

# Commitment decisions in the Japanese context

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- In this presentation, the “Categories” are those which are eligible for the commitment procedure, including:
  - vertical restraint,
  - exclusionary conduct, and
  - exploitative abuse.

## A brief history (1)

- Crude devices for commitment decisions
  - recommendation decisions from 1947 (¶ 6)
  - consent decisions from 1949 (¶ 8)
- A 2005 amendment abolished them in a course of streamlining the order procedure. (¶¶ 15-17)

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## A brief history (2)

- Intel and other firms took advantage of these succinct proceedings (¶¶ 12-14, 19), probably because:
  - no administrative fines for the Categories, anyway (¶ 18), and
  - no binding effects on private lawsuits, anyway. (¶ 11)

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## A brief history (3)

- A 2009 amendment introduced administrative fines to the Categories. (¶ 21)
- A 2013 amendment, which entered into force in 2015, exposed JFTC orders to direct judicial reviews. (¶ 26)
- Few orders for the Categories. (¶¶ 24, 25, 28, 29-32)

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## The 2016 Bill

- ¶¶ 33-48.

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## Judicial reviews (1)

- A request by the proposing firm for revocation of a JFTC dismissal (¶¶ 52-54)
- The “bounds of the agency’s discretionary power” has gradually been curtailed by the courts’ interpretation. (¶ 54)

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## Judicial reviews (2)

- A request by an alleged beneficiary of the conduct
  - A negative Supreme Court case (¶¶ 59-60)
- A request by an alleged victim of the conduct
  - A positive Tokyo High Court case (¶ 64)

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## Law development (1)

- Detailed announcements by the authorities
  - Admirable JFTC practices (¶¶ 71-74)
  - In need of making them sustainable (¶ 75)
  - In need of reading between lines (¶ 76)
- Study of cases in other jurisdictions (¶ 77)
- Raising competitors and watchers (¶¶ 78-79)

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## Law development (2)

- Systematic streamlining of knowledge would enable us to:
  - read between lines and locate each commitment decision in similar issues, and
  - raise more lawyers and judges who can read, explain, analyze, and sometimes criticize commitment decisions. (¶ 80)

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