

Client Alert

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JFTC publishes report on issues that may arise from IPO offering price setting processes, etc. under the Japanese Antimonopoly Act

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In brief

On January 28, 2022, the Japan Fair Trade Commission ("JFTC") published a report on specific antitrust and competition law issues that may arise from initial public offering ("IPO") price¹ setting processes, etc. under the Japanese Anti-Monopoly Act ("JAA"). The JFTC is expected to focus on these issues in the near future, making it necessary for companies to identify and rectify problematic practices as soon as possible.

Background

The JFTC states in the report that offering prices for startup companies set without sufficient explanation or reasonable grounds may give rise to concerns under the JAA. As such, securities companies involved in IPOs need to review their offering price-setting processes, including whether sufficient discussions have been held with the startup companies, to ensure that they are not setting offering prices unilaterally.

The report points out the following as potential violations of the JAA:

- Requests for the assignment of a specific securities company as lead underwriter and unjust interference with efforts by other securities companies to serve as lead underwriter

Unjust interference by a securities company in the efforts of other securities companies to serve as lead underwriter (eg, by pressuring the startup company via its affiliated banks and venture capital companies) may give rise to concerns under the JAA. Securities companies are expected to fairly compete for the role of lead underwriter by appropriately explaining their services to the startup company.

- Information exchange, etc. on underwriting commission rates by securities companies

Arrangements by competing securities companies on the underwriting commission rate may constitute an unreasonable restraint of trade (ie, a cartel) under the JAA. Any exchange of information on underwriting commissions by securities companies — even without a clear agreement — invites the risk of a violation of the JAA. Securities companies are expected to refrain from engaging in

¹ Offering price means the price at which startups sell their shares to investors before listing.



such information exchanges and to fairly compete on underwriting commission rates and service content.

- Abusing the disparity in bargaining power with a startup company to unjustly disadvantage it by unilaterally setting an offering price

Where a lead underwriter with a superior bargaining position to a startup sets a low assumed offering price without sufficient explanation or reasonable grounds (eg, an "IPO discount"), it may constitute an abuse of superior bargaining position under the JAA.

In order to avoid concerns under the JAA, securities companies should observe the following throughout the IPO process when setting an offering price : (i) set the assumed offering price based on sufficient discussion with the startup company; (ii) allow other securities companies to act as joint lead underwriters or change the lead underwriter at the startup company's request; and (iii) do not prevent the startup company from seeking a second opinion with respect to the proposed IPO.

Recommended actions

The JFTC's report announces that it will vigorously investigate future transactions involving IPOs for JAA concerns. Securities companies are strongly advised to investigate and, if necessary, rectify any potentially problematic IPO-related trade practices.