

JAPAN

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Executive Summary

1. The main feature of the 2002 activities of the Japan Fair Trade Commission (hereinafter referred to as the JFTC).

Amendment of the Antimonopoly Act

2. Significant amendments of provisions of the Antimonopoly Act were enacted in 2002. In consideration of recent economic conditions, the JFTC drafted an Antimonopoly Act amendment bill to contribute to further national economic development through the promotion of fair and free competition. Revisions included a review of the regulations on excessive concentration of economic power, an increase in the maximum penalty against juridical persons, procedures on the service of documents to overseas parties etc. and an extension of the scope of violations against which the Commission can take actions even after the violations have ceased to exist. The bill was approved on May 22, 2002.

Enactment of the Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc.

3. The Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. was proclaimed on July 31, 2002 for the purpose of promoting competition and ensuring proper execution of budgets in government and public demand sectors. This act provides effective means to prevent so-called “government-involved bid rigging” incidents that have occurred in recent years, in which employees of central and local government ministries and agencies and specified public corporations have been involved in bid rigging activities arranged by bid participants.

Development of cooperation with other competition authorities

4. In June 11, 2002 Japan and European Community (the other party to the negotiations was the European Commission) came to an agreement on the initiating draft text of a cooperation agreement, “Agreement Between The Government of Japan And The European Community Concerning Cooperation on Anticompetitive Activities”, and formally signed on July 10, 2003. In addition “Agreement Between Japan And The Republic of Singapore for a New-Age Economic Partnership”, Japan’s first free trade agreement, went into effect on November 30, 2002.

Actions against violations of the Antimonopoly Act

5. The JFTC has cracked down on the Antimonopoly Act violations. In 2002, the JFTC took legal measures (recommendations and orders to pay administrative surcharge without recommendations) against 23 cases of AMA violations, issued warnings in 16 cases, and ordered the payment of surcharge totalling 2643.32million.(Orders to pay 31.31million out of the amount were nullified because the JFTC had begun hearing procedures for some of the cases.)

Merger and acquisitions restrictions

6. During 2002, the JFTC received prior notifications of mergers, acquisitions and corporate divisions (110merger cases, 24division cases and 215acquisition cases) in 2002 under Sections15, 15-2 and 16 of the Antimonopoly Act.

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I. Changes to competition laws and policies – Outline of new regulations in competition laws and related legislation

1. Legislation

1) Amendment of the Antimonopoly Act

A) Repealed restriction on concentration of economic power

7. Instead of regulation on holding companies, the establishment of (or transformation of an existing company into) a company with “excessive concentration of economic power” has been prohibited (Section 9). The restriction on the total amount of stockholding by a large company (Section 9-2) has been repealed. Instead of restrictions on holding other companies’ voting rights through a financial company, holding non-financial companies’ voting rights through a bank or insurance company has been restricted (Section 11).

B) Increased upper limit of criminal fines against juridical persons etc.

8. The maximum penalty against juridical persons etc. that violate Section 3 (Prohibition of Private Monopolization or Unreasonable Restraint of Trade) had been increased from 100 million yen to 500 million yen (Section 95).

C) Improved procedures on the service of documents

9. Procedures on the service of documents had been improved, including introduction of a provision for the service of documents to parties overseas etc. (Section 69-2, Section 69-3 and Section 69-4).

D) Extended scope of violations against which the JFTC may take measures

10. The scope of violations against which the JFTC may take measures necessary to ensure elimination of violations, even when said violations have already ceased, had been extended (Section 7, Section 8-2, Section 48 and Section 54).

2) Enactment of the Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc.

11. The Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. was proclaimed on July 31, 2002 (Legislation by House members), and enforced on January 6, 2003..

[Main steps of the Act are as follows]

- The JFTC may demand improvement measures to the Heads of Ministries and Agencies etc.; the Heads of Ministries and Agencies etc. shall investigate the cases, implement improvement measures and publicly announce the results of their investigations and content of their improvement measures.
- Said Heads of Ministries and Agencies etc. shall investigate the reasons for disciplinary actions to take disciplinary measures against employees on the basis on the findings of their investigations and perform a necessary investigation if there is any damage to the government, etc., due to the said involvement in bid rigging etc..
- Coordination and cooperation among the administrative institutions concerned, consideration to the independent efforts of local public bodies, etc.

2 Revisions of guidelines

1) Guidelines Concerning Appropriate Electric Power Dealings

12. The JFTC, in cooperation with the Ministry of Economy, Trade and Industry (METI), published the revised Guidelines Concerning Appropriate Electric Power Dealings on July 25, 2002.

13. Based on incidents and cases involving reports and prior consultations following partial deregulation, the JFTC considered it vitally important to more specifically and clearly describe the preferable approach for proper electric power dealings under the system currently in force to all related parties, including electric power companies, new market entrants and customers, in order to create an environment in creative initiative can be demonstrated to the maximum extent.

14. This revisions supplemented the types of conduct that are problematic under the Antimonopoly Act based on its examinations and hearings with businesses. The revisions clearly indicated that competition – particularly competition among electric power companies – has not been stimulated even though the market has been partially market liberalized, and creating conditions disadvantageous to new market entrants or to electric power consumers wishing to use new market entrants will create a strong concern that such conditions will make new market entrants’ business activities difficult because electric power companies maintain local monopoly positions even after partial liberalization and because the customers and new market entrants that are the target of deregulation must depend on the electric power companies owning the electric power delivery grids under a local monopoly market structure.

2) Guidelines for Promotion of Competition in the Telecommunications Business Field

15. The JFTC, in cooperation with the Ministry of Public Management, Home Affairs, Posts and Telecommunications, published the revised Guidelines for Promotion of Competition in the Telecommunications Business Field on December 25, 2002.

16. The JFTC decided to gather cases while continuing to respond to changes in the competitive environment, and to appropriately and flexibly review the Guidelines in a format reflecting the accumulated results. Three Year Program for Promoting Regulatory Reforms (Revised) (Cabinet Decision of March 28, 2002) and the e-Japan Priority Policy Program-2002 (Decision of the IT Strategic Headquarters dated June 18, 2002) also provide revises of the Guidelines by the end of 2002.

17. In this revision, the Guidelines had been corrected to ensure consistency in conjunction with the April 2002 revisions to the Guidelines for Use of Poles, Ducts, Conduits and Similar Facilities Owned by Public Utilities (issued by the Ministry of Public Management, Home Affairs, Posts and Telecommunications).The Guidelines had been also added language based on case studies of application of the Antimonopoly Act in the past, stating that “with regard to construction works and replacement of equipment on supplying telecommunications services, unfairly obstructing the trade between competitors and their customers by making the expenses for the construction works and replacements in question disadvantageous to competitors and their customers compared to the expenses for customers of a company or parties related to a company” is conduct that will be a problem under the Antimonopoly Act.

3) Guidelines Concerning Franchising under the Antimonopoly Act

18. On April 24, 2002, the JFTC published the revised Guidelines Concerning Franchising under the Antimonopoly Act through the public comment procedure, to specifically describe the Antimonopoly Act in transactions between franchisers and franchisees. The major points of the revisions to this guideline are as follows:

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Solicitations for franchise participants by a franchise headquarters

- Added and expanded matters franchisers must disclose to parties wishing to become a franchisee.
- Requires franchisers to disclose facts and calculation method used as grounds for projections when a franchiser discloses sales or earnings projections.
- Illustrates matters the JFTC will consider when determining whether a franchiser's transaction methods related to franchisee solicitation violate the Antimonopoly Act. (Prohibition of Deceptive Customer Solicitation, Section 19)

Transactions between franchisers and franchisees after a franchise agreement is signed

- Clarifies the JFTC's thinking in situations where individual articles of a franchise agreement or a franchiser's conduct violate the Antimonopoly Act. (Prohibition of Abuse of Dominant Position, Section 19)
- Clarifies the JFTC's thinking in situations where an entire franchise agreement violates the Antimonopoly Act. (Prohibition of Abuse of Dominant Position, Section 19)
- Clarifies the respective JFTC thinking in situations where restrictions on selling price by a franchiser violate the Antimonopoly Act. (Prohibition of Resale Price Restriction ,Prohibition of Dealings with Restrictive Terms, Section 19)

3. *Bilateral Cooperation Agreements*

1) *Agreement between Japan and European Community*

19. The Government of Japan initialled the draft text of the agreement, "Agreement between the Government of Japan and the European Community Concerning Cooperation on Anticompetitive Activities", in Brussels on June 11, 2002 and formally signed it on July 10, 2003.

2) *Agreement between Japan and the Republic of Singapore*

20. "Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership", Japan's first free trade accord, went into effect on November 30, 2002. This Agreement incorporates the intent of Japan and Singapore to respond to anti-competitive conduct in their respective sovereign territories, promote cooperation between both countries and contribute to smooth trade and investment as competition policy sectors, and provides the specific framework for cooperation in the Implementing Agreement.

3) *Others*

21. Japan's central government is continuing activities aimed at concluding an agreement with the government of Canada for cooperation in competition sectors. The government is also conducting discussions concerning the text of a competition policy as it pursues examinations aimed at reaching economic partnership agreements with Mexico and some East Asian countries.

II. Enforcement of competition laws and policies

I Measures against violations

1) Measures taken in 2002

22. Out of 81 examinations which the JFTC concluded during 2002, the Commission took legal measures in 23 cases (22 recommendations and a surcharge payment order without recommendations) ordering actions such as cease and desist orders for violations. The Commission also issued warning in 16 cases in which it identified suspicions of violations of the Antimonopoly Act, issued cautions in 36 cases, and terminated examinations in 6 cases in which it did not uncover any facts of illegal conduct. The JFTC has been engaged in continuous efforts to eliminate bid-rigging. In 2002, 17 of the JFTC's formal measures were against bid-rigging.

A) Legal measures

• Private monopolization	0
• Bid-rigging	17
• Price cartels, etc. (excluding bid-rigging)	3
• Unfair trade practices	3
• Others	0

B) Surcharge payment orders

23. The Antimonopoly Act states that when firms or trade associations form cartels, a surcharge will be levied in the following cases:

- a) Cases related to the price of goods or services;
- b) Cases that affect the price of goods or services by effectively restricting the volume of supply.

24. The amount of the surcharge payment 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 surcharge payment is levied on the firms constituting the association. In 2002, the JFTC issued surcharge payment orders to 419 firms amounting to 2,643.32 million yen. In addition, the JFTC issued 20 orders to firms totalling 145.47 million yen following a decision in 2002 on a case for which a hearing procedure had been initiated concerning a previous surcharge payment order.

25. Of the 419 firms ordered to pay surcharges (except for surcharge payment orders as decisions via hearing procedures), 27 firms requested hearings in 2002. The JFTC initiated hearings on all of the cases, and surcharge payment orders totalling 313.1 million yen were nullified.

C) Criminal accusations

26. The JFTC has adopted an active policy to apply criminal penalties to violations that (a) substantially restrict competition in a particular field of trade, including price cartels, supply restraint cartels, market allocation agreements, bid-rigging and boycotts, which constitute serious cases that are likely to have a widespread influence on the national economy; or (b) involve firms or industries that are repeat offenders or which do not take appropriate measures to eliminate a violation, and where the administrative measures of the JFTC are not considered sufficient to meet the aims of the Antimonopoly Act.

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27. There were no criminal accusations in 2002. The JFTC investigated a bid rigging case concerning water meters purchased by the Tokyo Metropolitan Government, and in July 2003 filed an accusation with the Public Prosecutor General against four companies and five individuals who were engaged in the sale of water meters purchased by the Tokyo Metropolitan Government, based on Section 73-1 of the Antimonopoly Act.

D) Hearing procedures

28. The JFTC initiated hearing procedures on 61 cases in 2002. As of December 2002, the JFTC was conducting ongoing hearing procedures for 81 cases, of which 8 concerned allegations of the Antimonopoly Act violations and 73 concerned surcharge payment orders. The JFTC issued decisions on 8 cases in 2002 after hearing procedures, including bid-rigging cases.

2) *Summary of main cases*

A) Case against bidders for landscaping projects in Mie Prefecture

29. The JFTC found that 33 bidders for landscaping projects ordered by the Mie Prefecture government through designated competitive bidding had colluded to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on April 18, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 3 (Prohibition of unreasonable restraint of trade) of the Antimonopoly Act (decision issued on May 29, 2002).

B) Case against Mitsubishi Electronic Building Techno-Service Co., Ltd.

30. The JFTC found that Mitsubishi Electronic Building Techno-Service Co., Ltd. interfered in the conclusion of maintenance contracts between independent maintenance firms and owners of elevators manufactured by Mitsubishi Electric Corporation, and in the smooth conduct of their business activity. Accordingly, on June 11, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 19 (Prohibition of unfair trade practices) of the Antimonopoly Act (decision issued on July 26, 2002)

C) Case against bidders for maintenance engineering works for oil storage facilities

31. The JFTC found that seven contractors of maintenance engineering works for oil storage facilities ordered by the head offices of national oil stocking companies through designated competitive bidding had colluded to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on June 24, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 3 (Prohibition of unreasonable restraint of trade) of the Antimonopoly Act (decision issued to five contractors on September 26, 2002, and hearing procedures initiated to two contractors on June 24).

D) Case against bidders for engineering works for road signs ordered by the Metropolitan Police Department

32. The JFTC found that bidders for engineering works for road signs ordered by the Metropolitan Police Department through designated competitive bidding had made an agreement that the bid organizer decided winners in consideration of business results, and colluded to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on July 15, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 3 (Prohibition of unreasonable restraint of trade) of the Antimonopoly Act (decision issued on July 30, 2002).

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E) Case against producers and sellers of crossbred seeds

33. The JFTC found that 32 producers and sellers of crossbred seeds of Chinese cabbage, cabbages, Chinese radishes and turnips decided standard prices severally and sold these seeds to comply with these prices. Accordingly, on August 26, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 3 (Prohibition of unreasonable restraint of trade) of the Antimonopoly Act (issued decision to 13 entrepreneurs on September 25, 2002, and hearing procedures initiated against the other on October 16).

F) Case against bidders for construction work in Chiba City

34. The JFTC found that 119 contractors of engineering works and 98 contractors of paving works whose head offices or branches are located in Chiba City had colluded to designate in advance the winners of bids and effectively allow them to receive orders issued by Chiba City and the Chiba City Urban Development Corporation through designated competitive bidding. Accordingly, on October 30, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 3 (Prohibition of unreasonable restraint of trade) of the Antimonopoly Act (decision issued to 122 entrepreneurs on December 4, 2002, and to one on January 8, 2003).

G) Case against bidders for road maintenance works ordered by Japan Highway Public Corporation

35. The JFTC found that bidders for road maintenance works ordered by Japan Highway Public Corporation through public appeals and designated competitive bidding colluded to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on November 12, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 3 (Prohibition of unreasonable restraint of trade) of the Antimonopoly Act (decision issued on December 4, 2002).

36. In this case, Japan Highway Public Corporation procured the works in a manner that spoiled the meaning of public appeals and designated competitive bidding. The JFTC therefore requested Japan Highway Public Corporation to not procure works in the same manner in the future, to initiate thorough information control and to take measures to utilize the merits of competitive bidding.

H) Case against Scubapro Asia Co., Ltd.

37. Scubapro Asia Co., Ltd. supplied new or popular diving gear to retailers directly or through distributors on the condition that retail prices will be higher than prices set by Scubapro Asia Co., Ltd.. Accordingly, on November 28, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 19 (Prohibition of unfair trade practices; retail price restriction) of the Antimonopoly Act (decision issued on December 26, 2002)

I) Case against manufacturers of science teaching materials

38. The JFTC found that eight makers and sellers of science teaching materials had colluded not to supply the teaching materials which are similar to specified stocks on the specifications of the local governments etc. of Western Japan, in spite of these local governments etc. have policies to purchase similar goods of specified stocks on the specifications. Accordingly, on November 29, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 3 (Prohibition of unreasonable restraint of trade) of the Antimonopoly Act (decision issued on December 26, 2002).

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J) Case against Tokyo Area ALC Cooperative Society

39. The JFTC found that the Tokyo Area ALC Cooperative Society unreasonably interfered with business activities of outside firms in transactions for construction work of specific autoclaved lightweight concrete products in the Tokyo metropolitan area for the purpose of preventing outside firms from supplying those products to contractors directly at a low rate. Accordingly, on December 26, 2002 the JFTC issued a recommendation for elimination of the conduct, for violation of Section 19 (Prohibition of unfair trade practices; interference with a competitor's transactions) of the Antimonopoly Act (decision issued on January 31, 2003).

3) *Litigation*

40. Three lawsuits seeking to overturn the JFTC decisions were rejected by court decisions, while two new lawsuits were filed in 2002. As of the end of December 2002, there were four ongoing lawsuits.

A) Lawsuit seeking to overturn a JFTC decision that has been rescinded – lawsuit filed by International Geology Co., Ltd.

41. After a series of hearing procedures, the JFTC issued a decision on September 20, 2001 against International Geology Co., Ltd. on the grounds it had violated Section 3 of the Antimonopoly Act (Prohibition of unreasonable restraint of trade) by colluding to decide in advance the winners of bids for specific geological survey services ordered by Chiba City and other jurisdictions. Although International Geology Co., Ltd. filed a lawsuit with the Tokyo High Court on October 19, 2001 to overturn the decision, the court dismissed the suit on October 25, 2002 and the court's decision became final.

B) Lawsuit seeking to overturn a JFTC decision that has been newly filed

42. After a series of hearing procedures, on July 25, 2000 the JFTC issued a decision against Okazaki Kanko Co., Ltd. on the grounds it had violated Section 3 of the Antimonopoly Act (Prohibition of unreasonable restraint of trade) by colluding to decide in advance the winners of bids for specific water-main works procured by the Water Bureau of Hiroshima City.

43. The case had been subject to a series of hearing procedures since April 2001, when the decision was made to initiate the hearings. In response, Okazaki Kanko Co., Ltd. filed a lawsuit with the Tokyo Supreme Court on August 21, 2002 to overturn the decision.

C) Lawsuits seeking compensation for damages based on Section 25 of the Antimonopoly Act

44. During 2002, two lawsuits seeking compensation for damages based on Section 25 of the Antimonopoly Act was filed, and had one lawsuit pending at the end of December 2002.

45. On April 18, 1997, the JFTC issued a recommendation against Kimmon Manufacturing Co., Ltd. and 24 other companies, in which it suspected Kimmon Manufacturing and 24 other companies of deciding which firms would receive orders for specified water meters ordered by the Tokyo Metropolitan Government and colluding to ensure the selected companies received the orders. On April 14, 1998, the Tokyo Metropolitan Government initiated a lawsuit against Kimmon Manufacturing and 24 other defendants, seeking damages based on Section 25 of the Antimonopoly Act, and on October 4, 2002 reconciliation settlement was approved (amount of reconciliation payment 2,051,780,000 yen).

D) Lawsuits seeking injunction based on Section 24 of the Antimonopoly Act

46. During 2002, two lawsuits for injunction claims were dismissed and seven new lawsuits initiated based on Section 24 of the Antimonopoly Act. As of December 31, 2002, there were 12 ongoing lawsuits .

E) Other claims for compensation for damages related to the Antimonopoly Act

47. Based on the provisions of Section 242-2 of the Local Autonomy Law, residents living in districts of local governments that issued purchase orders have initiated lawsuits on behalf of the local government in each district seeking compensation for damages suffered as a result of bid rigging (resident subrogation lawsuits). Furthermore, following enactment of the revised Local Autonomy Law in September 2002, residents living in districts of local government may file a lawsuit against municipalities for bringing a case before the court by itself.

- Main resident subrogation lawsuits pending – Resident lawsuits concerning electrical equipment construction ordered by Japan Sewage Works Agency

48. On July 12, 1995, the JFTC issued surcharge payment orders against Hitachi, Ltd. and eight other parties with regard to bid rigging on electric equipment construction ordered by the Japan Sewage Works Agency. Residents in the district where the bid rigging occurred also initiated lawsuits on behalf of the local governments in each local court, seeking compensation from damages from Hitachi and the other parties, and as of this time these lawsuits are also pending.

2. *Mergers and acquisitions*

1) *Policies Dealing with Prior Consultation Regarding Enterprise Combination Plans*

49. When companies execute actions such as a merger, division or business acquisition in Japan, the JFTC conducts a strict examination to determine whether the action will violate the Antimonopoly Act. In some cases, the parties to such transactions also consult with the JFTC prior to submitting their notification on the merger, division or business acquisition. In situations where the JFTC highlights a problem with such transactions, even at the stage of prior consultations with the parties to the transaction, the companies concerned make a decision on whether to abandon the merger, division or business acquisition in question, or to formally submit a notification after altering the details of the transaction to a form that will not violate the Antimonopoly Act.

50. From the standpoint of further increasing the speed and transparency of these prior consultations, on December 11, 2002 the JFTC publicly released the “Policies Dealing with Prior Consultation Regarding Enterprise Combination Plans”. In addition, with view to further improving the transparency of its examination results, the JFTC released a policy to broaden the details of its responses and the contents of public statements regarding those matters for which the JFTC conducts detailed examinations.

2) *Statistics relating to mergers and acquisitions*

51. Based on the provisions of Section 15, Section 15-2 and Section 16 of the Antimonopoly Act, company mergers, divisions and business acquisitions of a particular size in Japan must be reported in advance to the JFTC. The JFTC conducts an examination on cases that are reported, and when it determines a transaction will substantially restrict competition in a particular field of trade, the JFTC has the power to take measures including its preclusion. During 2002, 110 company mergers were reported to the JFTC based on the provisions of Section 15 of the Antimonopoly Act, 24 company divisions were reported based on the provisions of Section 15-2 of the Act, and 215 cases of business acquisitions were

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reported based on the provisions of Section 16 of the Act. None of the company merger, division or business acquisition cases reported in 2002 were cases in which the JFTC adopted legal measures.

Table Number of reports concerning company mergers, divisions and business acquisitions

	2000	2001	2002
Mergers	170	136	110
Divisions	—	12	24
Business acquisitions	213	197	215
Total	383	345	349

Note: The division system (joint establishment division and acquisition division) was newly established by an amendment of the Act in May 2000 and enforced in April 2001.

3) *Main mergers and acquisitions cases*

A) Integration of Harddisk Drives Businesses by Hitachi and International Business Machines Corporation(IBM)

52. International Business Machines Corporation (hereinafter referred to as “IBM”) decided to transfer all of its hard disk drive (HDD) business to Hitachi, Ltd. (hereinafter referred to as “Hitachi”), by establishing a joint investment company (Hitachi: 70%, IBM: 30%) to integrate the HDD businesses of both companies and then converting the joint investment company into a 100% subsidiary of Hitachi. In September 2002, the JFTC responded to the companies in question and publicly released its assessment that the integration would unlikely violate the provisions of the Antimonopoly Act if it judged from the explanations given by the parties concerning the details of the integration during prior consultation.

53. In this case, the JFTC found that 3.5 inch HDDs (SCSI) and 2.5 inch HDDs, respectively, over which the inquiring parties are in competition, constitute particular fields of trade.

54. The proposed integration will bring the share and ranking of the parties’ combined number of shipped units in the respective domestic particular field of trade to approximately 40%, ranking No. 1, for 3.5 inch HDDs (SCSI), and about 35%, ranking No. 2, for 2.5 inch HDDs. On a world-wide basis, the share and ranking of the inquiring parties in terms of combined number of shipped units will come to approximately 25%, ranking No. 2, for 3.5 inch HDDs (SCSI), and about 60%, ranking No. 1, for 2.5 inch HDDs. Considering the world-wide share of the parties in terms of combined number of units shipped, there is a possibility the inquiring parties may acquire an even larger share of the domestic 2.5 inch HDD market in the future.

55. In both fields of trade, however, the following situations were found to exist, and the JFTC determined the integration would not be substantial to restrain competition in any particular field of trade.

- Since HDD users usually split their orders to a number of different manufacturers, in this case it is considered difficult for the inquiring parties to maintain their existing market share in terms of the number of combined units shipped after the integration.
- HDD manufacturers do not publicize the prices at which they sell their products to PC manufacturers or other users. Also, HDDs are subject to very short product life cycles, and their selling prices decline quite substantially. For these reasons, it is difficult for HDD manufacturers to discern their competitors’ selling prices, and this is one factor preventing them from entering into cooperative pricing with competing HDD manufacturers.

- As there is little difference among the relevant types of HDD products in their manufacturing facilities and technologies, there is no significant barrier for HDD manufacturers to go into manufacturing other types of HDDs.

56. Also, in each particular field of trade, the following situations are found to exist.

- In 3.5 inch Adds (SCSI) ,there exist strong competitors having market shares of approximately 35%, 15% and 10% respectively in terms of the units shipped domestically, and the company with the domestic share of 35% has world-wide market shares of 45%. Considering the fact that the total number of units shipped within Japan amounts to only about 5% of the corresponding number for the entire world market, it will be easy for the particular competitors to increase their shipments to Japan if justified by the condition of Japan's domestic market. This aspect can be regarded as an effective deterrent from an anti-monopoly point of view.
- In 2.5 inch HDDs, there exist strong competitors having market shares of approximately 45% and 25% respectively in terms of units shipped. While the size of the market for 3.5 inch HDDs (IDE), which account for 75% of all HDDs produced in the world, is larger than that for other types of HDD, there is information that more than one major manufacturer of 3.5 inch HDDs (IDE) intends to enter the 2.5 inch HDD market in view of the possible market growth in demand for that type of HDD in the future.

57. Taking all these things into consideration, the JFTC determined that this integration would not be substantially to restrain competition in any particular fields of trade.

B) Business integration by Nippon Felt Co., Ltd., Ichikawa Co., Ltd. and Nippon Filcon Co., Ltd.

58. This case involved three manufacturer-distributors of paper machine clothing, which were planning to integrate their businesses by establishing a holding company. Following the user hearing sessions and the detailed examination of the additionally provided information, in October 2002, the JFTC indicated the parties of the potential infringement of the planned integration on the Antimonopoly Act. Afterwards, in December 2002 the companies notified the JFTC and publicly announced they had decided not to proceed with the integration, and the JFTC publicly released its views with respect to the Antimonopoly Act in connection with the integration.

59. In this case, each product of paper machine clothing tools (wires, felts and belts) constitutes a particular field of trade. Among the products examined, a particular field of trade for felts was constituted with respect to the transactions with large-to-medium sized papermakers and those with medium-to-small sized papermakers.

60. Among each field of trade mentioned above, the JFTC placed particular focus on felt because the combined share of sales volume was going to be extremely large, in addition to the significant leap in the parties' market share after the integration. The result was as follows;

- Large-to-medium sized papermakers

Nippon Felt and Ichikawa each hold about 45% market share; the combined share of sales volume following the integration would be approximately 90%, with the integrated company being the sole felt manufacturer in Japan.

There is no large difference in product quality between the domestic and overseas manufacturers, and some domestic manufacturers are inclined to increase the percentage of

imports. However, imports currently have a market share of about 10%, with the percentage holding steady during the past five years. In addition, the large-to-medium sized papermakers purchase many kinds of products exclusively from the two domestic manufacturers in question, and therefore the JFTC concluded it is unlikely for the percentage of imports to rise under the present conditions.

- Medium-to-small sized papermakers

The combined share of sales volume was going to exceed 99%, with the integrated company being the sole felt manufacturer in Japan.

The imports assume a very small proportion of less than 1% of the market share. Many felt products needed by the medium-to-small sized papermakers are not available from the overseas manufacturers in the first place. Therefore, it was entirely unlikely for the pressure from the imports to increase. Following the integration, the medium-to-small sized manufacturers were going to be virtually forced to make purchases from the integrated company.

61. As stated above, the JFTC observed that while the users primarily purchase products from both domestic companies and hold an advantageous position in price negotiations, following the integration this might no longer be the case should imports emerge as significant competitors against the sole domestic manufacturer, and therefore the JFTC determined that the integration as proposed might be substantially to restrain competition in the field of trade regarding felt transactions with large-to-medium sized papermakers.

III. The role of competition authorities in the formulation and implementation of other policies (regulatory reform, trade and industrial policies, etc.)

1. Coordination between the Antimonopoly Act and other economic laws and ordinances

62. When administrative bodies propose to enact or amend an economic law or ordinance from the standpoint of a specific policy requirement, and there is a concern the proposed amendment or enactment will include exemption clauses from the Antimonopoly Act or provisions which may restrict competition, the JFTC acts in consultation with these bodies at the planning and drafting stage to ensure coordination among the proposed provisions, the Antimonopoly Act and competition policy.

2. Administrative coordination

63. As necessary, the JFTC also coordinates with administrative bodies when they take administrative measures based on specific policy requirements, in order to prevent such measures from causing problems concerning the Antimonopoly Act and competition policy. Three Year Program for Promoting Regulatory Reforms (Revised) (Cabinet Decision of March 28, 2002) states that ministries and agencies concerned are required to hold prior consultations with the JFTC to ensure that anti-competitive administrative guidance does not replace similar restrictive regulations. The JFTC ensures necessary coordination with the ministries and agencies concerned.

3. Reform of government regulations

64. To achieve specific policy objectives, the government has regulated the free economic activities of businesses, such as market entry or prices, according to applicable laws and ordinances. Because economic conditions have greatly changed since the regulatory systems were introduced, however, such regulations may lack purpose and may even suppress economic vitality and efficiency.

65. The JFTC has conducted medium and long-term reviews of government regulatory systems from the viewpoint of promoting fair and free competition. Based on OECD Council recommendations in 1979, the JFTC conducted an economic survey in 1982 and published its views. Furthermore, the JFTC has urged the relevant ministries and agencies to carry out reforms through legal and administrative coordination. The JFTC has also organized meetings of the Study Group on Government Regulations and Competition Policy, a body of scholars and other experts, and commissioned its members to address problems of government regulations and competition policy in individual sectors.

1) Report of Study Group on Government Regulations and Competition Policy

A) Examination of competition policy in the electricity sector

66. In May 2002, the Study Group on Government Regulations and Competition Policy held meetings to research ways to improve the environment in order to promote competition in the electricity sector, and in June 2002 published its basic thinking in a report entitled “Establishment of Environment to Promote Competition in the Electricity Sector – Report of Study Group on Government Regulations and Competition Policy –”

67. The main suggestions proposed in the report are summarized below.

- As measures to encourage new market entry, a full-fledged review of the existing electric power distribution system or measures such as establishment of electric power trade exchange system are needed
- As measures to activate wide-area competition, a full-fledged review of the system for electric power transmission service usage charges, such as abolition of the existing inter-account transfer charge system, is required
- To establish impartial rules for the consignment power distribution sector, it is necessary to examine measures to separate system administration from operations of electric power companies, in order to ensure system administrations neutrality and transparency and effectiveness of these impartial rules.
- As assurance of a fair rule to promote competition in the electricity sector, a mechanism for providing sufficient cooperation between the JFTC and the regulator must be facilitated, such as establishing a system for the JFTC to hear opinions regarding the establishment of third-party organizations and creation of new rules to regulate and supervise system operations, while continuing to use ex post regulation based on the Antimonopoly Act.

B) Examination of competition policy in the telecommunications sector

68. In September 2002, the Study Group on Government Regulations and Competition Policy set up a Working Group on the Telecommunications Sector and began studying system reforms and various approaches from the viewpoint of competition policy for the telecommunications sector, and in November 2002 published its findings in a report entitled “Regulatory Reform and Competition Policy in the Telecommunications Business Field – Report of Study Group on Government Regulations and Competition Policy –”

69. The main suggestions proposed in the report are summarized below.

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- Because of rapid progress of technical innovations in the telecommunications sector, it is important to abolish ex ante government regulations to the extent possible and to promote originality of firms by strengthening fields of free activity of firms. And it is also important for the government to take an ex post facto approach of specifying prohibited conducts clearly and taking actions only if problems on competition occur rather than regulate the market using ex ante government regulations such as approvals or licenses.
- It is needed that the JFTC and the regulator collaborate to ensure fair competition rules for competition.
- Ex ante regulations to make bottleneck facilities open are required to introduce transitional competition, but it will be necessary for the regulator and the JFTC to jointly verify the progress of competition in the marketplace and review such regulations.

C) Examination of competition policy in the social regulation sector

70. In April 2002, the Study Group on Government Regulations and Competition Policy set up a Working Group on the Social Regulation Sector and began studying system reforms and various approaches to competition policy in the social regulation sector, covering nursing care, medical care and labour. In November 2002, the Study Group published its findings in a report entitled “Promotion of Competition in the Social Regulation Sector (Nursing Care, Medical Care, Labour) – Report of Study Group on Government Regulation and Competition Policy –”

71. According to the report, an adequate review of regulations in the social regulation sector has not yet to be completed. From the standpoint of diversity and efficiency of services, however, the reform of these systems has become a pressing issue. The report states that in the social regulation field as well, it is needed to enforce the minimum regulations required to ensure quality of services and provide such services to all citizens and not to enact regulations on quantity of market entity.

- Nursing care sector:

72. Relaxation of regulations related to entities providing facility nursing services, ensure equal footing for private corporations and social welfare corporations, actively utilize PFI, etc.

- Medical care sector:

73. Review quantity restrictions on sickbeds, review regulations on hospital management entities, review best approach for mixed diagnosis and treatment (combination of services covered and not covered by social insurance), etc.

- Labour sector:

74. Relaxation of regulations on commissions in the job introduction business, review restrictions on dispatch periods and businesses approved for labour dispatch in the labour dispatch business, etc.

2) *Survey Report on Public Service Corporation Reforms and Competition Policy in the Standards Certification /Inspection Sector*

75. Of the 77 systems such as inspections that the central government consigns or is recommending for non-profit organizations, the JFTC conducted a survey of the general situations of competition for 37 systems in which private business corporations may participate as a result of system reforms conducted to-

date. The JFTC conducted detailed surveys of seven systems in which private businesses may participate based on a review under the Three Year Program for the Promotion of Deregulation, the water quality test on publicly supplied water, the inspection system for technical conformity of electrical facilities, the system for technical regulations conformity certification of “specified radio equipment”, the system for certifying “telecommunications terminal equipment” conformity to technical conditions, the inspections for “special machines” such as boilers (excluding small-sized boilers, the model certification examinations for machines such as power driven presses), and issued its report in March 2002.

76. According to the results of the survey, in some systems the results of competition such as reductions in fees can be noted as a effect of market entry by private business organizations. On the other hand, under the traditional systems where consignment to the services have been expanded to private business organizations and the government ministry maintains its authority to designate the certification/inspection bodies, system and operations-related problems such as no significant market entries by new participants can be noted. There are also many systems where market entry by new participants has not occurred.

77. In the future, alternatives such as moving to a system where certification/inspection is conducted registered organizations (fair and impartial third-party organizations registered by the government in a form that leaves no room for administrative discretion) will be considered. Regarding the results of this survey, however, the regulatory authorities should consider that (1) design of systems for promoting competition such as lowering barriers to entry, (2) ensuring conditions for competition are on an equal footing, (3) prohibition of conduct that restrains competition and (4) thorough disclosure, are critical to realize the successful results of system reforms.

IV. Japan Fair Trade Commission Resources (fiscal 2002)

1. Budget

Trends in the budget of the Fair Trade Commission (unit: billion yen, %)

Fiscal Year	1995	1996	1997	1998	1999	2000	2001	2002
Budget of the JFTC								
Budget amount (billion yen)	5.24	5.38	5.56	5.62	5.78	5.9	6.04	6.16
change over previous year (%)	-0.1	2.7	3.3	1.1	2.8	2.1	2.3	2.0
General Expenditures Budget								
change over previous year (%)	3.1	2.4	1.5	-1.3	5.3	2.6	1.2	-2.3

Notes:

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

2. Number of officials

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

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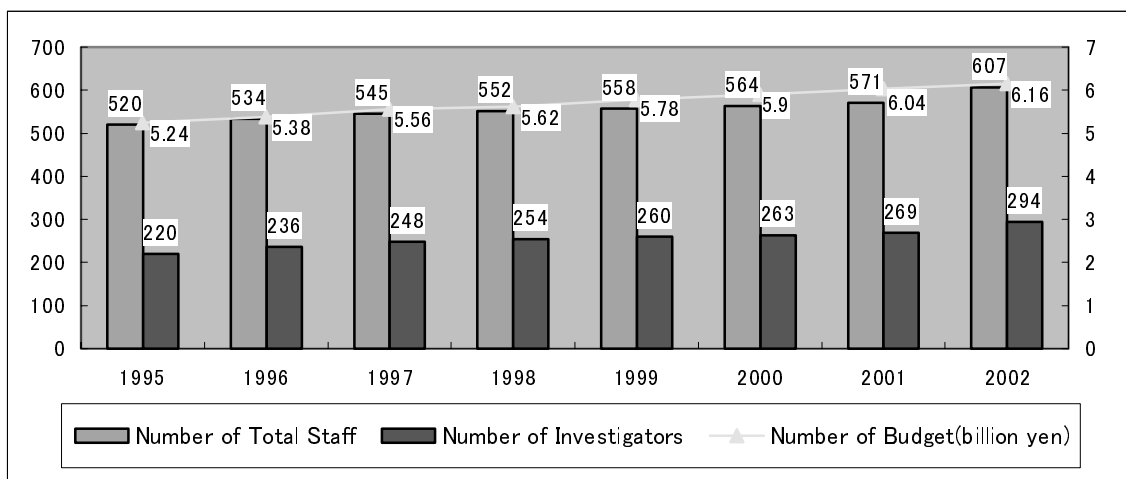
Fiscal Year	1995	1996	1997	1998	1999	2000	2001	2002
Number of officials	520	534	545	552	558	564	571	607
Enforcement against anti-competitive practices	220	236	248	254	260	263	269	294
Merger review enforcement	18	18	18	19	19	22	22	28
Advocacy efforts	14	23	23	23	22	22	22	25

Notes:

1. Up until FY 1995, the secretariat office was the Executive Office.
2. The number of officials engaged in enforcement against anti-competitive practices refers to the Investigation Bureau (the Investigation Department up until FY 1995) and Investigation Divisions of local offices.
3. 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 (the Coordination Division up until FY 1995) and the Coordination Division.

Staff and budget (FY 1995-2002)



V. Main surveys related to competition policy

1. Survey Report on Business Alliances and Competition among Firms

79. The JFTC conducted a survey of actual conditions concerning business alliances among companies, which have increased rapidly in recent years, and publicly released its survey results in February 2002. While business alliances are thought to have the positive effect of promoting competition through mechanisms such as lowering prices of manufactured goods through cost reductions, ensuring early market introductions of new products and expanding the number of customers, it also has the negative effect of restraining competition through the unification of decision-making concerning companies' business policies such as selling price. The JFTC therefore conducted its survey of actual conditions, classifying business alliances according to its patterns such as alliances in "production sector" and "sales sector".

80. Approximately 80% of firms have executed some sort of business alliances and they responded their objectives were to achieve benefits such as supplementing knowledge and technology in which the firm was deficient, reducing costs and risks, and increasing the pace of business development. In the case

of strategic alliances in particular, entrepreneurs sought to achieve competitive dominance in markets expected to grow in the future or to maintain their competitiveness in mature markets, so business alliances tend to be horizontal, globalized or cross-industry orientated ones.

81. While business alliances are considered to promote competition in many cases, when the latitude for competition among participating firms or the incentives to compete are substantially reduced by collaboration among competitors that have a large market share, it is necessary to understand and evaluate this aspect appropriately because the influence of such business alliances on competition is conceivable to be significant.

2. *Survey Report on Competition in an Innovation Market from the Viewpoint of Competition Policy - Focusing on the Pharmaceutical Industry -*

82. In June 2002, the JFTC publicly released the results of a survey concerning actual conditions in research and development competition that uses technological innovation as the principal means of competition, taking the pharmaceutical industry as an example. The JFTC highlighted the following matters in its report.

83. In the ethical drug sector where the principal means of competition is not the pricing, dynamic competition takes place centered on research and development activities. Because products in the ethical drug sector are not differentiated according to design or price but are differentiated according to absolute product qualities such as efficacy and effect, the business is characterized by large changes in market structure when products demonstrating superior efficacy or effects unavailable in the existing market are introduced. In addition, the recent development of the discussions at ICH(International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use) brings increasing borderlessness of R&D in the pharmaceutical industry.

84. Because the successful outcomes of R&D activities such as new technologies have extremely low transfer costs, and it is also easy to transfer the R&D outcomes developed in one country to other countries, in many cases R&D competition is developed at the global level. Therefore, when considering competition at the R&D level it is necessary as a rule to consider competition among R&D activities from the global perspective, without limitation to merely domestic competition.

85. In evaluating competition in the R&D market, the focus must be on the area where the main feature of the R&D competition is its speed and content and where the progress of the R&D is at the same level among the competitors. Furthermore, because the products developed from the R&D activities are sold in the market, the R&D market can be considered as linked processes, and therefore in many cases it is considered appropriate to evaluate the market and the product market as a single subject during the stages leading up to product commercialization.

3. *Survey Report on Globalization and Market Structure*

86. In June 2002, the JFTC publicly released the results of a survey concerning the effects on market structure and prices from changes in economic conditions based on the globalization. The JFTC pointed out the following matters in its report.

• Cross-industry analysis:

87. In manufacturing industries there is a consistent upward trend in the concentration of production from 1991 through 2000, and oligopolistic tendency has been intensified. Moreover, to the extent a product showed a large increase in imports or a large decrease in market size during the same period, a tendency for prices to fall is noted. Under the economic environment in last decade, during which globalization

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continued apace and Japan's economy declined, a tendency can be noted in which the larger the prices decreases, the higher the ratio of the production concentration increase. This is considered to reflect the occurrence of mergers and acquisitions aimed at ensuring survival in markets experiencing increasing competition or the withdrawal from less-profitable sectors.

• *Individual industry analysis:*

88. In the JFTC's recent analysis, which covered the industries of cement, newsprint, copy paper and ethylene, the results from the analysis of the main factors causing price changes did not detect a statistically significant relationship between prices and changes in market structure resulting from mergers.

89. In markets for products such as ethylene, where domestic prices are determined by prices in the international market as a result of globalization and the market is moved latently or potentially by competitive pressures from overseas, or in markets for products such as copy paper where the increase in imports has a significant influence on the drop in domestic prices, the possibility for market structure affects prices can be thought to be low except in situations that the domestic oligopolization lead to invite international oligopolization.

90. In markets for products such as cement and newsprint where the domestic price is mainly determined by domestic supply-demand circumstances, it is necessary to adequately evaluate the effect exerted by changes in market structure on the balance of the bargaining power between sellers and buyers in price negotiations because of the danger that the increasing oligopolization of the market structure will have an effect on prices.

4. *Report on Role of Competition Policy in Strengthening Economic Partnership with East Asian Countries*

91. In September 2002, the JFTC publicly released the report of the Study Group of International Affairs on the Antimonopoly Law and Competition Policy," which examined the role of competition policy in strengthening economic partnerships in East Asia. The study group highlighted the following matters in its report.

92. In the East Asian region, where mutual economic relations continue to grow stronger, it is important to establish a framework for common understanding and cooperation in order to take appropriate measures against anti-competitive activities such as international cartels that may arise with the growth of increasingly closer economic interdependence, and to adopt an appropriate response based on competition laws. As East Asian countries grow increasingly active in examining ways to strengthen the creation and enforcement of competition laws and policies, Japan must actively promote technical assistance with due consideration to the diversity of the development stages of, and approaches to, competition laws and regulations in each country.

93. Although Trade Remedy Measures are permitted by the WTO, their application requires appropriate evaluation from the viewpoint of competition policy because depending on how the measures are implemented, these measures are likely to somewhat restrain free market competition and affect the interests of users and consumers. In addition, the JFTC must monitor entrepreneurs to ensure they do not engage in anti-competitive activities by using Trade Remedy Measures as a means to encourage participation in international cartels or to devise export controls by forming export cartels.