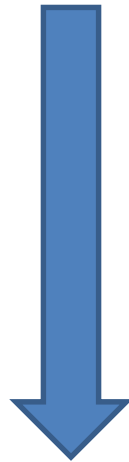
2) Opportunity to present views and evidence to JFTC

(6) Cease and Desist Order (Administrative Measure)

Violations are recognized as a result of investigations



Procedure for a hearing of opinions presided



The Investigator explains the followings

- Tentative contents of the order
- Facts recognized by the JFTC
- the application of laws and regulations
- Show principal evidence

The would-be addressee may express opinion and produce evidence, and put a question to the investigator

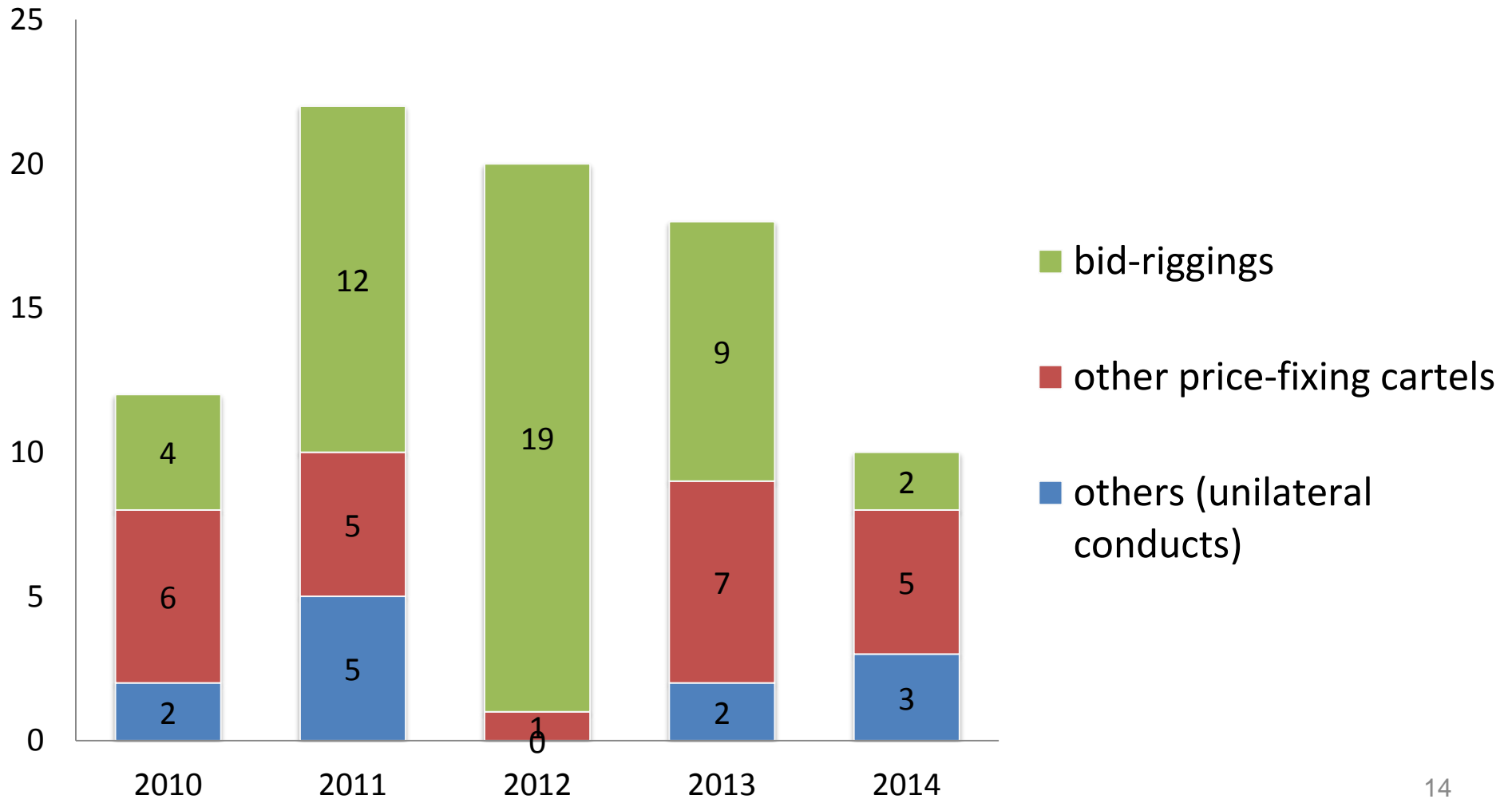
Cease and Desist Order

Not obtain sufficient evidences but violation is still suspected



Warning

The number of Cease and Desist Orders



(7) Surcharge Payment Order (Administrative Measure)

$$\boxed{\text{Surcharge}} = \boxed{\text{Sales Amounts of Products/Services in question during the period of violation (3 years at a maximum)}} \times \boxed{\text{Surcharge Calculation Rates}}$$

(surcharge calculation rate)

	Large enterprises		Medium and small enterprises			
Manufacturing, etc.	10%	Early termination	8%	4%	Early termination	3.2%
		Repeated violation	15%		Repeated violation	6%
		Leading role	15%		Leading role	6%
		Repeated + leading	20%		Repeated + leading	8%
Retail	3%	Early termination	2.4%	1.2%	Early termination	1%
		Repeated violation	4.5%		Repeated violation	1.8%
		Leading role	4.5%		Leading role	1.8%
		Repeated + leading	6%		Repeated + leading	2.4%
Wholesale	2%	Early termination	1.6%	1%	Early termination	0.8%
		Repeated violation	3%		Repeated violation	1.5%
		Leading role	3%		Leading role	1.5%
		Repeated + leading	4%		Repeated + leading	2%

Annual Surcharge Amounts over the Last Decade

Fiscal year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Amount (Billion Yen)	17.87	9.26	11.29	27.03	36.07	72.08	44.25	25.07	30.24	17.1

(8) Accusation to the Prosecutor General (Criminal Measure)

When violations of the AMA are recognized as a result of criminal investigations, the JFTC files an accusation with the Prosecutor General (AMA Article 74).

The JFTC has filed an accusation with the Prosecutor General in 6 cases since introduction of criminal investigation authority (amendment of the AMA in 2006).



2. Overview of Recent Enforcement

The enforcement status in FY 2014 (10 cease and desist orders)

Type of conduct	Cases	Outlines
Private monopolization	Private monopolization case by JA Fukui Prefectural Economic Federation of Agricultural Cooperatives (January 2015)	With respect to the communal drying facility (country elevator) works, the Federation designated successful bidders, instructed other bid participants what price to bid for said works and made them bid at said price so that the designated successful bidders could win the biddings. In this way, the Federation controlled the business activities of the bid participants.
Price-fixing	Price-fixing case by the manufacturers of corrugated board sheets for users that placed their price negotiation sections in eastern Japan (June 2014)	The manufacturers agreed to raise the selling prices of corrugated board sheets. (The total amount of surcharge payment is 3,162.29 million yen.)
	Price-fixing case by the manufacturers of corrugated board boxes for users that placed their price negotiation sections in eastern Japan (June 2014)	The manufacturers agreed to raise the selling prices of corrugated board boxes. (The total amount of surcharge payment is 8,152.80 million yen.)

Cont.

Type of conduct	Cases	Outlines
Price-fixing	Price-fixing case by the manufacturers of corrugated board boxes for large-lot users that placed their price negotiation sections in eastern Japan (June 2014)	The manufacturers agreed to raise the selling prices of corrugated board boxes. (The total amount of surcharge payment is 1,978.04 million yen.)
	Price-fixing case by the manufacturers of steel balls (September 2014)	The manufacturers agreed to raise or maintain the selling prices of steel balls. (The total amount of surcharge payment is 1,324.71 million yen.)
	Price-fixing case by Abashiri Concrete Products Association (January 2015)	The Association assigned one of its members, etc. to enter into a contract for concrete secondary products with each user, and decided to restrict a discount rate for the design price to which the selling prices of said secondary products relate. (The total amount of surcharge payment is 58.59 million yen.)

Cont.

Type of conduct	Cases	Outlines
<p>Bid-rigging (in public and private demand)</p>	<p>Bid-rigging (private demand) case by engineering companies to undertake low-temperature air-conditioning system works ordered by agricultural cooperatives, etc. located in Hokkaido (January 2015)</p>	<p>With respect to the low-temperature air-conditioning system works ordered by the agricultural cooperatives, etc., the engineering companies designated successful bidders and managed to have the designated successful bidders win the biddings. (The total amount of surcharge payment is 16.55 million yen.)</p>
	<p>Case caused by contractors to undertake the manufacturing and installation works of facilities for drying, husking and storage of grains (country elevator) and rice milling facilities ordered by the agricultural cooperatives, etc. (March 2015)</p>	<p>With respect to the agricultural facilities works, the contractors designated successful bidders and managed to have the designated successful bidders win the biddings. (The total amount of surcharge payment is 1,175.89 million yen.)</p>

Cont.

Type of conduct	Cases	Outlines
<p>Abuse of superior bargaining position</p>	<p>Abuse of superior bargaining position case by a general discount company to its suppliers (June 2014)</p>	<p>The discount company committed the following acts toward its suppliers that are in trade positions relatively inferior to it (“specific suppliers”):</p> <p>(1) When opening new stores and other occasions, the discount company forced specific suppliers to dispatch their employees, etc. to be engaged in work to move goods, including goods other than those delivered by said specific suppliers, and other work in said new stores before the opening of the new stores without agreeing on the terms and conditions of said dispatch with the specific suppliers in advance and without bearing expenses necessary in ordinary course of dispatch.</p> <p>(2) i) At the sale at the closing down of stores, the discount company forced specific suppliers to provide monetary contribution equivalent to all or part of discounts on the goods delivered by said specific suppliers and sold at the discount prices set by it on the pretext of cooperation money, etc. for said sale without giving a clear explanation for the purpose of and calculation grounds and other reason for said cooperation money in advance, although the specific suppliers could not obtain sales promotion effect.</p> <p>ii) When a fire occurred at its store on May 4, 2011, the discount company forced specific suppliers that had delivered to said store the goods lost or damaged by said fire (“lost or damaged goods in fire”) to provide monetary contribution equivalent to all or part of purchase values of the lost or damaged goods in fire in order to</p>

Thank you

Questions and Comments are welcome
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<http://www.jftc.go.jp/en/index.html>