



BY EMAIL

June 20, 2017

Mr. Nakamoto
President of Japan Federation of Bar Associations
1-1-3 Kasumigaseki
Chiyoda-ku, Tokyo 100-0013
Japan

Re: Request for Comments, Due Process in Anti-Trust Investigations in Japan

Dear Mr. Nakamoto,

Introduction

The Federation of Law Societies of Canada (the “Federation”) is pleased to respond to your request for comments on specific aspects of the report published for comment by the Study Group on the Antimonopoly Act convened by the Japan Fair Trade Commission (the “JFTC”).

The Federation is the coordinating body of the 14 provincial and territorial regulators of the legal profession in Canada. Together Canada’s law societies regulate more than 117,000 lawyers, 4,500 Quebec notaries and 8,000 Ontario paralegals in the public interest.

Response to specific questions

In your letter requesting feedback you invited comments on two specific aspects of the report, one related to attorney-client privilege, the other to due process. The comments below address the issue of privilege only.

As we indicated in our July 4, 2014 letter sent in response to a request for comments on issues related to attorney-client privilege in Japan, in Canada solicitor-client privilege is recognized as a principle of fundamental justice protected under section 7 of the Canadian *Charter of Rights and Freedoms*. Our Supreme Court has repeatedly held that the privilege is essential to the proper functioning of the Canadian justice system and must remain as close to absolute as possible.

The foundation for the Supreme Court’s treatment of solicitor-client privilege is the belief that it is essential that clients seeking legal advice be able to speak candidly to their lawyers knowing that, subject to clearly defined exceptions, their communications may be disclosed only with their consent. This free and open communication is considered necessary for clients to obtain

the best legal advice possible. The Court has recognized that candid communication between clients and their legal counsel is an essential aspect of our justice system.

We note that the report concludes that “[c]oncrete facts were not found that enterprises have actually suffered from disadvantages for lack of so-called attorney-client privilege.” In Canada the rationale for protecting solicitor-client privilege is based on the importance of confidentiality between a client and his or her lawyer for the functioning of our legal system and the protection of the legal rights of the citizen. The protection of the privilege does not depend on demonstrating that there will be an *actual* disadvantage to the client. In our view, however, disadvantage to the client (in this case the enterprise) is inevitable if their communications with their legal counsel may be disclosed to the very authorities investigating them. The lack of protection for communications between a client and his or her lawyer would also impede the proper functioning of the justice system as it would undermine the ability of citizens to obtain clear legal advice based on full disclosure of all relevant facts to their lawyer.

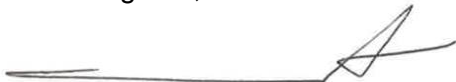
We respectfully disagree with the suggestion that any concerns caused by the lack of attorney-client privilege would be addressed by giving the JFTC the discretion to protect the communications between clients and their lawyers “to the extent that the fact-finding ability of the JFTC should not be impeded.” In our view any legal proceedings in which the protection of these fundamental rights is not guaranteed, but rather is at the discretion of those conducting or administering the proceedings is fraught with the potential for conflict and the possibility of abuse.

The Federation is of the view that protection for the communications between lawyers and their clients is an important component of the rule of law. In fostering candour between clients and their legal advisors it ensures that the decisions clients make are fully informed which can contribute to efficiency and fairness in the justice system.

Conclusion

We hope that these comments will be of assistance to the review of the surcharge system in anti-trust investigations. Please feel free to contact us should you have any additional questions.

Kind regards,



Maurice Piette
President