

JAPAN

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Table of contents

Executive Summary

- I. Changes to Competition Laws and Policies
 1. Outline of New Regulations in Competition Law and Related Legislation
 - (1) Amendment of the Antimonopoly Act.
 - (2) Publication of M&As Guidelines
 - (3) Publication of “Antimonopoly Act Guidelines Concerning the Abuse of Dominant Bargaining Position on Consignment Transaction of Services”
 2. Proposals of New Legislation
 - (1) Reform of the Exemption Systems of the AMA
 - (2) Reform of the Injunctive Relief through Civil Litigation Against the AMA violations

- II. Enforcement of Competition Law and Policy
 1. Measures against violations
 - (1) Investigation
 - (2) Situation regarding Measures
 - A) Legal Measures
 - B) Order to Pay Surcharges
 - C) Criminal Accusations
 - D) Hearing Procedures
 - (3) Main Cases
 - A) Case against the Paramount Bed Co., Ltd.
 - B) Case against Grand Dukes Inc.
 - C) Case against Nike Japan Corp.
 - D) Case against Lawson Inc.
 - E) Case against MDS Nordion Inc.
 - F) Case against Microsoft Co., Ltd
 - G) Case against Bid-rigging by Suppliers of sodium chlorate for disinfectant
 - H) Case against Medical Doctor Association of Hamakita City
 - (4) Litigation
 - A) Lawsuit filed by Dai-Nippon Printing Co., Ltd. And Two Other Companies
 - B) Lawsuit filed by Kansei Co-operative Association

JAPAN

2. Mergers and Acquisitions

(1) Statistics Relating to Mergers and Acquisitions

(2) Major Merger Cases

--- Merger between Chichibu-Onoda Corp. and Nihon-Cement Corp. and Integration of cement business between Ube Kousan Corp. and Mitubishi Material Inc.

III. The Role of Competition Authorities in the Formulation and Implementation of Other Policies

1. Co-ordination of the Antimonopoly Act and Other Economic Laws

(1) Partial Amendment of the Law concerning Non-Life Insurance Rating Organisation

(2) A bill concerning the measures by large scale Retail stores for preservation of living environment

(3) Others

2. Administrative Coordination

3. Reform of Government Regulation

(1) Review of the resale price maintenance system on Copyright Works

4. Change of position of the JFTC in the Administrative Reform

IV. Resources of the Fair Trade Commission

1. Budget of the Fair Trade Commission

2. Number of Officials

V. Surveys Relating to Competition Policy

1. Follow-up survey of Film Industry

2. Survey of advertising restrictions, etc. for professional services (judicial scriveners and administrative scriveners)

3. The 6th Survey Report on the Actual Conditions of the Six Major Corporate Groups

4. Surveys of Insurance Industry

Appendix 1: Outline of Partial Amendment of the Antimonopoly Act in 1998

Appendix 2: The outline of the Guidelines for Interpretation on the Stipulation that “The Effect May Be Substantially to Restrain Competition in a Particular Field of Trade” Concerning M&As

Appendix 3: Outline of the Omnibus Act to Repeal and Reform Cartels and other Systems Exempted from the Application of the Antimonopoly Act under Various Laws

Appendix 4: Surveys and Reports Relating to Competition Policy Published in 1998

Executive Summary

The main features of the 1998 activities of the Japan Fair Trade Commission (referred to hereafter as the JFTC) are as follows:

1. The Antimonopoly Act (hereafter the AMA) was amended to reduce the scope of reporting and notification requirements regarding mergers and stockholding and to improve examination procedures. At the same time, the JFTC, in an effort to enhance transparency and predictability of its enforcement of laws regulating corporate mergers, made public its position on stockholding and merger cases that substantially restrict competition in a particular field of trade.
2. The JFTC released Antimonopoly Act Guidelines Concerning the Abuse of Dominant Bargaining Positions in Consigned Service Transactions. The guidelines were worked out to regulate abuses of dominant bargaining positions in consigned service transactions, to contribute to preventing Antimonopoly Act violations, and to promote sound business practices in this sector.
3. The JFTC has been reducing exemption systems following the Cabinet Decision. The Three-Year Programme for Promoting Deregulation of March 1998 includes the result of review of them. For example, depression cartels and rationalisation cartels under the Antimonopoly Act will be repealed, and the Exemption Act will be abolished. The bill for taking these measures will be submitted to the 1999 ordinary Diet session.
4. The JFTC is studying how to improve the civil remedy system to the Antimonopoly Act violations, organising "Study Group on Civil Remedy System to the Antimonopoly Act violations." In December, 1998, the study group released an interim report on the civil injunction system to the Antimonopoly Act violations.
5. 27 legal measures (recommendation and administrative surcharge orders without recommendations) were taken in 1998. 22 warnings were also issued, and 23 cases of price cartels and bid-rigging incurred administrative surcharges totalling 8.28046 billion yen (approximately 68 million dollars), (because of the initiation of hearing procedures, approximately 5.5 billion yen of the amount lost validity.)
6. Based on the provisions of Section 15 and 16 of the AMA, the JFTC received a total of 3 813 prior notifications of mergers and acquisitions in 1998 (2 160 mergers and 1 653 acquisitions)

I. Changes to Competition Laws and Policies

1. Outline of the New Regulations in Competition Law and Related Legislation

7. Japanese competition policy is based upon the Act Concerning Prohibition of Private Monopolisation and Maintenance of Fair Trade (law No. 54 of 1947); the Act against Delay in Payment of Subcontract Proceeds, etc., to Subcontractors (law No. 120 of 1956, hereafter the Subcontract Act) and the Act against Unjustifiable Premiums and Misleading Representations (law No. 134 of 1962, hereafter the Premiums and Representation Act).

JAPAN

(1) *Amendment of the Antimonopoly Act*

8. Bills, aiming at reducing the scope of reporting and notification requirements regarding mergers and stockholding and improving examination procedures, was enacted on May 22 1998, promulgated on May 29 1998 and came into force on January 1 1999. (Some parts of the enactment were put into force immediately when it was promulgated. As to the outline of the amendment, see Appendix 1.)

(2) *Publication of M&As Guidelines*

9. The amended Antimonopoly Act is effective from January 1 1999, reducing the scope of notification and report requirements concerning stockholding and merger and acquisition. Prior to the enforcement, the JFTC has drawn up “Guidelines for Interpretation on the Stipulation that “The Effect May Be Substantially to Restrain Competition in a Particular Field of Trade” Concerning M&As” in order to increase ability of companies to foresee enforcement and ensure transparency of enforcement of the Act by the JFTC and made them public in December 1998. (As to the outline of the guidelines, see Appendix 2)

10. In the guidelines, types of M&As to be examined in impact on competition are outlined. Then, by citing actual examples, how to define the scope of a particular field of trade and the point of view for M&As where the effect may substantially restrict competition are elucidated.

(3) *Publication of “Antimonopoly Act Guidelines Concerning the Abuse of Dominant Bargaining Position on Consignment Transaction of Services”*

11. In order to grasp problems in competition policy for major consignment transactions in the service sector, the JFTC conducted a survey covering 14 industries, including the trucking industry, the computer software development industry, and television program production industry. The JFTC also commissioned the Study Group on Inter-Enterprise Trade to look into this particular issue. On June 19, 1997, the JFTC released a report on the findings.

12. Based upon the proposals of the study group and the “Antimonopoly Act Guidelines Concerning the Distribution System and Business Practices”, the JFTC decided to clarify its interpretation on the major practices that might violate the Antimonopoly Act resulting from abuse of dominant bargaining positions. This move aims at preventing Antimonopoly violations regarding consigned transactions of services, as well as at promoting sound trade practices. On March 17, 1998, the JFTC released the Guidelines Concerning the Abuse of Dominant Bargaining Position on Consignment Transaction of Services.

13. The Guidelines clarify the JFTC’s interpretation on consigned transactions of services that violate the Antimonopoly Act. This Guidelines are concerned with consigned transactions of services whose specifications are instructed by consignors. They list the cases that are considered to be an abuse of a dominant bargaining position of the consignors over the consignees. They also clarify when consignors are judged to be in a dominant bargaining position over consignees. The guidelines listed i)the delay of payment, ii)forcing discount in payment, iii)forcing unreasonably low prices, iv)forcing to redo the service, v)soliciting “co-operation contribution,” vi)forced sales of certain products, vii)and domination of rights and other matters deriving from the result of the services provided and clarify the viewpoint of Antimonopoly Act regarding these practices, citing actual cases of violations.

2. Proposals of New Legislation

(1) *Reform of the Exemption Systems of the AMA*

14. The AMA prohibits the formation of cartels by firms and trade associations. However, certain cartels are permitted under exceptional circumstances and certain requirements stipulated under relevant laws. In principle, the formation of such a cartel requires approval by the JFTC or Minister, or notification to the relevant agency.

15. The exemption systems are based on the AMA itself; the AMA Exemption Act; or provisions in individual laws. The JFTC believes that the exemption systems should be limited to the absolute minimum, with a view to greater utilisation of market forces. And it has for a long time actively pursued reforms of the systems. The exemption systems have been reformed through subsequent Cabinet Decisions. In July 1997, 35 exemption systems under 20 individual laws were abolished by the enactment of an omnibus Act. After further reviews of other systems, final conclusions, including the repeal of the depression cartel and rationalisation cartel systems and the abolition of the Antimonopoly Exemption Act, were woven into the New Three-year Deregulation Plan Cabinet decision in March 1998). It was decided that those initiatives which need legislative measures will be sent to the Diet for enactment. (As to the outline of the revised bill, see Appendix 3)

(2) *Reform of the Injunctive Relief through Civil Litigation Against the AMA violations*

16. The JFTC, with a view to improving the civil remedy system with regard to the Antimonopoly Act violations, has held meetings of the Study Group on Civil Remedy System to the Antimonopoly Act violations since March 1998. The study group's discussions covered the introduction of a system allowing a private individual to file an injunction suit against Antimonopoly Act violators as well as the improvement of the damage action system for Antimonopoly Act violations. In December 1998, the JFTC released an interim report on the injunction system for Antimonopoly Act violations, which was the first agenda of the study group.

17. The report concludes that it would be appropriate to introduce injunction system from the perspective of improving the remedies for victims of the AMA violations as well as deterring illegal conduct. For the injunction system function effectively and properly, the report also said it is necessary to design the system in line with the examination of the improvement of the damage action system against AMA violations.

II. Enforcement of Competition Law and Policy

1. Measures against violations

(1) *Investigation*

18. The number of cases investigated by the JFTC in 1998 is as follows:

a) carried over from the previous year	88
b) newly taken up in 1998	118
Total (a and b)	206

JAPAN

c) investigation completed	159
d) carried over to the next year	47
Total (c and d)	206

(2) *Situation regarding Measures*

19. Of the 159 cases for which the JFTC completed investigations in 1998, formal legal measures were taken in 27; in 26 of those, recommendations were issued. In the remaining one case, one order to pay surcharges without a recommendation were issued. In addition, warnings were issued in 22 cases and cautions were issued in 100, where AMA violations were suspected but not substantiated. There were 10 cases in which investigations were discontinued.

A) *Legal Measures*

20. The breakdown of the 27 cases in which legal measures were taken is as follows:

Private Monopolisation	3
Bid-rigging	15
Price Cartels	3
Unfair Trade Practice	5
Others	1

Trade associations were involved in 3 of the above 27 cases.

21. The JFTC has been making continuous efforts to eliminate bid-rigging. In 1998, 15 of the JFTC's 27 formal measures involved bid-rigging. From the viewpoint of preventing violations of the AMA, the JFTC organises an annual conference for liaison officers on bid-rigging issues, which has been running since 1993, with the aim of improving relations between the procurement agencies and JFTC officers. In September 1998 a conference was held for the period covered by this report. The JFTC organised another conference for liaison officers of the local offices of national agencies in 9 locations across Japan, and also helped local governments to organise anti-bid-rigging seminars by sending lecturers and compiling text books.

22. With over all deregulation under way, the JFTC believes it important to ensure that the benefits of deregulation should not be nullified by the Non-governmental Restriction in the Private sector (so-called Min-Min Kisei). The JFTC, therefore, is paying special attention to cases involving private regulations. It also takes a stiff stance toward such Antimonopoly Act violations as blocking parallel imports that would result in creating gaps between domestic and foreign prices.

B) *Orders to Pay Surcharges*

23. The AMA states that when cartels are formed by firms or trade associations, surcharge will be levied in the following cases.

- i) those related to prices of goods or services;
- ii) those that affect prices of goods or services through restricting the volume of supply.

24. The amount of the surcharge is calculated by multiplying the amount of sales during the period of the cartel by a certain percentage. In the case of trade associations, the surcharges are levied on the firms constituting the trade association. In 1998, the JFTC issued surcharge payment orders to 431 firms

involved in 23 cases of price cartels and bid-rigging. The total amount of surcharges was 8 280 460 000 yen (approximately 68 million dollars).

25. Of the 431 firms that were ordered to pay surcharges, 24 requested hearings in 1998. As the JFTC decided to initiate hearings, surcharge payment orders amounting to 5,453,320,000 yen in total were nullified.

C) Criminal Accusations

26. The JFTC has adopted a more active policy to make criminal accusations and apply criminal penalties to violations which enter i) substantially restrict competition in a particular field of trade, such as price cartels, supply restraint cartels, market allocation agreements, bid-rigging and boycotts, which constitute serious violations that are likely to have a widespread influence on society; or ii) involve firms or industries that are repeat offenders, or that do not take the appropriate measures to eliminate the violation, and where the administrative measures of the JFTC are not considered sufficient to meet the aims of the AMA.

D) Hearing Procedures

27. In 1998, the JFTC initiated hearing procedures for 28 cases. There were 34 cases undergoing hearing procedures as of December 31, 1998. (In 22 cases, the hearing procedures were consolidated because their source was the same case.)

28. In 1998, there were three cases in which the JFTC issued a decision based on hearing procedures: A case involving an exclusive importer of automobiles that interfered with the businesses between a parallel importer and a foreign car dealer, a surcharge payment order case against bid-rigging in gas and water plumbing projects of Chitose City in Hokkaido and other entities, and a surcharge payment order case against bid-rigging involving the public procurement of large colour monitors.

(3) Main Cases

The main cases of legal measures taken by the JFTC in 1998 are as follows:

A) Case against Paramount Bed Co., Ltd.

29. Paramount Bed Co, Ltd. had been founded to restrain competition substantially in the field of hospital bed business for metropolitan hospitals ordered by the Tokyo Metropolitan Government (orders placed by the Bureau of Finance) through designated competitive tenders, and open competitive tenders since 1995 by:

1. excluding competitors by conducting specification-based tenders with specifications that would allow for the delivery only of Paramount Bed's hospital beds; and
2. controlling the business activities of the distributors by instructing the distributors participating in the tender on their tender prices.

30. Accordingly, the JFTC issued a recommendation to Paramount Bed on 26 February for violation of Section 3 of the Antimonopoly Act (prohibition on private monopolisations) (the decision was issued in 31, March).

JAPAN

B) Case against Grand Dukes Inc.

31. Grand Dukes Inc. was found to interfere transactions of water purifiers “Seagullfour” made by General Ecology, between a parallel importers and foreign distributors. Accordingly, the JFTC issued a recommendation to Grand Dukes Inc. on June 23 1998 for violation of Section 19 of the Antimonopoly Act (prohibition on unfair trade practices) (the decision was issued in July 24 1998).

C) Case against Nike Japan Corp.

32. Nike Japan Corporation was found to instruct retailers, directly or through dealers, to maintain its recommended prices and not to sell parallel imports. It is also found to allow only the shops that followed its instruction, such as retail price maintenance to all its top-branded shoes.

33. Accordingly, the JFTC issued a recommendation to Nike Japan on June 29, 1998 for violation of Section 19 of the Antimonopoly Act (Prohibition on unfair trade practices) (the decision was issued in July 28, 1998).

D) Case against Lawson Inc.

34. Lawson Inc. was found to order suppliers of sundries to pay extra money without any particular reasonable cause and to force them sell, by mainly use of its dominant position, their goods at one yen.

35. Accordingly, the JFTC issued a recommendation to Lawson Inc. on July 16 1998 for violation of Section 19 of the Antimonopoly Act (Prohibition on unfair trade practices) (the decision was issued in July 30, 1998).

E) Case against MDS Nordion Inc.

36. MDS Nordion Inc. was found to prevent its competitors from entering the Japanese market, by concluding contracts which are effective for 10 years beginning in 1996, two companies that purchases Molybdenum-99 which is a raw material of technetium-99m, a kind of radio pharmaceutical produced, in Japan.

37. Accordingly, the JFTC issued a recommendation to MDS Nordion Inc. on 24 June, 1998 for violation of Section 3 of the Antimonopoly Act (prohibition on private monopolies) (the decision was issued in 3, September, 1998).

F) Case against Microsoft Co., Ltd

38. Microsoft Co., Ltd. (hereafter “MS Japan”), a Japanese subsidiary of Microsoft Corporation was found to tie its wordprocessor software to their spreadsheet software and to unjustly tie personal information management software to the wordprocessor software and the spreadsheet software, when it licenses their softwares personal computer manufacturers for the purpose of installing or bundling them to personal computers.

39. Accordingly, the JFTC issued a recommendation to MS Japan on 20 November,1998 for violation of Section 19 of the Antimonopoly Act (Unfair Trade Practices / Tie-in Sales (Item 10 of the Designation of the Unfair Trade Practices)) (the decision was issued in 14, December).

G) Case against Bid-rigging by Suppliers of sodium chlorate for disinfectant

40. Suppliers of sodium chlorate for disinfectant were found to collude to designate that would supply disinfectant for a sewage treatment plants in the procurement by City Osaka and other entities.

41. Accordingly, the JFTC issued a recommendation to them on December 22, 1998 for violation of Section 3 of the Antimonopoly Act (Prohibition on unreasonable restraint of trade) (the decision is issued in January 25, 1999).

H) Case against Medical Doctor Association of Hamakita City

42. Medical Doctor Association of Hamakita City was found to unreasonably restrain advertising of its members by restricting the methods and period of advertisement other than signboard or the place of signboard and prohibiting advertisement on health counseling.

43. Accordingly, the JFTC issued a recommendation to the Hamakita Medical Association on December 28, 1998 for violation of Section 8-1 of the Antimonopoly Act (Prohibited acts of trade associations) (the decision is issued in January 25, 1999).

(4) Litigation

44. In terms of lawsuits seeking to quash JFTC decisions, three cases were decided by the Supreme Court in 1998, one new lawsuit was filed, and three cases were still pending at the end of December 1998.

A) Lawsuit filed by Dai-Nippon Printing Co., Ltd. And Two Other Companies (3 cases)

45. The JFTC ordered Dai-Nippon Printing Co., Ltd. and two other companies to pay administrative surcharges for bid-rigging in Social Insurance Agency's procurement of seals for payment notices. The three companies, however, requested the initiation of hearing procedures. On August 6 1996, the JFTC, after a series of hearing procedures, issued the decision, reconfirming the earlier order for administrative surcharge. In response, all three companies filed lawsuits separately on August 28, September 2 and September 3, 1996, with the aim of overturning the decision. On June 6 1997, the Tokyo High Court, ruling in favor of the JFTC, dismissed the claim. All three companies then appealed to the Supreme Court, which dismissed it on October 13, 1998, with the ruling as follows:

1. When the criminal penalty was finalized for the appellants' practices of forming cartels in violation of the Antimonopoly Act and the state filed a civil litigation seeking the return of undue profit, it is not unconstitutional, as suggested by a past ruling¹, that the JFTC, based on the Antimonopoly Act Section 7-2 (1), ordered the appellants to pay administrative surcharges for forming illegal cartels.
2. As to the inclusion of the consumption tax amount into the administrative surcharge, the first court's ruling was justifiable and acceptable under the findings legally finalized in the first court.

B) Lawsuit filed by Kansei Cooperative Association

46. On March 11 1998, the JFTC ordered Kansei Association to pay administrative surcharges after hearing procedures applying the provision of the AMA Section 7-2,1 concerning rate to be multiplied to

JAPAN

the sale amount in calculating the surcharges of the association. (six percent). In response, on April 8 1998, Kansei filed a suit with the Tokyo High Court, with the aim of overturning of the decision.

2. Mergers and Acquisitions

(1) *Statistics Relating to Mergers and Acquisitions*

47. According to Sections 15 and 16 of the AMA, the JFTC must be notified of all planned mergers and acquisitions of businesses in advance. The JFTC examines the content of the notifications. If a planned merger or acquisition is found likely to substantially restrict competition, the JFTC has the power to prohibit it. In 1998, the JFTC was notified of 2,160 planned mergers in accordance with Section 15 of the AMA, and 1,653 planned acquisitions of businesses, in accordance with Section 16 of the AMA

Number of Notified Mergers and Acquisitions			
	FY 1996	FY 1997	FY1998
Mergers	2 420	2 162	2 160
Acquisitions	1 468	1 434	1 653
Total	3 888	3 596	3 813

48. The JFTC did not take any legal measures with respect to mergers or acquisitions in 1998.

49. In Japan, prior consultations with the JFTC are common before formally submitting merger notifications when there are concerns of difficulties with mergers due to the AMA. In these consultations the JFTC carries out thorough examinations of the merger's potential problems with regard to the AMA. On consultation, if the JFTC detects a problem, the company either abandons the merger or revises its contents in line with the AMA, and then formally files notification for the merger to be effected.

(2) *Major Merger Cases*

Merger between Chichibu-Onoda Corp. and Nihon-Cement Corp. and Integration of cement business between Ube Kousan Corp. and Mitubishi Material Inc.

50. These cases include merger between Chichibu-Onoda Corp., and Nihon-Cement Corp., cement manufacturers and comprehensive alliance between Ube Industries Ltd. and Mitsubishi Material Corp. concerning their cement business by collaboration in their manufacturing, and research and development departments and by establishment of a new company to integrate their sales and distribution departments.

51. The JFTC informed these companies involved in that these case would arise problems under the AMA since the plans would have the following outcome if implemented.

1. The domestic market share of top three cement companies would be about 80 percent.
2. The new company created by the merger of Chichibu-Onoda and Nihon-Cement would become the leading manufacturer with share of about 40 percent in the nation-wide market and in Hokkaido and Kanto regions, the new firm with about 50 percent. The new company to be formed by Ube Industries and Mitsubishi Material would have a share of about 25 percent in the nation-wide market and about 60 percent in Okinawa market.
3. Imported cement could not be a full-fledged alternative supply source at least in the short term although it would put some pressure on domestic manufacturers.

4. Competition is not so keen in the distribution of cement from the viewpoint of change of their suppliers.
5. Producers of ready, mixed concrete, major customers of cement manufacturers, usually form cooperative associations for joint marketing, and consequently, competition among them doesn't promote competition among concrete manufacturers.

52. In response, the company involved in merger between Chichibu-Onoda and Nihon-Cement proposed the JFTC that in order to liquidise the market share, they will sell, lend or abolish some 40 service stations across the country, or convert them into other business facilities. The companies involved in the alliance between Ube Industries and Mitsubishi Material proposed that they will reduce stock holdings of affiliated cement companies. The JFTC determined that the effect of the proposed transactions might not substantially to restrain competition in any particular field of trade when these measures are taken.

III. The Role of Competition Authorities in the Formulation and Implementation of Other Policies

1. Coordination of the Antimonopoly Act and Other Economic Laws

53. When administrative bodies propose the enactment or amendment of economic laws and ordinances from specific policy viewpoints, the JFTC consults these bodies at the planning and drafting stage, if there is a concern that the laws and ordinances will include exemption clauses from the AMA or provisions which may restrict competition.

54. In 1998, the JFTC took appropriate action with regard to following matters;

(1) *Partial Amendment of the Law concerning the Non-Life Insurance Rating Organization*

55. In order to promote competition through further deregulation and to make the system unrestrictive to competition, the JFTC scrutinized and amended the Law concerning the Non-Life Insurance Rating Organization. The JFTC also made some amendments necessary to minimize the scope of exemption.

56. Before the amendments, the member insurance companies were required to use the insurance rates for fire, damage, automobile, earthquake and automobile liability insurance. Under the amended act, the Non-Life Insurance Rating Organization calculates only pure premium rates which are used for reference when member insurance companies calculate insurance rate (equivalent to money to be paid), except earthquake and automobile liability insurance that are a kind of public service insurance, and member companies are not required to use these rates. The exemption system was abolished accordingly.

(2) *A bill concerning the measures by large scale Retail stores for preservation of living environment*

57. This bill calls for the repeal of the Law Concerning Adjustment of Retail-sale in a Large Supermarket and aims to transform the system to coordinate the openings of new stores under the law to one that encourages sound development of retailers with requirements for taking proper measures, regarding parking spaces, noise, waste disposal and other things so that the living environment of the neighborhood will not be damaged by retailers and to improve the transparency of its procedures. In order

JAPAN

to ensure a sound implementation of the system following its original purposes and to ensure the system would not work like regulations on store openings under the Large-scale Retail Store Law, the JFTC made some coordination.

(3) *Others*

58. The JFTC made some coordination in bills for financial system reforms, amendment to the commodity exchange act, repeal of the KDD Act and amendment to the Telecommunications Service Act.

2. **Administrative Coordination**

59. The JFTC coordinates with administrative bodies as necessary when they take administrative measures and give administrative guidance based on specific policy requirements in order to prevent guidance from causing problems concerning the AMA and competition policy. In June 1994, the JFTC published the “ Antimonopoly Act Guidelines Concerning Administrative Guidance” in order that guidance by administrative bodies would not hinder free and fair competition or induce violation of the AMA. In addition, it was decided in the “ The Three-Year Programme for Promoting Deregulation” (Cabinet Decision on March 1998) which, based on the “ Guidelines” , the JFTC would coordinates as necessary with the relevant ministries and agencies so that after deregulation any administrative guidance restricting competition will not substitute similar restrictive regulation. Accordingly, the JFTC is taking the necessary action in conjunction with the relevant ministries and agencies.

3. **Reform of Government Regulation**

60. In order to achieve specific policy objectives, the Government regulates the free economic activities of businesses concerning market entry or prices according to laws and ordinances. However, because economic conditions have changed considerably since the system was introduced, such regulation can lack in purpose, sometimes even to the detriment of the economy's vitality and efficiency.

61. The JFTC has conducted many medium and long-term reviews of the Government's regulatory system with regard to competition policy. Based on the recommendations of the OECD Council of 1979, the JFTC conducted an economic survey in 1982 and published its views. Moreover, it has urged the relevant ministries and agencies to carry out reforms through the adjustment of laws, ordinances and administrative actions.

62. The JFTC has been organizing meetings of study groups on the government regulations, made up of academics and others, to study problems of government regulations and competition policy as well as carrying out surveys on competitions in the government-regulated fields. The outcome of these efforts were released to the public. Based upon the outcome, the JFTC suggested relevant ministries and agencies to review their regulations.

63. In 1998, the JFTC conducted a survey on the insurance industry and the survey report were made available to the public. (As to the outline of the report, see V-4.)

(1) *Review of the resale price maintenance system on Copyright Works*

64. Review of the resale price maintenance system has been decided by a series of Cabinet Decisions. Based the Decisions, the JFTC has dealt with review of the system.

65. The JFTC held meetings of the Study Group on Government Regulations and Competition Policy for the Review of Resale Price Maintenance Issues since February 1997, and studied the system from various points of view. On January 13, 1998, the group submitted its report.

66. In response to the report, the JFTC examined the issue, and on March 31, 1998, made public the following conclusions:

- (1) In light of competition policy, the resale price maintenance exemption for copyrighted works should basically be reviewed with a view to repealing the exemption. It was pointed out, however, that the resale price maintenance exemption for copyrighted works has a function of dissemination of copyrighted materials and promotion of culture, although it cannot be considered to be an original function. Further study is therefore needed to find out effects of its repeal, and the review of the system should be continued. After a certain period of time, it should be decided whether to continue or to abolish the resale price maintenance system itself.
- (2) The goods subject to the resale price maintenance system for copyrighted books should be limited to six items: books, magazines, newspapers, music CDs, music cassettes and records.
- (3) The JFTC will urge relevant industries that existing problems in distribution and trade practices should be swiftly and appropriately addressed.

67. On December 2, 1998, the JFTC released a report on relevant industries' efforts to address the problems under the current resale price maintenance system.

4 Change of position of the JFTC in the Administrative Reform

68. As a part of administrative reforms, the Basic Law on the Reform of Central Ministries and agencies (1998 Law No. 103) was enacted based upon the final report of the Administrative Reform Council of December 3, 1997.

69. The law stipulates:

- (1) that the Fair Trade Commission will be an external organ of the new Ministry of Management and Coordination;
- (2) that the Fair Trade Commission continues to be responsible for competition policies including antimonopoly policies; and
- (3) that the commission' s capacity to investigate violations, should be strengthened in order to ensure the strict implementation of the Antimonopoly Act.

JAPAN

IV. Resources of the JFTC

1. Budget of the Fair Trade Commission

Trends in the budget of the Fair Trade Commission (unit: 100 million Yen %)

Fiscal Year	1988	1990	1991	1992	1993	1994	1995	1996	1997	1998
Budget of the JFTC	35.2	37.6	40.8	44.1	46.2	52.4	52.4	53.8	55.6	56.2
Budget amount (100 million yen)										
-change over previous year (%)	8.4	6.7	8.6	7.9	4.9	13.4	△0.1	2.7	3.3	1.1
General Expenditures Budget	3.3	3.8	4.7	4.5	3.1	2.3	3.1	2.4	1.5	△1.3
- change over previous year (%)										

Notes:

The FTC budget for FY1994 includes office relocation costs (230 million Yen).

The General Expenditures Budget refers to the total budget of the Japanese Government and is the amount of General Account Budget Expenditures minus National Debt Service and Local Allocation Tax Grants.

2. Number of Officials

Trends in the number of officials in the General Secretariat of the Fair Trade Commission (unit: persons) are shown below:

Fiscal Year	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Number of officials	461	474	478	484	493	506	520	534	545	552
Enforcement against anticompetitive practices	129	154	165	178	186	203	220	236	248	254
Merger review enforcement	18	18	19	18	19	18	18	18	18	19
Advocacy efforts	16	16	15	15	15	15	14	23	23	23

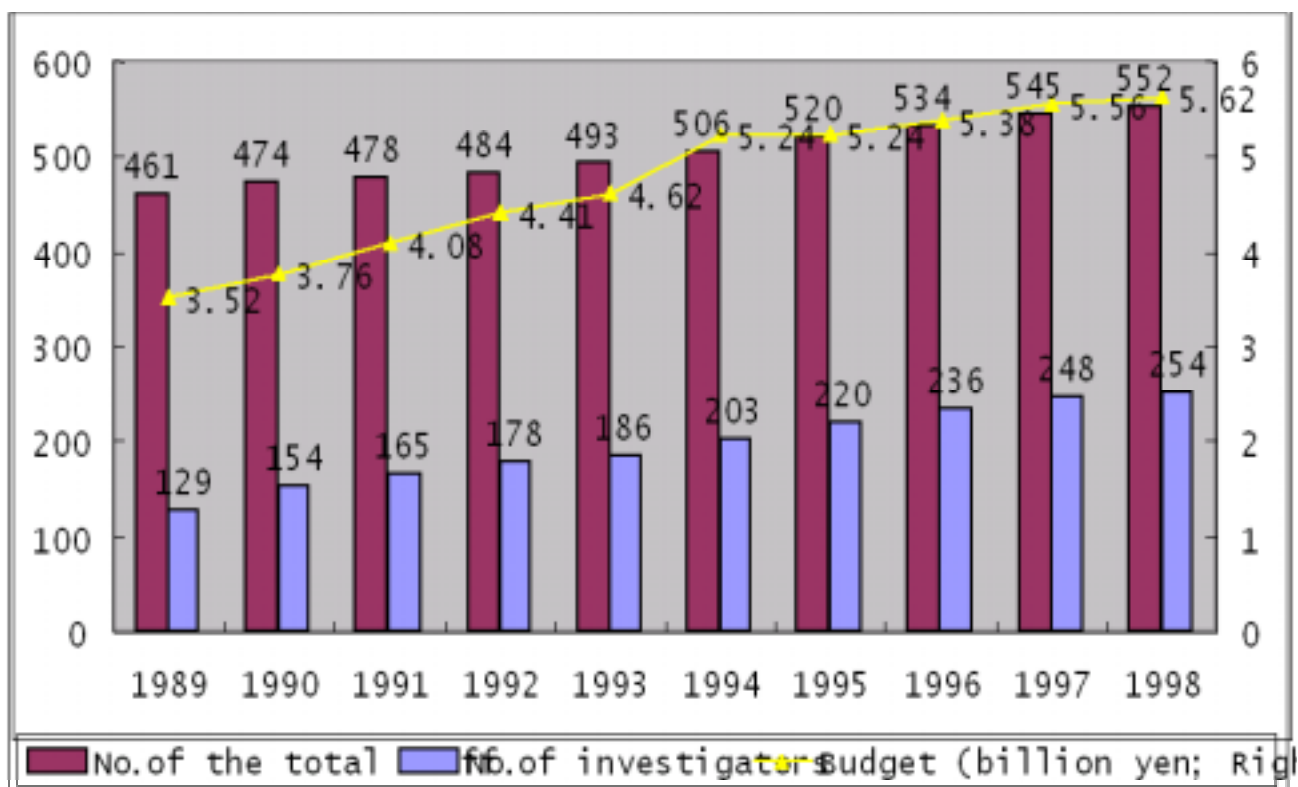
Notes:

Up until FY 1995, the secretariat office was the Executive Office.

The number of officials engaged in enforcement against anticompetitive practices refers to the Investigation Bureau (the Investigation Department up until FY 1995) and Investigation Divisions of local offices.

The number of officials engaged in merger review enforcement refers to the Merger and Acquisitions Division (the Enterprise Division up until FY 1995).

The number of officials' devoted to advocacy efforts refers to the General Affairs Division of the Economic Affairs Bureau (Coordination Division up until FY 1995) and the Coordination Division.



V. Surveys Relating to Competition Policy

70. The JFTC conducted surveys relating to competition policy in 1998 as shown in Appendix 4.

1. Follow-up Survey of Film Industry

71. The JFTC conducted a follow-up survey on the items the JFTC pointed out to Fuji Film and other companies from the view point of competition policy in the “ Survey of Transaction among Firms regarding Photographic Color Films for General Use and Photographic Color Paper.” The commission found that the firms sincerely follow the JFTC’ s suggestion. (The finding was released in June 1998).

2. Survey of advertising restrictions, etc. for professional services (judicial scriveners and administrative scriveners)

72. The JFTC conducted a survey on associations of professional services, especially judicial scriveners and administrative scriveners, whose business is restricted only to those respective scriveners, to see if the trade associations’ own regulations restrict businesses of members. The survey mainly focused on trade associations’ restrictions on advertising activities. The JFTC released its findings in a report on September 18, 1998.

73. The survey found the following practices that might violate the AMA:

JAPAN

- (1) Some associations categorically prohibited their member scriveners advertisement activities or made excessive restrictions on the types of media for advertising, and the frequencies and content of advertisements.
- (2) Some associations, in addition to authorized service fees decided by the association's rules and regulations, made up their own lists of additional unauthorized fees or those of standard fees on each type of cases and distributed them to their members.

74. The JFTC informed both the Japan federation of judicial scriveners' associations and the Japan federation of administrative scriveners' associations of their possible violations of the AMA. The JFTC request them to inform the problems to the member associations and to make voluntary effort for appropriate management of the system in accordance with the purpose of the AMA.

3. The 6th Survey Report on the Actual Conditions of the Six Major Corporate Groups

75. There are various kinds of corporate groups in Japan. From the viewpoint of competition policy, the JFTC conducted the 6th survey covering the six major corporate groups -- Mitsui, Mitsubishi, Sumitomo, Fuyo, Sanwa and Dai-ichi Kangyo Bank groups -- to find out how closely they engage in their business transactions. The findings were released to the public in October 1998.

76. Each corporate group is made up of corporations whose presidents form a group and meet occasionally. The survey found that the member companies of these groups still maintain a certain amount of cross share holding, dispatching of executives and close business transactions, but ties among group members through capital, personnel and financing were found loosening. The volume of business transactions within a group is decreasing. By and large, the survey found that ties among member companies within a group are getting weaker.

77. However, the six corporate groups, though they consist of small number of members, continue to be major locomotives of the nation's economy with their business activities accounting for more than 10 percent of Japan's total economy. As those corporate groups include many leading companies in the individual industries, it is necessary to continue to observe such as their ties in personnel and capital, business transactions within the group and the state of concentration of economic power.

78. Amid lingering serious recession, in some cases corporate groups extended helping hands to member companies facing serious financial crisis. And some companies mentioned that support and assistance by a group was one of the major benefits for being a member of a corporate group. The JFTC finds it necessary to continue to observe if corporate groups increase their ties in this regard.

4. Surveys of Insurance Industry

79. A sharp deregulation is under way in the Japanese insurance market through the 1995 amendment of the Insurance Business Act and the amendment of the Act concerning Non-Life Insurance Rating Organization, include in the financial system reform act in 1998. Under such circumstances, the JFTC conducted a survey on the insurance industry for the following reasons.

- (1) It is pointed that there are some government regulations and anti-competitive business practices in the insurance sector. So it was necessary to find out the state of competition under such restrictions. and to measure the effects of deregulation measures such as the amendment of the Insurance Business Law which allows the mutual entry of life and non-life insurance companies into the third sector.

(2) Foreign countries are concerned about the regulations and business practices in the Japanese insurance market.

80. In November 1998, the JFTC made public the result of survey. According to it

81. After the 1995 amendment of the Insurance Business Act, deregulation has steadily been in progress in the insurance industry. However, there still are rooms for expanding opportunities for market entries and customers of business. As to contracts of non-life insurance activities with corporate customers, they tended to choose insurance companies based on factors others than substance such as insurance premiums and coverage. Under such a circumstances, it is important to promote deregulation further through the competition of insurance products themselves and premiums from the viewpoint of competition.

82. The JFTC will continue to fully observe the future competition conditions in the insurance sector to realize the purpose of deregulation and will strictly enforce the AMA against business practices that constitute violations of the Antimonopoly Act.

NOTE

1. The Grand Bench of the Supreme Court ruled in 1954 that the Article 39 of the Constitution which prohibits double jeopardy, does not bar charging both the fine, a form of criminal penalties, and a penalty tax, an administrative measure. The court said that penalty tax under the Article 43 of the defunct Corporate Tax Law should be interpreted as an administrative measure to prevent such infringements of the obligation to pay taxes as false returns and failure to file a return, and to facilitate taxation. The court stated that that particular article does not intend to make infringement of taxation obligation a criminal act and therefore it does not intend to levy penalty tax as a criminal penalty.

Appendix 1

Outline of Partial Amendment of the Antimonopoly Act in 1998

- (1) Reporting System for Stockholdings (Section 10)
 - a. The scope of reporting requirements is reduced by raising the threshold from companies with over 2 billion yen in total assets (unconsolidated) to companies with over 10 billion yen in total assets (including the company' s parent and subsidiary companies).
 - b. The reporting system for stockholdings will be altered from the current system of reporting all stockholdings held by a company at the end of a fiscal year to a system of reporting stockholdings only when the acquisition of stock of a company with in total assets of more than one billion yen (unconsolidated) causes the acquiring company' s ownership of the acquired company to exceed certain percentages.
- (2) Notification System for Interlocking Directorates (Section 13) and Reporting System for Stockholdings by Persons other than a Company (Section 14)
Both systems will be repealed.
- (3) Notification System for Mergers (Section 15)
 - a. The scope of mergers subject to pre-notification requirements will be reduced from all mergers to mergers between a company with sum of total assets more than ten billion yen including the company' s parent and subsidiary companies and a company with sum of total assets more than one billion yen including the company' s parent and subsidiary companies.
 - b. Notification requirements will be waived for mergers between a parent company and its consolidated subsidiaries and mergers between sister companies (when a parent company owns over 50 percent of a subsidiary' s stock).
 - c. If the Fair Trade Commission requests additional reports within 30 days of receiving notification of a proposed merger, the period during which a recommendation or a decision to initiate hearing proceedings can be issued will be extended, and procedures governing the implementation of remedies specified in its notification will be improved.
- (4) Notification System for Acquisition of Business (Section 16)
 - a. The scope of business transfers subject to pre-notification requirements will be reduced from all transfers of entire businesses or major portions of businesses to (1) transfers of entire businesses from a company with total assets more than one billion yen, or (2) transfers of major portions of businesses or fixed business assets with more than one billion sales, to a company total assets of more than then billion yen including the company' s parent and subsidiary companies.
 - b. Notification requirements will be waived for business transfers between a parent company and its subsidiaries and business transfers between sister companies, business leasing, management undertakings, and contracts for sharing of profits and losses.

- c. The examination procedures for merger (item (3)C) will be applied mutatis mutandis to the examination procedures for business transfers covered by notification requirements.

(5) Mergers and Acquisitions outside Japan (Sections 10, 13, 14, 15, and 16)

- a. The amendment of the Antimonopoly Act has expanded its object for regulation to M&As outside Japan.
- b. Mandatory reporting and notification requirements concerning stockholdings and other provisions will apply when the annual sales of a business office or a subsidiary of a foreign company in Japan exceed 1 billion yen.

(6) Miscellaneous

This amendment would take effect on January 1, 1999 (the notification system for interlocking directorates and reporting system for stockholdings by a person other than a company will be repealed on the date this amendment is promulgated).

Appendix 2

The outline of the Guidelines for Interpretation on the Stipulation that "The Effect May Be Substantially to Restrain Competition in a Particular Field of Trade" concerning M&As

1. M&As to be examined in impact on competition

In accordance with types of M&As, the JFTC judges whether M&As should be examined in impact on competition.

(1) The example case of M&As to be examined are as follows:

- the stockholding ratio (the ratio of shares possessed by the acquiring company to the total outstanding stock of the acquired company) exceeds 50 percent;
- interlocking directorate formed by a person holding the right of representation of the both companies;
- mergers and acquisitions of business except cases mentioned (2) are conducted.

(2) The example cases not to be examined in impact in principle

- the stockholding ratio is less than 10 percent and no officer concurrently serves the boards of the two companies;
- mergers and acquisitions of business between a parent and its subsidiaries or between sister companies.

2. Basic Point of View for the Defining the Scope of a Particular Field of Trade

Relevant markets are defined in terms of the goods or services traded, trading area (geographic area), stage of trade, a specific party or parties to trade, and other factors where the business activities of all the companies whose joint relationships are formed, maintained, or strengthened by M&As elucidated in (1).

3. The effect may be substantially to restrain competition

(1) Basic Point of View

The effect may be substantially to restrain competition means a case where the market structure is altered in a noncompetitive manner by the M&A and the condition that would allow the company a certain latitude price, quality, volume, and other conditions unilaterally or by acting cooperatively together with other companies are easily led to presence to manipulate.

(2) Specific Determining Factors

In every particular field of trade, defined in 2, industry position of companies involved (market share, rank, existing competitive conditions between the companies involved), market conditions (numbers

of competitors and degree of concentration, entry, importation, foreclosure or exclusivity based on the trading relations). overall business capabilities of companies, competitive pressure from related markets, and efficiency will be considered comprehensively, and it will be determined if the proposed M&A may be substantially to restrain competition.

4. Prior consultation

The JFTC will respond, based upon the guidelines above, to inquiries from companies about whether the plans for actual M&As would pose problems with respect to the Antimonopoly Act.

Appendix 3

Outline of the Omnibus Act to Repeal and Reform Cartels and Other Systems Exempted from the Application of the Antimonopoly Act under Various Laws

1. Amendment of the Antimonopoly Act

- (1) Legitimate conduct based on business laws and ordinances (Section 22) was deleted.
- (2) The repeal of the depression cartel (Section 24-3)
- (3) The repeal of the rationalization cartel (Section 24-4)

2. The repeal of the Exemption Act and accompanying measures

- (1) The repeal of the Exemption Act
- (2) Exemptions concerning cooperatives under the Exemption Act will be based on Section 24 of the Antimonopoly Act.
- (3) The Central Association of Small and Medium Business Groups and established on the Cooperative Societies of Minor Enterprises Act and based on the Federation of Agricultural Cooperatives Association Act remain to be exempted from the application of the Antimonopoly Act.
- (4) The exemptions for all the other organizations were repealed.
- (5) Trade associations referred to in Section 2 of the Exemption Act continue to be exempted from notification requirement.

3. Amendment of other laws

- (1) The Maritime Transportation Law

[A] Maritime transportation cartel (Coastal Shipping)

- (a) The exemption is limited to joint operation agreements for maintaining lines indispensable for people's daily living and to arrange service schedule.
- (b) Procedural provision between MOT and JFTC is established. Consultation with the JFTC is required.

[B] Maritime transport cartel (international shipping)

Procedural provision between MDT and JFTC is established. (Transport Minister's Orders to change the situation, and notification requirement to the JFTC.)

- (2) Coastal Shipping Association Law

[A] Coastal Shipping Cartel

Reforming of procedures (Notice to the JFTC was changed to consultation with JFTC)

[B] Joint shipping Business

The case will be excluded from the scope of the exemption where firms other than small and medium sized ones use the system.

- (3) Aviation Law -- Aviation cartel (international) (Cartel formed by air carriers to make agreements on fares or other transportation affairs)

Procedural provision is established. (Notice to the JFTC)

- (4) Law Concerning Coordination and Improvement of Hygienically Regulated Business ---Cartel to prevent excessive competition

The exemption will not apply to the cases where unfair trade practices are employed.

Appendix 4

Surveys and Reports Relating to Competition Policy Published in 1998

January 1998

A policy statement on the resale price maintenance exemption system for copyrighted works

A report on premiums offered by newspaper salesmen at the time of subscription solicitation based on findings of a survey of consumer monitors.

March 1998

Consultation concerning business activities

A study report on changes of the distribution structure and response by firms to the changes (A report by the Study Group on Distribution-related Issues)

A proposal on the resale price maintenance exemption system for copyrighted works (A report by the Study Group on Government Regulations and Competition Policy for the Examination of Resale Price Maintenance Issues)

April 1998

JFTC' s activities against unfair trade practices in deregulated markets

June 1998

Major cases of consultation concerning the activities of trade associations in 1997 (FY)

Trends in the notifications related to Chapter 4 of the Antimonopoly Act in 1997 (FY)

A survey report concerning self-made restrictions on advertising and store openings by pharmaceutical retailers

A report by Study Group on Inter-Enterprise Trade regarding the implementation of the subcontract Act

The Survey on the Insurance Industry report concerning compliance programs of the Antimonopoly Act

A follow-up for survey on transaction among firms regarding photographic color films for general use and photographic color paper

A report of correcting problematic business practices of English conversation schools

July 1998

A survey report on the status of voluntary standards and certification of nonprofit public corporations and other bodies.

September 1998

A survey of associations of judicial and administrative scriveners regarding restriction on advertising

October 1998

The 6th survey report on the actual conditions of the six major corporate groups
JFTC' s activity against unfair trade practices in deregulated markets

November 1998

The Survey Report on the Insurance Industry

December 1998

A report regarding efforts to improve distribution and trade practices in related industries under the resale price maintenance exemption system for copyrighted works

Interim report on the introduction of injunctive system through Civil Litigation against the AMA violations