

TASK FORCE
FOR ABUSE OF SUPERIOR/DOMINANT BAGAINING POSITION
DRAFT MANDATE

1. In the markets where both of the larger firms and smaller firms operate, an issue of abuse of superior/dominant bargaining position, as opposed to more familiar abuse of dominant/monopolization issues, appears to have recently arisen in business to business relations in several jurisdictions particularly, but not limited to, in the retail sector in the wake of the emergence of large-scale retailers like hypermarkets.

2. However, the views and rules on whether or how to address the issue of abuse of superior/dominant bargaining position seem quite different among jurisdictions. In certain jurisdictions, such practice or part of it is handled by competition authorities under competition policy, often in special statutory provisions, or by other government agencies/branches under other policy perspectives. In other jurisdictions, none of such practice is regulated, and solving the problems caused by them, if any, is basically left to the market and private litigation.

3. Thus, it would be useful to look into the different approaches to abuse of superior/dominant bargaining position among the jurisdictions, from the viewpoint of helping further develop our thoughts on the possible scope of the competition policy/authorities, as another attempt for enhancing mutual understanding of competition law and policy.

4. **The main questions to be addressed** in this work would be the following:

(1) What does “abuse of superior/dominant bargaining position” mean in business to business relations in various jurisdictions?

(2)1) (For those jurisdictions where such practices mentioned above (1) are regulated,)

How are such practices regulated? And why?

2) (For those jurisdictions where such practices mentioned above (1) are not regulated,)

Why are such practices not regulated?

- (3) Whether and/or how should we address such practices under competition policy? And why or why not? For example, do such practices affect consumer welfare, and if so, how?

5. This work is mainly intended to gain knowledge on and insight into regulations on abuse of superior/dominant bargaining position, if any, in various jurisdictions. **The first stage** is fact-finding of legal frameworks and their enforcements of such regulations (corresponding to (1) and (2) above). **The second stage** is to hold one-and-a-half-hour panel discussion as Special Program during the 2008 ICN Kyoto Annual Conference, to discuss the question (3) above, based upon the results of the fact-finding of the first stage.

6. **For taking a fact-finding exercise mentioned above to prepare the ground for Special Program panel discussion, a special task force is to be established under the authorization of the ICN Steering Group. The mandate of this task force is to conduct necessary questionnaire survey among several jurisdictions and compile a descriptive report on the current status on regulations on abuse of superior/dominant bargaining position.**

7. The task force pays due attention to the interests of **agencies from developing economies**. To this end, the task force will encourage the active participation by these agencies in its proceedings.