

● **The lack of criminal sanctions in Japan**

The effective use of criminal sanctions to control corporate conduct in Japan is a close to impossible task. Criminal prosecutions engender severe political and intra-agency conflict as a result of the clientele relationship between each economic ministry and the industries within its jurisdiction. Resort to criminal sanctions is similarly precluded except in rare instances by the social density that results from the intricate personal ties that connect the leaders of Japanese business, politics and bureaucracy. Mandated remedial measures are considered legally binding only with regard to the violations set out in the facts of the decision.

Informal control is common to all legal and antitrust systems, but seems ubiquitous in Japan. The cultural proclivity for deference makes even the limited array of formal measures less necessary to command obedience. Such a proclivity is not all that is at work in informal enforcement, however.

● **Prompting voluntary compliance**

The regulated businesses are more likely to obey regulations with which they agree. The probability of compliance increases with participation in the process of regulation. Administrative guidance, the most common form of Japanese informal enforcement, is no different.

All legal systems depend upon voluntary compliance with the law, from the payment of taxes to regulatory control by official suggestion, advice, recommendation or pointed direction. This approach is not only common to all legal systems, it is indeed the most common form of law enforcement including in the U.S. (although prosecutions are more common in the U.S. than in Japan).

● **Informal ways of the JFTC**

The real influence of antitrust occurs unseen through negotiations and threats to deter mergers and other actions, and to intervention in regulatory cases through informal persuasion, by threatening to go to court or through testimony at formal public hearings. The same could be said for Japanese antitrust enforcement. The vast majority of all antitrust violations investigated by the