

The Japanese Leniency Program: Pro-Cartel or Anti-Cartel?

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Japan has, with the adoption of a leniency program in 2005, caught up with an international trend in the enforcement of competition law. The rules went into effect in 2006 and have since then triggered over 150 applications. The JFTC has taken decision in a little over 20 cases. Compared to the early start of the leniency programs in the United States and the European Union, this start could at least be called successful. Despite this successful start, the Japanese government made several changes to its original leniency scheme.

This presentation will investigate whether the changes to the Japanese Leniency Program actually contribute to an even more successful leniency policy in Japan. By engaging in this kind of research, this presentation does in no way pretend to create an optimal leniency program for Japan. Such an endeavor will eventually fail for any country, as a leniency program basically is a strategy determining game. In order to choose for an optimal outcome of the strategy, full information for each of the participants of the game on each other is required. This may seldom be the case. The aim of the presentation is rather limited to analyze whether there are enough incentives to report illegal cartel activity and whether these incentives are not hampered by legislative shortcomings.

In order to evaluate the Japanese Leniency Program, the presentation will engage in a law and economics analysis as well as a comparative one. The former is necessary to indicate the environment in which information can be given in return for a lenient treatment. The latter will be used to exemplify, and occasionally to contradict, the former. Differently, the accumulated experiences of the United States and the European Union will basically be used to investigate the predictions made by the economic theories. By using this information, a statement will be made regarding the Japanese legislation.