

**Alert | Antitrust Litigation & Competition Regulation**



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## **Japan Fair Trade Commission’s Analysis of Cease-and-Desist Recurrence Prevention Measures**

As part of its evidence-based policymaking, the Japan Fair Trade Commission (JFTC) undertakes ex-post verification, focusing specifically on measures to prevent the recurrence of previously issued cease-and-desist orders. This process serves dual purposes: it verifies the effectiveness of the implemented measures, particularly those aimed at preventing unfair trade restrictions according to Article 3 of the Antimonopoly Act, and it generates insights for crafting more effective strategies to avert recurrence. These iterative checks help ensure a robust, competitive, and fair marketplace.

### **Approach**

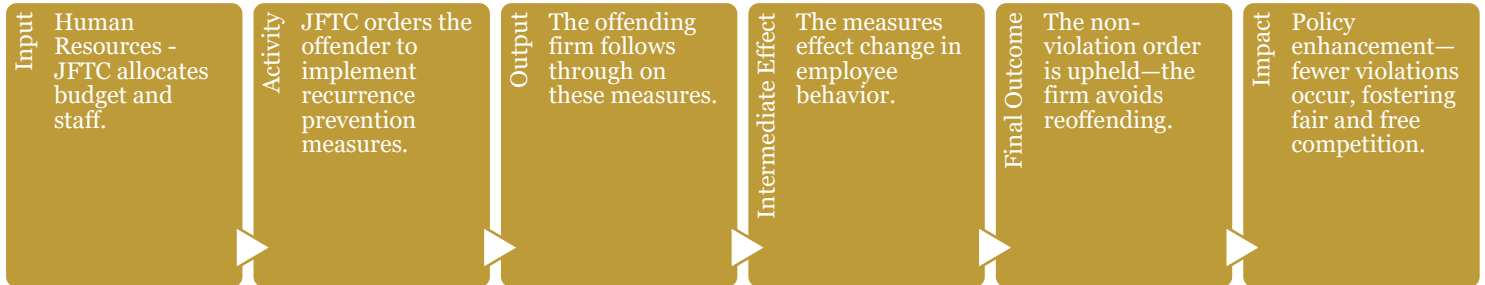
A web survey targeted 719 businesses previously issued cease-and-desist orders, receiving 410 valid responses (57% response rate). The survey ran from Oct. 27 to Dec. 8, 2022. Furthermore, Oliver Wyman Group K.K. and NERA Economic Consulting investigated overseas corrective measures, studying practices in the EU, U.S., UK, Germany, and Korea.

### **Verification Basis: The Logic Model**

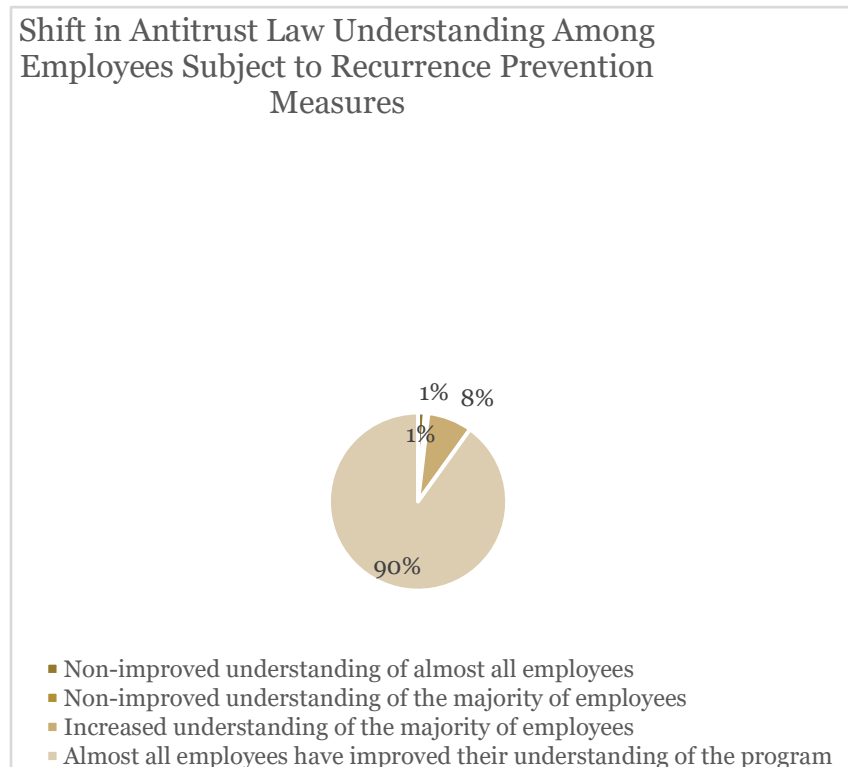
Basing analysis on logic frames the critical intermediate outcome—observable behavioral change in employees of businesses that previously violated regulations. This shift, often overshadowed by more immediately tangible results, is a clear indicator of successful interventions.

The logic model’s structured causal relationships illuminate this focus, tracing outcomes back to implemented measures. This method ensures not only the clarity and precision of the analysis but also its depth, encompassing the layers of human behavioral changes vital to prevention success.

**Compliance understanding**



Over 90% of respondents reported employees better understood antitrust laws after prevention measures were implemented.



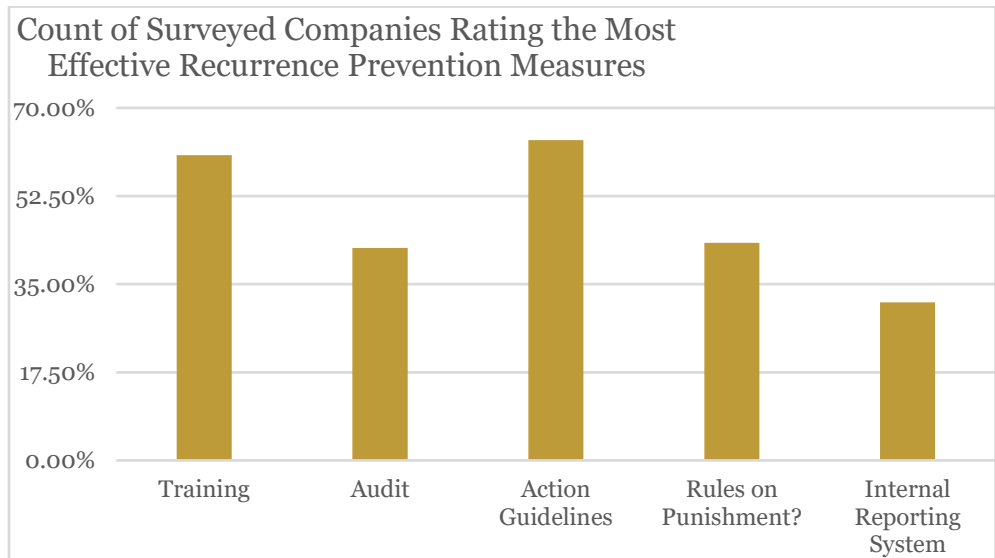
**Antitrust violation prevention**

69.6% of the 161 companies directed to implement prevention measures took proactive steps. Most commonly, they sought legal advice before competitor meetings, highlighting the overall effectiveness of the measures.



**Rating Prevention Measures**

The surveyed businesses were asked to subjectively score the effectiveness of their recurrence prevention measures on a scale of 0-10, with 0 indicating no measures taken. These responses were then standardized to assess the relative impact of individual prevention measures within each entity. For instance, the most effective measure, such as training, would score 1, while the least effective measure would score 0. Analyzing the ratio of top-rated (1) responses across all evaluation points revealed that action guidelines and training were seen as the most influential measures in preventing recurrence, as compared to other strategies implemented.



### **Suggestions for better prevention**

The report proposes several enhancements:

1. *Management's Role*: Most respondents referred to top management's involvement as a key strategy to prevent recurrence.
2. *Training-Centered Measures*: Many revealed that their prevention strategies centered around a training program, which included action guidelines and audits to check comprehension.
3. *Small and medium-sized enterprises (SMEs)' Proactive Approach*: About 60% of SMEs voluntarily implemented training programs to prevent recurrence, even without orders, sometimes using unique approaches fitting for smaller businesses.
4. *Additional Preventive Efforts*: Beyond cease-and-desist orders, some companies bolstered their prevention efforts, including strengthening their legal departments.
5. *International Prevention Tactics*: In the U.S., for example, companies often appoint a designated person to oversee competition law compliance programs.

### **Conclusions: Effectiveness and Future Direction**

1. *Effectiveness of Recurrence Prevention Measures*
  - a. Overall, the measures implemented to prevent recurrence have proven successful.
  - b. Among these, behavioral guidelines and training programs have been especially effective within individual companies.
2. *Recommendations for Enhancing Prevention Measures*
  - a. To ensure greater effectiveness of prevention measures, top management involvement and training-centric strategies should be prioritized.
  - b. For SMEs, the development of unique, tailored preventive measures could offer additional benefits.

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