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Leniency in Japan
An Empirical Survey of its Use

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I. Introduction

Leniency programs have been lauded as an effective tool to enforce competition law against cartels.[1] The basis for the positive view is often the numerical approach on decisions or applications. Enforcement agencies often emphasize the discrepancy in decisions before and after adopting a leniency program.[2] Cartel decisions usually see a rise after the adoption of a leniency program. If it is not the discrepancy that is stressed, the enforcement agencies highlight the high number of applications their leniency program triggers.[3] Sometimes, the success is attributed to the increase of the amount of the fine.[4]

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[1] *See*, *e.g.*, Toshiyuki Nambu, A Successful Story: Leniency and (International) Cartel Enforcement, 3 JOURNAL OF EUROPEAN COMPETITION LAW & PRACTICE 158 (2014); James Griffin, The Modern Leniency Program after Ten Years – A Summary Overview of the Antitrust Division's Criminal Enforcement Program (2003) (Paper presented at the American Bar Association Annual Meeting August 12 in San Francisco), http://www.justice.gov/atr/public/speeches/201477.htm (Accessed 21 May 2013); Philip Lowe, What's the Future for Cartel Enforcement (2003) (paper presented at the Understanding Global Cartel Enforcement 11 February in Brussels), http://ec.europa.eu/competition/speeches/text/sp2003_044_en.pdf (Accessed 21 May 2013).

[2] *See* Lowe, *supra* note 1.

[3] *See* Nambu, *supra* note 1, at 159.

[4] *See* Griffin, *supra* note 1; *See also* Akinori Uesugi, Trends in Cartel Regulation 17 (2010), http://asiacompetition.org/pdf/Session1/0.%20Akinori%20Uesugi.pdf (accessed March 25, 2014).

A sole focus on the numerical data may be misleading to address the effectiveness of a leniency programs. Maurice Stucke has pointed out some reasons.[5] Writing on whether the enforcement regimes with a leniency program are effectively deterring cartel activity, Stucke concludes that it is not and he puts forward four indicators explaining the persistence of cartels. A first indicator is the fact that penalties do not decrease. A second indicator is that the duration of cartels does not diminish. A third indicator is the continued workload of the enforcement authority in dealing with cartels. A fourth indicator is that firms persist in cartel formation even after publicizing record high fines.

Whereas Stucke's approach towards the effectiveness of leniency programs is theoretical, few studies have undertaken an empirical approach. Daniel Sokol engaged in a survey on the effectiveness of the leniency program in the United States.[6] The outcome of his survey is that leniency applications are mainly an expression of strategic behavior among firms. If the leniency program indeed triggers strategic behavior, it is questionable that it actually contributes to deterrence. Caron Beaton-Wells researched the Australian leniency program by conducting interviews with several practitioners involved in the leniency application process.[7] Based upon surveying the Australian case, her general conclusion is to be careful with theoretically accepted principles in relation to leniency programs. In reality, these principles may not work or play out differently.

This paper would like to add to the empirical research by focusing on Japan. The purpose of this paper is to inform the reader on what is at play in Japan. This paper does not yet aim at connect conclusions to the empirical data. The empirical data obtained needs to be further checked with a qualitative study. The reason for already making the findings public is twofold. First, there is a wealth of information available on the use of the Japanese leniency program but only in Japanese language. Second, the quantitative study has shown great parallels between the answers of lawyers and cartel participants.

The paper is structured as follows. Section II provides an introduction into the legal framework of the leniency program in Japan. This section explains Article 7-2 paragraphs 10-18 of the Antimonopoly Law (hereinafter "AML")[8]. Section III surveys data on the leniency program. The focus will be on the number of leniency applications and decisions, the types of cartel that have been revealed, the ratio between grants of immunity and reduction, the number of firms that have received multiple lenient treatment, the number of international cartels, the number of listed and non-listed firms as recipients of leniency and the kind of industries involved. In section IV, the paper introduces the results of a

[5] *See* Maurice Stucke, Am I a Price Fixer? A Behavioral Economics Analysis of Cartel Law, in Caron Beaton-Wells and Ariel Ezrachi (eds.) CRIMINALIZING CARTELS: A CRITICAL INTERDISCIPLINARY STUDY OF AN INTERNATIONAL REGULATORY MOVEMENT 263-288 (2010).

[6] *See* Daniel D. Sokol, Cartels, Corporate Compliance, and What Practitioners Really Think about Enforcement, 78 ANTITRUST LAW JOURNAL 201 (2012).

[7] *See* Caron Y. Beaton-Wells, Immunity for Cartel Conduct: Revolution or Religion? An Australian Case Study, JOURNAL OF ANTITRUST ENFORCEMENT 1 (2013); Caron Beaton-Wells, The ACCC Immunity Policy for Cartel Conduct: Due for Review, 41 ABLR 171 (2013).

[8] Law No. 54 of 1974, shiteki dokusen no kinshi oyobi kousei torihiki no kakuho ni kan suru houritsu, trans. "Law Concerning the Prohibition of Private Monopolies and the Assurance of Fair Trade". (hereinafter AML).

survey among cartelists and lawyers. This section will, before concluding, provides insights on the leniency program in terms of the drivers of the leniency program, the increased fear for detection due to leniency, the impact of sanctions on the leniency program, the procedure of the leniency program and the perception towards compliance with cartel law.

II. The Japanese Leniency Program

A. Pre- and Post-Investigation Leniency

The Japanese leniency program is inscribed in the AML in Article 7-2 from paragraphs 10 to 18. Article 7-2 of the AML mainly prescribes the surcharges, a kind of administrative fine that allows the JFTC to take away the financial profits gained by an illegal competition law activity.[9] By incorporating the leniency program into this article, the scope of application of the program automatically reduces. The leniency program will not be extendable to the other sanctions provided for in the AML, whether they are criminal penalties or private damages actions.[10]

Within this limited scope of application, a distinction is made between the pre-investigation stage,[11] in which the Japan Fair Trade Commission (hereinafter "JFTC") has not yet launched an investigation (dawn-raid), and the post-investigation stage,[12] in which the JFTC has started an investigation. Once the JFTC has started the investigation, the firms[13] are allowed to submit their leniency application up to 20 business days after the dawn raid.[14] The incentives for self-reporting, limited to a maximum of five firms,[15] vary between the two stages.

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[9] The amount of the surcharge is calculated by multiplying the amount of the sales of the relevant products or services during the period in which the unreasonable restraint of trade was implemented (maximum period is three years) by the surcharge calculation rate of the specific industry. The general category of surcharge is 10%. This can be aggravated to 15% if the firm has been subject to a surcharge payment during the last 10 years or has played a major role in the unreasonable restraint of trade. The surcharge could increase to 20% if the firm falls within both aggravation categories just described. A mitigation of the surcharge is also possible on the condition that the company ceases its violation one month prior to the investigation of the JFTC. In this case, the surcharge will be 8%. The surcharge rate differs for retailers and wholesalers. The former has a general rate of 3%, an aggravated rate of 4.5% or 6%, and a mitigated rate of 2.4%. The latter has a general rate of 2%, an aggravated rate of 3% or 4%, and a mitigated rate of 1.6%.

[10] *See* Akira Inoue, JAPANESE ANTITRUST MANUAL: LAW, CASES AND INTERPRETATION OF THE JAPANESE ANTIMONOPOLY ACT 113-4 (2007).

[11] *See* Art. 7-2(10) and (11) of the Antimonopoly Law (hereinafter "AML").

[12] *See* Art. 7-2(12) of the AML.

[13] The present paper addresses the subject of competition law not according to the terminology used in the Japanese AML. This paper addresses the subject of competition law as "firm" and not as "entrepreneur". However, whenever the term firm is used in the context of the AML, it should be understood as entrepreneur in the sense of the AML.

[14] *See* Section 5, Rules on Reporting and Submission of Materials Regarding Immunity from or Reduction of Surcharges, Fair Trade Commission Rule No. 7 of 2005, http://www.jftc.go.jp/en/legislation_guidelines/ama/pdf/immunity.pdf (accessed March 25, 2014) (hereinafter "Rule No. 7").

[15] The original leniency program only provided for leniency for up to three firms. Experts within a study group under the Cabinet Office, the *dokusen kinshi hou kihon mondai kohandai*, trans. "the Round Table Conference on the Fundamental Problems of the Antimonopoly Law", advised to extend the potential for

In the pre-investigation stage, the leniency program offers full immunity for the first firm who applies for and obtains leniency successfully.[16] Four more firms can receive partial leniency in this stage. The second firm who applies successfully will get a reduction of 50%,[17] while the third,[18] fourth[19] and fifth firms[20] who obtain leniency successfully will receive a reduction of 30% each. It is important to note that only the fourth and fifth firms have to provide information on the facts that have not been ascertained by the JFTC yet.[21] Any other applicant beyond the fifth firm will not be granted a reduction.[22]

If, however, an investigation has already begun, only partial leniency is available. By waiving 30% of the surcharge for each firm in the post-investigation stage, there is no discrimination based on the order in which the firms come forward with information.[23] Unlike in the pre-investigation stage, only three applicants shall receive reduction of the surcharges in the post-investigation stage on the condition that no more than two firms successfully obtained leniency in the pre-investigation stage.[24] If the investigation was started *ex officio*, and thus no successful applicants in the pre-investigation stage exist, no more than three firms shall receive reduction in the post-investigation stage.[25] For post-investigation applicants, the same condition applies to the fourth and fifth applicants under the pre-investigation stage. The information submitted needs to include facts that are not yet ascertained by the JFTC.[26]

B. Conditions Attached to a Leniency Application

In order to enjoy immunity from or a reduction of the surcharge, the applicant has to fulfill certain conditions. It is not sufficient that an applicant wins the race to Kasumigaseki. Immunity will only be granted in the pre-investigation stage to the applicant who first submits a report.[27] While the 2005 leniency program used to require

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leniency to five firms. This group comprised academics, business people, the private bar and consumer organizations. The JFTC officials did not form part of this group, but it decided to respect the decision of this panel. *See* interview with Takujiro Kono, Senior Officer for Leniency Program, JFTC, in Tokyo, Japan (17 February 2012).

[16] *See* Art. 7-2(10) of the AML.

[17] *See* Art. 7-2(11)(i) of the AML.

[18] *See* Art. 7-2(11)(ii) of the AML.

[19] *See* Art. 7-2(11)(iii) of the AML.

[20] Ibid.

[21] Ibid.

[22] *See* Art. 7-2(12) of the AML.

[23] *See* Art. 7-2(12)(i) of the AML.

[24] *See* Art. 7-2(12) of the AML.

[25] Ibid.

[26] *See* Art. 7-2(12)(i) of the AML.

[27] The process of submitting reports to the JFTC is described in detail in the Rules on Reporting and Submission of Materials Regarding Immunity from or Reduction of Surcharges, Fair Trade Commission Rule No. 7 of 2005, *see* http://www.jftc.go.jp/en/legislation_guidelines/ama/pdf/immunity.pdf (accessed March 25, 2014). In order to apply for leniency, the applicant has to submit three different kinds of reports. The procedure for the leniency application starts by faxing Form No. 1. This form only requires a statement on the identity of the applicant and a short description of the illegal activity, as well as the names of the other firms involved. Following this report, the applicant has to submit a more detailed Form No. 2.

each firm to submit a report independently of other firms, since the 2009 amendments to the AML, reports can now be submitted either individually or jointly.[28] The advantage of a joint application, which is only available for firms which are in a parent-subsidiary relationship,[29] is that they can secure the same order of application for all.[30] It is not possible to join applications retroactively once individual applications have been submitted. In such a case, each applicant will be granted leniency, if the application was successful, according to the order of submission.

The submission of the report needs to be kept secret from any third party.[31] Once reported, the applicant has to terminate the illegal conduct[32] and provide additional assistance in the form of information upon the request of the JFTC.[33] The information provided must not turn out to be false.[34] Further, the applicant may not have coerced other firms to participate in the leniency program or prevented an firm from ceasing such conduct.[35] Similar conditions apply to the applicants who are only entitled to a reduction of the surcharge.[36]

In the pre-investigation stage, it is important to determine the order of the applicants because the rewards differ. The procedure in this regard is quite rigid.[37] The applicants need to fax a report (Form 1)[38] to a centrally established fax number[39]. The submission of

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Besides the previously reported information, this form needs to give a detailed overview of all persons involved in the illegal activity and a listing of the attached evidentiary materials. In the post-investigation stage, the applicant will have to submit Form No. 3.

[28] *See* Art. 7-2(10)(i) and (13) of the AML.

[29] *See* Art. 7-2(13) of the AML. This article delineates the applicability of a joint application to the firms that are in a direct or indirect parent-subsidiary relationship. This means that more than 50% of the voting rights have been to be owned by the parent.

[30] *See* Art. 7-2(13) of the AML.

[31] *See* Section 8, Rule No. 7.

[32] *See* Art. 7-2(10)(ii) of the AML.

[33] *See* Art. 7-2(16) of the AML.

[34] *See* Art. 7-2(17)(i) of the AML. Bunka Shutter Co., Ltd. has seen its leniency status revoked based upon the submission of false information. *See* Robert Grondine, Joy Fuyuno and Jiro Tamura, Japan Fair Trade Commission Watch 4 (July 2010), http://www.whitecase.com/files/Publication/833db3fb-0112-4778-9c4c-daf4d04a9655/Presentation/PublicationAttachment/28efcec4-fe5b-49e2-8cd2-e6fdbe50d0a3/JFTC_Watch_07_2010.pdf (accessed March 25, 2014).

[35] *See* Art. 7-2(17)(iii) of the AML.

[36] *See* Art. 7-2(11)(i), (ii) and (12)(i) of the AML on report and evidence; Art. 7-2(11)(iv) and (12)(ii) of the AML on termination of the illegal conduct; Art. 7-2(16) of the AML on continued assistance and Art. 7-2(17) of the AML on false information and coercion.

[37] *See* Rule No. 7 of 2005.

[38] The first report (Form 1) requires the leniency applicant to submit the following information: an outline of the infringement, a description of the cartel conduct, and the duration of the infringement. Rule No. 7 further provides some guidelines as to what each of these categories mean. The outline of the infringement requires a detailing of the goods and services in order to delineate any kind of relevant market. The description of the cartel conduct includes the naming of the cartel conduct as price fixing, bid rigging, market allocation and so on. Once the cartel conduct has been names, the leniency applicant is also required to identify the other cartel members and/or the involvement of trade associations. Depending on the type of the cartel, conduct specific information should be provided. For price fixing, this relates to the price setting. For bid rigging, this could be the contract awarding public agency. The duration of the infringement is calculated based upon the date of which it is certain that there was an implementation of the infringing act.

the first report only secures the position of the applicant provisionally.[40] Failing to submit the second report (Form 2)[41] and the required evidentiary materials within the time period stipulated by the JFTC (usually two weeks) automatically revokes the applicant's previously secured position.[42] Since no race needs to be stimulated for the post-investigation stage, all applicants receive a similar degree of leniency, only one report (Form 3)[43] has to be submitted.

Even though it is the main practice that Form No. 2 and Form No. 3 are submitted in written form,[44] the JFTC also accepts oral statements.[45] The oral statement will be made in front of the Senior Officer for Immunity from or Reduction of Surcharges and this at the premises of the JFTC. If the oral statement is to replace Form No. 2, the leniency applicants need to respect the time period stipulated by the JFTC. An oral statement replacing Form No. 3 has to be submitted within 20 business days after the dawn raid. The Rule No. 7 does not specify the circumstances in which oral statements could be made. The literature seems to accept the threat of discovery procedures may constitute the exceptional circumstance requiring oral statement.[46]

An applicant who successfully submits the reports and evidence will be promptly informed about the receipts of such documents.[47] This notice of acceptance does not legally guarantee the grant of immunity or reduction.[48] Leniency is only officially granted by the JFTC when the decision is taken to issue the surcharge payment orders against the other AML violators.[49]

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[39] This fax number is 03-3581-5599 (for faxes from outside Japan the number is +81-3-3581-5599). Section 1(2), Rule No. 7.
[40] *See* Section 7, Rule No. 7.
[41] The second report (Form 2) is more detailed than the first one. Besides a repetition of the information already provided in the first report, the second report also requires the identification of the co-conspirators, the names and titles of the employees of the applicant that were involved and the names and titles of the employees involved at the side of the co-conspirators, and a list of materials that evidences the infringement. Rule No. 7 further elaborates this Form 2, by saying that all employees, executives and other, current and past, have to be listed. As evidence of the infringement, memoranda of meetings, business reports, any kind of related correspondence with the cartel members, or even written reports related to the infringement that are carrying the signatures or seals of the executives or employees. Note that all information has to be submitted in Japanese or accompanied by Japanese translations.
[42] *See* Art. 7-2(17)(ii) of the AML.
[43] Form No. 3 is basically as detailed as Form No. 2. However, in this form, extra information should be given regarding the goods or services or the situation surrounding the implementation.
[44] *See* Section 6, Rule No. 7. Form No. 2 can either be directly delivered to the Senior Officer for Leniency Program, sent by registered mail to this Officer or transmitted in facsimile. Note that Section 4(2), Rule No. 7 stipulates that Form No. 3 has to be transmitted in facsimile.
[45] *See* Section 3(2), Rule No. 7.
[46] *See* Hideto Ishida and Etsuko Hara, Japan: Cartels, 2013 THE ASIA-PACIFIC ANTITRUST REVIEW 72, at 74.
[47] *See* Art. 7-2(15) of the AML.
[48] *See* Fumio Koma, Akira Inoue and Junya Ae, Japan, in Samantha J. Mobley & Ross Denton (eds.) GLOBAL LENIENCY MANUAL 2011, 322 (2011).
[49] *See* Art. 7-2(18) of the AML.

III. Surveying the Data on the Leniency Program

A. Applications and Decisions in Numbers

The leniency program in Japan has rendered many applications. Reporting on the fiscal year 2012, the JFTC states that there have been a total of 725 applications.[50] These 725 applications are divided between 79, 74, 85, 85, 131, 143 and 102 applications for leniency respectively for the fiscal year of 2006, 2007, 2008, 2009, 2010, 2011 and 2012. Put into a table, we get the following result:

Fiscal Year	2006	2007	2008	2009	2010	2011	2012	Total
Number of applications	79	74	85	85	131	143	102	725

Number of Leniency Applications between Fiscal Years 2006-2012. Source: JFTC website.[51]

Not all these leniency applications have led to a final decision on a cartel. The decision making started relatively slowly to than increase, after which it took the shape of a wave. In the fiscal year 2006, 6 (5) decisions were based on a leniency application.[52] This increased to 16 (17) decisions in the fiscal year 2007,[53] to drop again in the fiscal year of 2008 to 8 decisions. Fiscal year 2009 has the highest number of cartel decision based on leniency ever, with 21 decisions based on leniency applications. Fiscal year 2010 and 2011 were again low with respectively 7 or 9 decisions based on leniency applications. The number went up again in the fiscal year 2012 to 19 (20) decisions.[54] The total amount of cartel decisions based upon a leniency program is thus 86 (87).[55] In the 86 (87) cartel decisions, leniency was granted to a total of 202 firms. This number is divided in 16, 37, 21, 50, 10, 27 and 41 for the respective fiscal year of 2006, 2007, 2008, 2009, 2010, 2011 and 2012.

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[50] *See* JFTC, heisei 24 nendo ni okeru dokusenkinshi ihan jiken no shori joukyou suite [Concerning the Enforcement Status of the Antimonopoly Law Infringement Cases of the Fiscal Year 2012], http://www.jftc.go.jp/houdou/pressrelease/h25/may/130529.html (accessed March 25, 2012).

[51] Id.

[52] Counting the publicized data of the leniency program, fiscal year 2006 has 5 decisions. *See* JFTC, kachoukin genmenseido no tekiyou jigyousha no kouhyou ni tsuite [Publication of the Entrepreneur's Application for Exemption of Surcharges], http://www.jftc.go.jp/dk/genmen/kouhyou.html (accessed March 25, 2014) (the counting spreads goes from April 1, 2006 to March 31, 2007 in order to cover fiscal year 2006).

[53] Counting the publicized data of the leniency program, fiscal year 2007 has 17 decisions. *See* JFTC, kachoukin genmenseido no tekiyou jigyousha no kouhyou ni tsuite [Publication of the Entrepreneur's Application for Exemption of Surcharges], http://www.jftc.go.jp/dk/genmen/kouhyou.html (accessed March 25, 2014) (the counting spreads goes from April 1, 2007 to March 31, 2008 in order to cover fiscal year 2007).

[54] Counting the publicized data of the leniency program, fiscal year 2012 has 20 decisions. *See* JFTC, kachoukin genmenseido no tekiyou jigyousha no kouhyou ni tsuite [Publication of the Entrepreneur's Application for Exemption of Surcharges], http://www.jftc.go.jp/dk/genmen/kouhyou.html (accessed March 25, 2014) (the counting spreads goes from April 1, 2012 to March 31, 2013 in order to cover fiscal year 2012).

[55] The official data states 86 decisions. *See* JFTC, *supra* note 50. However, if it is 20 decisions for fiscal year 2012, the number should be 87 decisions. *See supra* note 54.

If these data would be systematically represented in a table, it would look as follows:

Fiscal Year	2006	2007	2008	2009	2010	2011	2012	Total
Number of Decisions	6 (5)[56]	16 (17)[57]	8	21	7	9	19 (20)[58]	86 (87)[59]
No. of Firms Receiving Leniency	16[60]	37[61]	21	50	10	27	41	202

Number of Decisions based upon Leniency & Leniency Receiving Firms between Fiscal Years 2006-2012. Source: JFTC website.[62]

B. Price Cartels and Bid Rigging

In terms of types of cartels, the 86 (87) decisions can be split between price cartels and bid rigging cartels. The bid rigging cartels could be split again between the bid rigging cases in which the customer was a public or private procurement. In fiscal year 2006, all decisions were bid rigging cases involving public procurement. For fiscal year 2007, the number of 16 decisions is split between 10 bid rigging cases involving public procurement and 7 price cartels. The number of price cartels is much higher than bid rigging in fiscal year 2008, when 6 price cartels were fined against 2 bid rigging cases involving public procurement. Bid rigging cases peak again in fiscal year 2009 to a number of 16. 7 of these 16 cases involve private procurement, while the remaining 9 involve public procurement. 5 decisions involve price cartels. Fiscal year 2010 counts for 5 price cartels and only 2 bid rigging cases involving public procurement. 5 private procurement bid rigging cases were decided on in fiscal year 2011. During the same period, the JFTC took 4 decisions against price cartels. The cases decided in fiscal year 2012 are again mainly bid rigging cases. 18 bid rigging cases, all involving private procurement, were decided. In the same fiscal year, only 2 decisions were price cartels.

[56] *See supra* note 52.
[57] *See supra* note 53.
[58] *See supra* note 54.
[59] *See supra* note 55.
[60] Note that this is an official number of the JFTC. A manual counting of the firms whose leniency application is published, renders 15 applicants (this includes the firms exempted from a surcharge for other reasons than the leniency application, even though these firms submitted one). *See* JFTC, *supra* note 52 (the counting spreads goes from April 1, 2006 to March 31, 2007 in order to cover fiscal year 2006).
[61] Note that this is an official number of the JFTC. A manual counting of the firms whose leniency application is published, renders 38 applicants (this includes the firms exempted from a surcharge for other reasons than the leniency application, even though these firms submitted one). *See* JFTC, *supra* note 51 (the counting spreads goes from April 1, 2007 to March 31, 2008 in order to cover fiscal year 2007).
[62] See JFTC, *supra* note 50.

A schematic representation of these data would give the following result:

Fiscal Year	2006	2007	2008	2009	2010	2011	2012	Total[63]
Price Cartels	0	7	6	5	5	4	2	29
Bid Rigging (public)	5	10	2	9	2	0	0	28
Bid Rigging (private)	0	0	0	7	0	5	18	30

Decisions based upon Leniency Divided by Category of Cartels between Fiscal Years 2006-2012. Source: JFTC website.[64]

C. Immunity and Reduction

A total of 57 firms have received immunity in Japan over the period of 6 years of implementation of the leniency program.[65] Immunity has barely been followed by a 50% pre-investigation reduction. Not more than 12 firms have enjoyed the 50% reduction of the surcharge by the end of fiscal year 2012. The 30% reduction, to the contrary, has been frequently used. This reduction rate was often situated in the post-investigation stage at the early operational period of the leniency program (*i.e.* until the end of 2009). It can be presumed that this is also the case for the later operational period of the leniency program, even though it is not easy to draw such conclusion with certainty from the information available in JFTC documents. The difficulty to make an accurate statement on the number of post-investigation reduction is attributable to fact that a larger number of firms have become eligible for reduction.

[63] This table follows the counting according to what has been described in footnote 52-62. *See supra* notes 52-62.

[64] *See* JFTC, kachoukin genmenseido no tekiyou jigyousha no kouhyou ni tsuite [Publication of the Entrepreneur's Application for Exemption of Surcharges], http://www.jftc.go.jp/dk/genmen/kouhyou.html (accessed March 25, 2014); *See also* Kaori Yamada, "Antitrust and Procurement – Japan" (2011) 7 COMPETITION L. INT'L 87.

[65] Counting is based upon the information available at the JFTC website. The information is not directly available, but requires a counting of the data across different years. *See* JFTC, *supra* note 64.

The next table provides an overview of the number of firms receiving immunity, firms receiving 50% reduction and firms receiving 30% reduction.

Fiscal Year	2006	2007	2008	2009	2010	2011	2012	Total
Immunity	4	14	6	4[66]	1	8	20	57
50% Reduction	0	2	2	0	1	4	3	12
30% Reduction	11[67]	16[68]	10[69]	43[70]	8[71]	15[72]	16[73]	119
No Surcharge Levied	0	6	3	3	0	0	2	14

Number of Immunities and Reductions per Fiscal Year between Fiscal Years 2006-2012. Source: JFTC website.[74]

D. Recipients of Multiple Leniency Grants

The official number of firms that have been granted leniency is 202. Going over the list of firms that have received leniency, it is obvious these 202 firms are not all different firms. It often occurs that one firm receives leniency more than once. This happens when the cartel is narrowly defined. A cartel can be narrowly defined based upon a narrow identification of the product, the size of the sales volume towards particular customers, or the geographical range in which these products are distributed.

Going over the list of 202 firms that have publicized their leniency application, one can notice that only 42 applicants have been mentioned once in relation to a cartel. All other grants of leniency, *i.e.* a total of 160, compromise firms that have applied for leniency more than once. The range of times a firm has applied for leniency goes from two to nine times. Based upon this data, it is possible to say that only 81 different legal entities have been entitled to one form of leniency. If we present the data schematically, we get the following result:

No. of times the same firm obtains leniency	1	2	3	4	5	6	7	8	9	total
No. of firms receiving X times leniency	41	14	8	5	5	1	2	2	3	81[75]

Number of Times a firm has been Granted Leniency. Source: JFTC website.[76]

[66] There may be more immunity applicants, but the information has not been made available on the website.
[67] It is most likely that all 30% reductions in this fiscal year are post investigation reductions.
[68] It is most likely that 15 out of the 16 30% reductions in this fiscal year are post investigation reductions.
[69] For 2 out of the 10 30% reductions in this fiscal year, it cannot be said whether it is pre- or post-investigation reduction.
[70] All of the 30% reductions are post-investigation reductions.
[71] For 2 out of the 8 30% reductions in this fiscal year, it cannot be said whether it is pre- or post-investigation reduction.
[72] For 5 out of the 15 30% reductions in this fiscal year, it cannot be said whether it is pre- or post-investigation reduction.
[73] For 3 out of the 16 30% reductions in this fiscal year, it cannot be said whether it is pre- or post-investigation reduction.
[74] *See* JFTC, *supra* note 64 (counting by the author).
[75] This is the number of different legal corporate entities that have received leniency.
[76] *See* JFTC, *supra* note 64 (counting by the author).

Combining the data above with the number of formal decisions taken by the JFTC, one could conclude that the number of 86 (87) cartel decisions is made up by several cartels that closely link to each other. The leniency program should by no means be regarded as a tool that brought about 86 (87) cartels that are completely separate from each other. Bringing the cartels together into groups, based upon the composition of the same cartelists, one could divide the number of cartels as follows

Fiscal Year	2006	2007	2008	2009	2010	2011	2012	Total
No. of cartel decisions[77]	5	17	8	21	7	9	20	87
No. of groups of cartels	2	10	7	5	4	5	7[78]	40

Cartel Decisions that are Linked Compared to the Real Number of Cartel Decisions. Source: JFTC website.[79]

Even if we can delineate 40 different groups of cartels, it is still possible to detect linkages between the different groups. Even though these linkages are not as many, it is possible to see that Furukawa Electric Ltd., Yazaki Ltd., and Denso Ltd. are key players in several cartels across the previously identified groups of cartels.

E. Domestic Firms Apply, even in Case of International Cartels

The leniency program does not discriminate between domestic and foreign firms. Both are eligible to apply for leniency in Japan. Whether foreign firms would apply has much to do with the territorial scope of the AML. For a long time, the JFTC took the view that jurisdiction could only be asserted when there was a strong territorial link.[80] Whereas this link was originally conceptualized as the presence of a firm or its subsidiary, the territoriality link has extended, since the Nordion case, to the implementation of the anticompetitive agreement in Japan.[81]

Ten years after the Nordion case, the JFTC, without officially announcing that it is embracing a specific doctrine on extraterritoriality, did go one step further in 2008 in the Marine Hose cartel.[82] The JFTC issued a cease-and-desist order to foreign firms of the Marine Hose cartel even though they had not done any business in Japan. These firms were not subject to a surcharge, as the Japanese AML only allows the calculation of the surcharge based on actual turnover in the Japanese market. When Japanese firms were detrimentally affected by a cartel of foreign cathode ray tubes producers that sold their products outside of Japan to the subsidiaries of these Japanese firms, the JFTC decided in

[77] *See supra* notes 52-62 (this table uses not the official data as published by the JFTC, but the data as they appear on the website of the JFTC that is making the leniency applications public. *See* JFTC, *supra* note 64).
[78] The number of seven is obtained by splitting the car parts cartel into separate cartels based upon different products.
[79] *See* JFTC, *supra* note 64 (counting by the author).
[80] *See* Masako Wakui, ANTIMONOPOLY LAW: COMPETITION LAW AND POLICY IN JAPAN 274 (2008).
[81] *See* Yoshio Ohara, gaikoku jigyousha ni yoru nihon shijou he no sanyuu wo haijo suru koui [The Conduct to Exclude Access to the Japanese Market by Foreign Companies], 2002 MANUAL FOR CONSUMERS AND SMALL AND MEDIUM SIZED ENTREPRENEURS ON THE APPLICATION OF COMPETITION LAW 46-50; *but see* Etsuko Kameoka, COMPETITION LAW AND POLICY IN JAPAN AND THE EU 193 (2014) (claiming that it is still unclear on whether it was the implementation doctrine or the effects doctrine).
[82] *See* Kameoka, *supra* note 81, at 195.

2010 that it could assert jurisdiction over the anticompetitive behavior of the foreign firms. It can thus be said that in the Cathode Ray Tubes cartel the jurisdiction was based on fact that the cathode ray tube contract were negotiated by the Japanese parent firms and that the contracted goods were to be delivered.[83]

Even though a shift in the JFTC's policy towards the interpretation of the scope of the AML is noticeable, it is a recent phenomenon. If foreign firms do not expect to be caught in Japan for cartel behavior that takes place outside of Japan, these firms will not apply for leniency. The data also confirm this. No foreign firm has ever applied for leniency in Japan.[84]

Despite the fact that foreign firms have never applied for leniency in Japan, Japanese firms have applied for leniency for cartels that have been exposed abroad. Due to the extensive cooperation agreements with foreign enforcement authorities, the JFTC is contacted when it becomes obvious that a cartel has an international dimension and thus spreads over more than one jurisdiction. In this sense, foreign enforcement efforts could have triggered several Japanese investigations. The first one to mention is the Marine Hose cartel. The second one is the car parts cartel. The car parts cartel in Japan is, however, subdivided into many smaller cartels. This division is based upon different products, but also upon different clients to which these products were supplied. In total, these car parts cartel cases stretch over 22 (out of the 86 (87)) different cartel decisions.

F. Listed versus Non-Listed Firms

Listed firms count for the majority of the leniency receiving firms. Out of the 92 different corporate entities that have applied for and received leniency, 50 firms are listed. When the firms are not listed, still there is a majority of firms, 25 in total, that are controlled by a listed firm. Only a minority of the firms that are granted leniency, a mere 18, has no listing or is not controlled by a listed firm.[85]

The application of listed firms for leniency has contributed to the success of the leniency program. These firms have, according to Toshiyuki Nambu, been confronted with the

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[83] *See* Cease and Desist Order and Surcharge Payment Orders against Manufacturers of cathode Ray Tubes for Televisions (October 7, 2009), http://www.jftc.go.jp/en/pressreleases/yearly-2009/oct/individual-000037.files/2009-Oct-7.pdf (accessed March 25, 2014); *See also* Kozo Kawai, Futaba Hirano and Nobuhiro Tanaka, Japan, 2013 THE PUBLIC COMPETITION ENFORCEMENT REVIEW 213, http://www.jurists.co.jp/en/publication/tractate/docs/The%20Public%20Competition%20Enforcement%20Review%20-%20Fifth%20Edition%20-%20%28Japan%20Chapter%29.pdf (accessed March 25, 2014); Competition Policy International, Japan Fair Trade Commission: Aggressive Tackling Cartels, Bid-Rigging, & Monopolization, 2010 The CPI Antitrust Journal 2-3, https://www.competitionpolicyinternational.com/file/view/6301 (accessed March 25, 2014).

[84] *But see* Ryunosuke Ushijima, Price-fixing Conspiracy on Cathode Ray Tubes ("CRT") for Television Sets, http://www.antitrustasia.com/sites/default/files/PriceFixingConspiracyonCRT.pdf (accessed March 25, 2014) (insinuating that Chunghwa Picture Tubes Co. Ltd and its Southeast Asian subsidiary were granted immunity under the leniency program. This immunity application is not made public on the JFTC website. *See* JFTC, *supra* note 64).

[85] The listing has been checked based upon Toyo Keizai, Japan Company Handbook (Winter 2014).

leniency practice abroad and are therefore not scared to use it in Japan.[86] This explanation may well hold stake, but is worrisome. If firms are familiar with a leniency program and still engage in cartel activity, it could indicate that a leniency program does not deter these firms to enter in illegal cartel activity.

The following table separates, per fiscal year, the number of different corporate entities that receive leniency. For each fiscal year, it is further indicated how many of these corporate entities were listed firms and how many non-listed. The non-listed firms are separated into firms that are not controlled by a listed firm or any other parent firm and firms that are controlled by a listed (or a parent firm). The result is shown in the table below:

Fiscal Year	2006	2007	2008	2009	2010	2011	2012	Total
No. of Firms Receiving Leniency	16[87]	37[88]	21	50	10	27	41	202
Different Corporate Entities per Fiscal Year[89]	6	23	18	12	7	15	11	92
Listed	4	13	13	3	1[90]	5	9	48
Controlled by another (Listed) Firm	1	5	4	6[91]	3	5[92]	0	24
Non-listed	1	5	1	3	3	5	2	20

Listed versus non-Listed Cartel Participants. Source: JFTC website & Japan Company Handbook.[93]

G. The Industries

The price cartels and the bid rigging cartels are active in a wide variety of industries. The construction industry (including the engineering industry) has been the main industry in the early bid rigging cases involving public procurement. Bid rigging cases involving public procurement have further been driven by the survey industry, the medical industry, conduits industry, the cable industry (including optical fiber ones), engineering works. The car and car parts industry (wire harnesses, wiper systems, car starters, radiators, electric fans, lamps, and bearings) has been a prominent player in the cartel decisions

[86] *See* Nambu, *supra* note 1.
[87] Note that this is an official number of the JFTC. A counting of the firms whose leniency application is published, renders 15 applicants (this includes the firms exempted from a surcharge for other reasons than the leniency application, even though these firms submitted one). *See* JFTC, *supra* note 64.
[88] Note that this is an official number of the JFTC. A counting of the firms whose leniency application is published, renders 38 applicants (this includes the firms exempted from a surcharge for other reasons than the leniency application, even though these firms submitted one). *See* JFTC, *supra* note 64.
[89] When a firm receives leniency more than once in a given fiscal year, it is counted only once. If a firm received leniency in different fiscal years, it is counted for as many times as it received leniency in different years. Therefore, this number is different than the one projected in Section II.D. *See supra* note 75.
[90] Yazaki Ltd. is considered as not listed (no information in Japan Company Handbook or online).
[91] Two firms are controlled by non-listed firms.
[92] One firm is controlled by a non-listed firm.
[93] *See* JFTC, *supra* note 64; Toyo Keizai, Japan Company Handbook (Winter 2014) (counting by the author).

around fiscal year 2011 and 2012. This industry's bid rigging was mainly affecting private firms. The price cartels involved the marine industry, the iron and steel industry, the industry developing various forms of tubes and pipes, and the chemical industry at large.

III. Surveying the Operation of the Leniency Program

A. The Survey

To obtain a better view on why the Japanese leniency program has the enforcement data as shown above, a survey has been conducted among the firms that have applied for leniency and that allowed for their application to be published on the JFTC website.[94] The survey does not cover the whole enforcement period as described above. The survey covers the period between fiscal year 2006, the year the leniency program went into force, and the fiscal year 2012 until the decision of November 22. Within this period of time, 79 cartel decisions were taken. This included 192 firms receiving leniency. It should be noted that many of the firms have received leniency in various decisions. Therefore, not 192 questionnaires were sent out, but a total of 80. 15 of these questionnaires returned. 8 of them had addressee problems, while 7 others were completed.

To conduct a quality test on the results of the questionnaire of the firms and to identify possible biases, a survey with similar questions has been sent to law firms. The choice of the law firms was driven by several elements. First, major law firms of the regions in which the infringers were located have been identified. Second, within these law firms, a questionnaire has been sent to the lawyer specializing in competition law. A total of 150 questionnaires have been sent, out of which 30 returned. 15 of the returned questionnaires had addressee problems. The remaining 15 questionnaires were completed. However, only 7 of them were directly useful for information on the leniency program. The remaining 8 questionnaires only provided information on the perception of cartels in Japan.

B. The Elements Surveyed

The questionnaire for the firms was conceptualized around 7 themes. The first theme was an inquiry on the factual situation of the leniency application. In the second theme, the questionnaires aimed at collecting information on the cartel in which the leniency applicant participated. The reasons for applying for leniency were asked for in the third theme, while the inquiries about the procedural aspects of the leniency application were part of fourth section. Theme five made an inquiry into the position of the firm towards compliance tools. General questions on the perception of cartel formation were part of sixth theme. Theme seven inquired who within the firm provided an answer to the questionnaire.[95]

[94] *See* JFTC, *supra* note 64
[95] The respondent was either the legal department or the compliance officer of the firm.

The questionnaire for the lawyers was also divided into different themes. The first theme inquired into the experience of the respective lawyer in relation to the leniency program. In the second theme, the questionnaire collected information on the reason why firms apply for leniency, as well as on procedural aspects of the leniency program. The third theme centered on what kind of the legal advice the firms were looking for. The theme, and last theme, aimed at collecting perceptions of lawyers on how cartel law and the leniency program may be perceived by the firms.

C. The Responses

1. *The Characteristics of the Responding Firms*

Among the firms that responded, three firms applied for leniency prior to any investigation of the JFTC. Four firms indicate that they have applied after the JFTC started investigation.[96] All the other firms applied for a 30% reduction. Two firms explicitly indicate that they did not heard rumors about the investigation. The other firms did not respond the question. Among the firms applying for a post-investigation reduction of 30%, two firms had a down raid at their premises. The other firms did not answer this question.

The responses from price cartels outnumbered the responses from bid rigging with one, being respectively four and three. The bid-rigging firms were asked whether they received any help in their activity of setting up the bid rigging scheme and one firm confirmed that there was assistance from the procuring body. Except for two firms who did not respond this question, the responding firms were engaged in the cartel activity for a period of 1 year (price cartel), 3 years (2 respondents – one bid rigging and one price cartel), 4 years (price cartel) and more than ten years (price cartel).

Among the firms that responded, the majority, i.e. six out of seven, stated that they were not the leader of the cartel or did not take any leading role in the cartel. Out of these six firms, two firms say that they were pressured to participate in the cartel by other firms. None of the six firms have weighed costs against benefits before entering into the cartel. One respondent declared to have been the leader of the cartel.[97] The leader of the cartel indicates that it had a strong belief not to be detected, but if it would be detected the surcharge was the main component of the costs it would face.

2. *The Characteristics of the Responding Lawyers*

The responses from the law firms are divided in the ones that had never advised on leniency and the ones that have advised on leniency. Ten responses involve lawyers who

[96] It should be noted, however, that one of the firms indicating that it applied in the post-investigation stage that it received immunity.

[97] This cartel lasted for 3 years and was a price cartel. This firm applied in the post-investigation stage. A dawn raid at the premises of this firm occurred. However, it is not clear on how much leniency the firm received.

had never advised on leniency, while eight responses came from lawyers who have given advice. Among the lawyers that had given advice, only one did not indicate the number of firms she had advised. The other lawyers have indicated a number of 2, 3, 7, more than 8, 1, 6 and 1.

In most cases, the advice has rendered a lenient outcome for the firm seeking advice. However, the lawyer indicating that he gave advice twice, states that only one firm effectively received leniency. Something similar is reported for the firm indicating that it had advised 3, 7 or 6 times. In all these cases, one firm did not receive any leniency. The advice given by the lawyers was mainly situated before the investigation. Even though not all lawyers responded this question, only two advises were rendered for the post-investigation stage.

The responding lawyers have mainly advised price cartels, including price fixing, territorial division, and production limitation. Only few of the responding lawyers advised on bid rigging. All the bid rigging schemes for which the lawyers provided leniency advise, received assistance from the procurement agency. In one case, the procurement agency was the government.

The cartels that received advice from lawyers had a relatively long duration. The average duration of the cartels that the lawyers were advising was between 5 and 6 years. Some of the cartels lasted even for more than 10 years.

D. Leniency, a Convenient Tool to Escape Punishment

1. *Investigations as the Main Driver of the Leniency Program in Japan*

To answer the question of what drives leniency applications, information has to be directly collect from the cartel participants or second-hand from the lawyers advising the firms. The answers given will depend on the situation. The answer for international cartels will be different from domestic cartels. Cartels that are under investigation will also render different results compared to cartels that have not been investigated.

Seen the vast use of the 30% reduction, it is not surprising that a dawn raid by the JFTC is identified as one of the main driving forces for firms to apply for leniency. The firms further reveal that an investigation in one cartel has further inspired them to apply for leniency in relation to other cartels that were not yet exposed to the JFTC. In this kind of cases, some firms mention that a change in management was a key factor to further reveal other cartel activity.

The firms that were not yet under investigation by the JFTC indicate that a foreign dawn-raid caused their application in Japan. Leniency was applied for to lessen the financial burden for the firm in Japan. One respondent indicates that an investigation triggered its application for leniency for other cartels in which it was involved.

It is interesting to note that none of the responding firms reported a conflict or disagreement within the cartel as a cause for the application of leniency. Nor was a leniency application a strategy that was part of the cartel agreement. Rumors about a possible investigation into the cartel were also not the cause of application.

Lawyers greatly confirm the answers of the firms. Investigations abroad and by the JFTC have triggered many of the leniency applications on which they have advised. Another important factor identified by lawyers as a cause for a leniency application is the call for advice by firms on their business activities. Unlike the firms, lawyers see that firms use leniency applications as a tool to punishing other cartel members with whom there is a disagreement. Similarly, rumors on (possible) investigations are also not excluded by lawyers as also playing a role in the decision process for a leniency application.

2. *No Fear of Detection*

Lawyers indicate that the leniency program is not well accepted in the business community. There is even a belief that cartel participants trust each other not to use the leniency program. This may contribute to the lawyers answering that they see a tendency of underestimating the probability that the cartel will be detected.[98]

Cartel members confirm the lawyers' findings. Denying that a cost and benefit analysis has brought the firms to cartelize, firms basically state that when entering in a cartel the risk of being detected did not play a role at all. One cartel member, who was also playing a lead role in the formation of a cartel, asserted that it was confident of not being detected.

3. *A Fear for the Surcharge and Criminal Sanctions*

From the moment the cartel envisages problems and legal advice is being sought, the firms tend to focus on the surcharge. Criminal sanctions are also a big concern for the firms that seek legal advice. Private damages, to the contrary, seem to matter relatively less than the other sanctions a cartel participant could face in Japan. Once legal advice was received, cartel participants' concerns slightly change. The fear for criminal sanctions diminishes, while private damages actions enter the view the cartel participants. Despite the better understanding of the consequences of going ahead with a leniency application, only very few firms decide to withdraw their leniency application. In other words, there is a general perception that legal advice did not scare the firms to proceed with their leniency application.

The opinions of the lawyers stroke with the perceptions of the firms on cartel enforcement. Criminal sanctions or private damages play a relatively small role for firms. Firms are not concerned that a criminal fine may be imposed or that they have to pay damages. Being asked what the most negative consequence is of entering in a cartel, the firms all point in the direction of the surcharge. The surcharge is further perceived as high. This is not only so for the firms but also for the lawyers. That the other sanctions play a

[98] This is contradicted by the firms' responses. The firms share the perception that the JFTC is quite active

relatively lower role could be explained by the fact that the firms have a strong view on the JFTC as the sole enforcer of the AML.

This perception could be created by the media. Being asked to identify what the most important elements are on which the media focuses in Japan, the height of the administrative surcharge topped the list of responses among both the lawyers[99] and the firms. The second response is the investigation of the JFTC, followed by criminal procedures, scandals, corruption and bureaucrat involvement.[100] The latter may also explain why private enforcement actions do not come to mind when the firms seek advice and that the application of criminal sanctions is probably overestimated.

4. *The Leniency Application Procedure*

The decision to apply for leniency has by many respondents been taken without the consultation of a lawyer. Once the decision to apply for leniency was taken, there is a relatively clear trend among the respondents of not asking an external lawyer to guide the application process.[101] As a result, the majority of the firms indicate that the legal advice on criminal sanctions or private damages actions did not apply to them. Nevertheless, the few firms that received information on private damages actions indicate that it did not prevent them from applying for leniency.

One of the conditions of the leniency program is the continuous cooperation with the enforcement agency. Even though it can vary from case to case, lawyers indicate that it is normal to receive a question for additional cooperation one time. Three times or even four times is also not an exception. Firms confirm that the JFTC direct further questions to them. The responding firms indicate that the JFTC would come back on average two times. However, the JFTC sometimes requests firms more often for continuous cooperation. Some of the responding firms indicate that a request for further cooperation can even be as many times as six. Despite the continuous cooperation, lawyers indicate that their leniency applications settle within an average duration between 6 to 8 months.[102]

5. *The Low Value of Compliance Sessions and Manuals*

Most of the responding firms had a compliance manual. Several of these firms did not know exactly when the compliance manual was created. The firms that have a compliance manual responded that it existed for more than 20 years. These compliance manuals were regularly updated. Almost all firms had a revision of their compliance manuals during the last two years.

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[99] This includes the lawyers who have not given advice on the leniency program.
[100] The latter three are mainly indicated by the lawyers only.
[101] The responding firms are most likely relatively big firms as they have their own legal department or compliance officer.
[102] This has also been noted by Akinori Uesugi when he did an early review of the leniency program in Japan. *See* Akinori Uesugi, The Japanese Leniency Program – One Year in, 21 ANTITRUST 79, at 83-4 (2007).

Most of the firms organized compliance sessions. A relative large number of firms have a yearly compliance session. Few firms have the compliance session on an irregular basis. Some firms only limit the compliance sessions to the time when the AML changes. These compliance sessions are often organized in cooperation with law firms. The lawyers have stated that much of their activities in this regard situate in the construction, chemicals, electronics or the car parts industry.

IV. Conclusion

The leniency program has been able to position itself as an important enforcement tool in Japan. The majority of cartel decisions in Japan are based upon a firm or firms coming forward with information on illegal cartel activity. This resulted in the conclusion by the JFTC that the leniency program is effective. This paper does not aim at questioning the effectiveness of the Japanese leniency program, but at providing the academic community and practitioners with data on the use of the leniency program in Japan. The paper has split the data into two categories: data on leniency applications and data of a survey among cartel participants and lawyers advising on leniency.

The survey of the data reveals that the leniency program has attracted lots of applications in a period between the fiscal years 2006 and 2012. However, not all these applications lead to a decision. There is a relatively great discrepancy between the number of leniency applications and firms that effectively receive leniency. In the early stage of the application of the leniency program, the immunity applications are vast, in order to drop for the middle stage of the researched application period, and to rise again at the end of the researched application period. It is also remarkable that the 50% reduction is not used very much.

About half of the firms that are granted leniency receive it only once. All the other firms receive leniency for more than one cartel. If we look into the cartels in which the same firm names appear, cartel decisions could be grouped together. There is an obvious link between the different cartels in terms of participants. In doing so, the enforcement result of the leniency program looks less impressive.

The firms that apply are exclusively domestic firms, even if the cartel is internationally active as well. The research on the data further revealed that the majority of the firms applying for leniency are listed firms. Among the firms that are not listed, a majority of the firms is still controlled by a listed firm. A minority of the controlled firms are not controlled by a listed firm. A minority of the leniency applicants is not listed.

The applications for leniency stretch over a vast number of industries. Whereas bid rigging constitutes the majority of cases revealed by the leniency program, a gradual increase in the number of price fixing cases is noticeable. Another interesting turn is within the bid rigging cases. Originally centered on procurement for public works, recent bid rigging cases reveal that procurement for private works or products is prominently present in Japan.

Shifting to the data disclosed by the surveys among the cartel participants and the lawyers, the following conclusions could be drawn. Firms revert to leniency once they know that the JFTC or a foreign enforcement agency has started an investigation. Lawyers add to this that rumors on upcoming investigations are also a reason to apply for leniency. Further, lawyers do not exclude that the leniency program is being used to punish other cartel participants.

That firms revert to the leniency program may have much to do with the belief that cartels are barely detected. Lawyers confirm this belief by stating that there is an underestimation among firms that they will be detected. Despite this belief, many of the responding firms had competition law compliance manuals and regular compliance training sessions.

When firms are confronted with the possibility of being detected, the firms fear the administrative surcharge and the criminal sanctions the most. Private damages actions have barely any deterrent effect. This all changes once legal advice is asked. Private damages actions become more of a concern than the criminal sanctions.

With the above empirical data, an impetus may be given for further research. Why is there such a big discrepancy between the number of leniency applications and cartel decisions? Isn't it worrisome that big listed firms enter into cartel activities? How could the AML be made much more deterrent? Could compliance be made more effective? These are just a few examples of questions that could warrant further research. Such research will be much appreciated as the leniency program has become one of the most important enforcement tools to enforce competition law against cartels. Further insights in the working of leniency programs will allow enforcement agencies to set up better tools to enforce or induce compliance with their competition law.