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**Competition Law and Policy and
Sustainability**

Introduction of Japanese Green Guidelines

Presentation

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Introduction of Japanese Green Guidelines

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UNCTAD Intergovernmental Group of Competition Law and Policy

Twenty-First Session

Competition Law and Policy and Sustainability

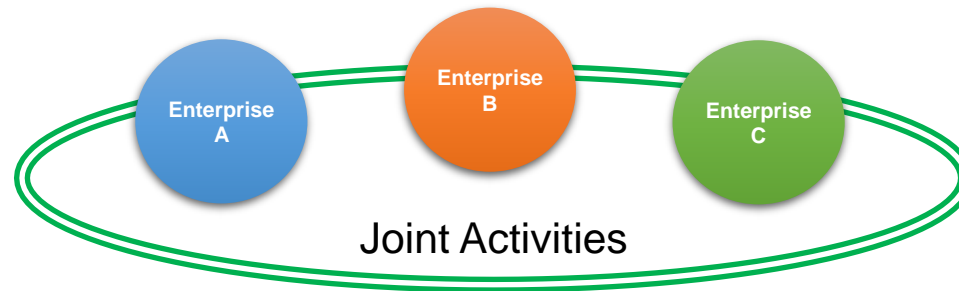
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Part I Joint Activities (1)

There are cases in which enterprises establish voluntary standards or implement joint activities such as joint R&D, as steps toward the realization of a green society.

These activities seek to streamline business activities, for example, by enabling prompt business execution, cost reduction, or mutual complementation to address insufficiency related to work, technologies, etc., and are aimed at achieving the early realization of a green society. In many cases, joint activities can be implemented without causing problems under Japanese Competition Law, and enterprises will not necessarily be held to be in violation of Japanese Competition Law merely because of the fact they have conducted such activities.



Establishment of
voluntary standards

Joint R&D

Technology
collaboration

Standardization
activities

Joint purchasing

Joint logistics

Joint production
and OEM

Sales cooperation

Data sharing

Japanese Competition Law has a requirement of **'substantial restraint of competition'** in a relevant **market** for cartel conducts.



For non-hardcore cartels, we can implement **rule of reason** test with taking into account **reduction of GHG emission as procompetitive effect**.



We are no need to introduce individual exemption system like TFEU 101 (3) to allow joint activities as green initiatives.

Acts that do not pose problems under Japanese Competition Law

Among joint activities of enterprises, those acts that are not expected to have any anti-competitive effects do not pose problems under Japanese Competition Law.

Most of the joint activities of enterprises that satisfy the following factors are considered to fall under the category of acts without anti-competitive effects: not affecting matters that constitute important means of competition including prices, not restraining entry of enterprises, and not excluding incumbents from markets.

Supposed case: Compliance with statutory obligations

Trade Association X, which consists of manufacturers of Product A, has set the target recycling ratio for its member enterprises to comply with; the target ratio is same as the obligatory recycling ratio with which each individual enterprise is statutorily required to comply. Then, in an attempt to ensure the achievement of that recycling ratio, X has decided to encourage its members to publish on their websites that they are making efforts to achieve the goals, and has decided to publish the accomplishment rate of each member enterprise on X's website, with the consent of the member enterprise

Acts that pose problems under Japanese Competition Law

If a joint activity of an enterprise causes **only** anti-competitive effects, in principle, it poses problems under Japanese Competition Law.

Specifically, if a joint activity falls under (i) act that restrains any matter constituting important means of competition such as prices, (ii) act that restrains entry of enterprises, or (iii) act that excludes any incumbents from markets then even if the purpose of this joint activity is to realize a green society, it will, in principle, pose problems under Japanese Competition Law without being justified by its purpose alone.

Acts that require attention in order not to pose problems under Japanese Competition Law

When a joint activities is considered to have both anti-competitive effects and pro-competitive effects, whether such an activity poses any problem under Japanese Competition Law needs to be assessed **by comprehensively considering both the anti-competitive effects and pro-competitive effects generated by the activity with the rationality of the activity's purpose and the adequacy of the means employed for it (e.g., whether there is any other less restrictive alternative means) taken into account.**

Types of conduct

Establishment of voluntary standards

- There are cases in which enterprises choose to establish voluntary standards for their business activities including the supply of products or services; for example, they possibly choose to formulate recommended standards concerning the types, quality, specifications, etc. of their products or services.

Business alliances

- An enterprise may possibly arrange a business alliance to reinforce its relationship with another enterprise and jointly implement operations.
- Business alliances include **Joint R&D, Technology collaboration, Standardization activities, Joint purchasing, Joint logistics, Joint production and OEM, Sales cooperation, Data sharing.**

Views on Establishment of voluntary standards

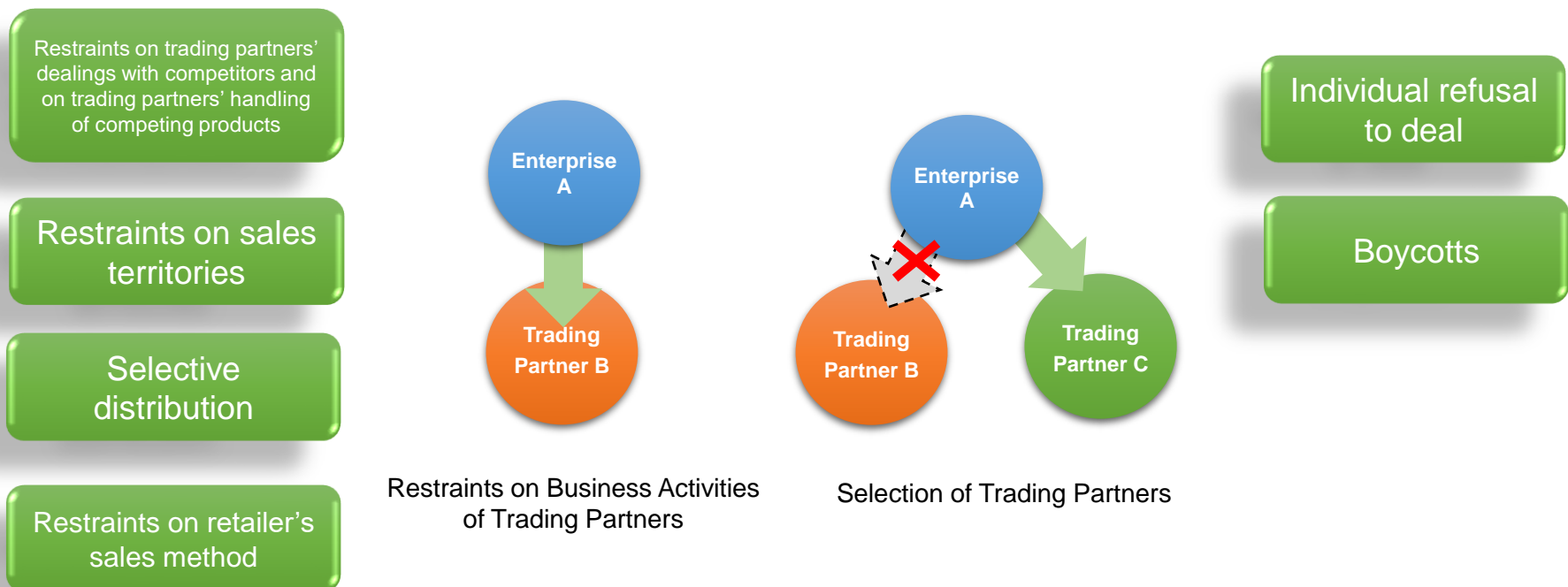
- In many cases, voluntary standards can be established without posing any problem under Japanese Competition Law since they may potentially lead to pro-competitive effects; for example, the unification of specifications can potentially lead to such pro-competitive effects as the prompt launch of a market for products adopting the unified specifications or an expansion of the demands.
- However, since the establishment of voluntary standards may cause anti-competitive effects, for example, in the case where it restrains means of competition and unjustly harms the interests of users, or where it is unjustly discriminatory among enterprises, such establishment may pose problems under Japanese Competition Law, depending on the contents or implementation methods of voluntary standards.
- Also, problems under Japanese Competition Law arise if any act that restrains any matter constituting important means of competition, such as prices, is conducted in association with the establishment of voluntary standards.

Business alliances : Views on Joint R&D

- There are cases in which enterprises jointly conduct basic, applied, or developmental research with other enterprises in competition and develop products with the technologies developed through such research in order to create technologies for the realization of a green society.
- In many cases, such joint R&D is implemented among such a small number of enterprises which do not affect competition in a market and thus can be conducted without causing problems under Japanese Competition Law.
- On the other hand, problems under Japanese Competition Law arise, for example, in the case where the majority of enterprises in competition in a product market conduct joint research despite the fact each of those enterprises can conduct research by itself, and thereby restrain their respective R&D activities, resulting in substantially restraining competition in the relevant technology market or product market.

There are cases in which an enterprise, for the purpose of reducing greenhouse gas emissions, conducts any acts that restrain trading partners' products for sale, sales territories, purchasers, sales methods, etc. or acts that break off dealings with trading partners.

Such activities of enterprises mainly observed in vertical trade relationships do not generate anti-competitive effects in many cases if they are carried out for the purpose of reducing greenhouse gas emissions. Furthermore, restraints on business activities of trading partners may result in generating pro-competitive effects such as the enhancement of consumers' convenience with the selling methods of the products they purchase being unified, the expansion of a market with the necessary investment made by trading partners, or an increase in the number of trading partners that actively engage in greenhouse gas reduction. For that reason, problems under Japanese Competition Law may not arise in many cases where the imposition of restraints on business activities of trading partners or selection of trading partners is carried out as an activity toward the realization of a green society.



Individual refusal to deal

When an enterprise determines which enterprise it conducts business with, it is basically a matter of its freedom of choice of trading partners. Even if an enterprise decides not to deal with another enterprise at its own judgment, considering such factors as prices, quality, and services, it basically poses no problem under Japanese Competition Law.

Acts that do not pose problems under Japanese Competition Law

An individual refusal to deal to a reasonable extent toward the realization of a green society does not pose problems under Japanese Competition Law; for example, an enterprise may, at its own discretion, decide not to conduct business with other enterprises that are not capable of achieving certain targets for greenhouse gas reduction set by the enterprise for the purpose of reducing greenhouse gas emissions in its entire supply chain.

Acts that pose problems under Japanese Competition Law

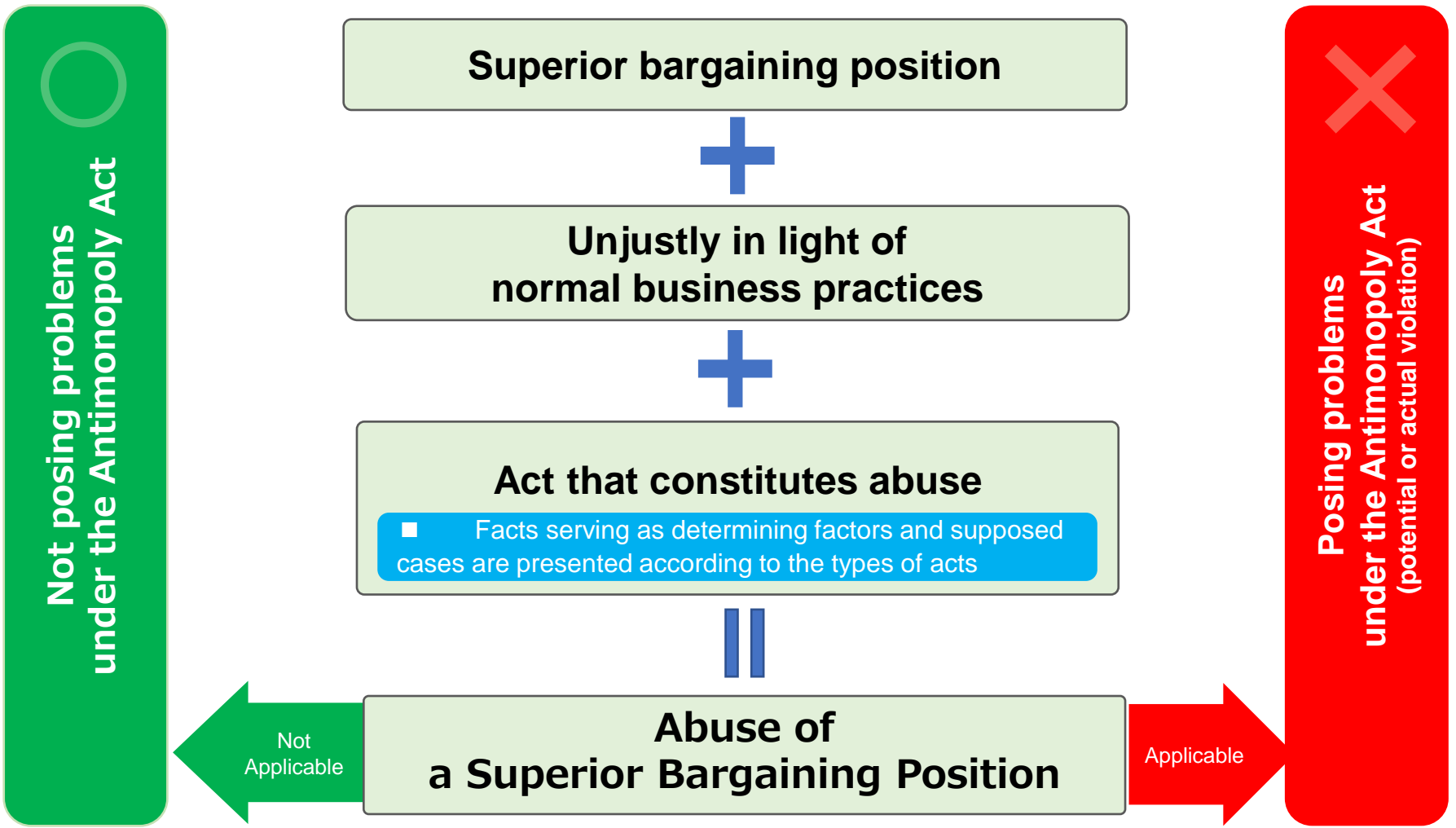
Even in the case of a refusal to deal unilaterally implemented by an enterprise, if, as an exceptional case, such refusal is executed as a means to ensure the effectiveness of a violation of Japanese Competition Law or as a means to achieve an unjust purpose under the same Act, such as for excluding a competitor from the market, problems under Japanese Competition Law may arise.

In the judgment of whether it is problematic under Japanese Competition Law in such a case, the following factors, among others, are comprehensively considered: whether it would be difficult for the enterprise whose dealings are refused to conduct its business activities; any adverse impact on competition in the market; the market position of the party carrying out the act concerned and those of competitors; and the duration and type of the act concerned.

Outline of Abuse of a Superior Bargaining Position

With respect to whether an act poses problems under the Antimonopoly Act in this context, the following is assessed on a case-by-case basis: (i) by making use of one's superior bargaining position over the other party, (ii) unjustly in light of normal business practices, (iii) performs categories of acts that constitute Abuse of a Superior Bargaining Position.

Outline of Abuse of a Superior Bargaining Position



Action 1

- The JFTC will continuously review the Guidelines according to future changes in markets and business activities, specific cases of law enforcement and consultation, and other relevant matters.

Action 2

- In order to encourage the activities of enterprises toward the realization of a green society, the JFTC will actively respond to their requests for consultation in light of the Guidelines.

Thank you for your kind attention!