

JAPAN

(1997)

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Executive Summary

The main features of the 1997 activities of the Japan Fair Trade Commission (referred to hereafter as the JFTC) are as follows:

1. The Antimonopoly Act (referred to hereafter as the AMA), was amended so as to revise the total prohibition of holding companies and to repeal the international contract notification requirement. As regards the exemption systems based on industrial laws, 35 systems under 20 laws were abolished through the Omnibus Act, which was passed by the Diet on June 13, 1997 and came into effect on July 20, 1997 (see Table 1 of Attachment 3 for details). Amendments have already been implemented or scheduled for a further 6 systems under six laws. The JFTC also held talks with the relevant ministries and agencies on the seven systems under 8 laws which were under examination at that time, with the aim of reaching definite conclusions by the end of FY 1997 (see Tables 2 and 3 of Attachment 3 for details).
2. For enforcement of new Section 9 of the amended AMA, the JFTC published "Guidelines for Holding Companies Which Constitute an Excessive Concentration of Economic Power", clarifying its interpretation of prohibited holding companies in order to ensure transparency of enforcement and to increase the predictability of enforcement.
3. Based on successive Cabinet Decisions, the JFTC has conducted surveys and held talks with those ministries and agencies concerned for the reform of all exemption systems. Of these systems, the depression cartel and rationalisation cartel systems under the AMA were scheduled for repeal in the "Action Plan for Reform and Building of the Economic Structure (first follow-up)", a Cabinet Decision adopted on December 24, 1997. For the Antimonopoly Exemption Act (referred to hereafter as the AMA Exemption Act), the Cabinet decided to "radically reform the exemption systems based on the Act by moving towards repeal of the Act itself." The JFTC reached definite conclusions on all exemption systems in the New Three-year Deregulation Plan formulated at the end of March 1998.
4. The JFTC addressed the issue of the resale price maintenance exemption of copyrighted works through its Study Group on Government Regulation and Competition Policy for Examination of Resale Price Maintenance Issues", which was set up in February 1997 with the aim of reaching a conclusion by the end of March 1998.
5. The Subcommittee for Review of Regulations on Corporate Combinations was established under the Study Group for Issues Relating to the Amendment of Chapter 4 of the AMA, in order to reform regulations on corporate combinations in terms of relaxing burdens on companies and promoting international harmonisation. The subcommittee examined the merger notification system, the stockholding reporting system and other procedural aspects of Chapter 4 of the AMA, producing a report in July 1997. Based on this report and decisions made by the Cabinet since the Deregulation Action Plan of March 31, 1995, the JFTC proposed a bill amending regulations on corporate combinations in the AMA, which was submitted to the 142nd Session of the Diet on February 24, 1998.
6. In accordance with The JFTC's strict policy on violations of the AMA, a bid-rigging case involving water meters tendered by the Tokyo Metropolitan Government was presented to the prosecuting authorities on February 4, 1997 as a criminal offence. A further 27 legal measures (recommendations and administrative surcharge orders without recommendations) were taken in 1997. 13 warnings were also issued, and 10 cases of price cartels and bid-rigging incurred administrative surcharges totalling 5.91184 billion yen (approximately \$47.3 million dollars).

7. Based on provisions of Sections 15 and 16 of the AMA, the JFTC received a total of 3 596 prior notifications of mergers and acquisitions in 1997 (2 162 mergers and 1 434 acquisitions).

8. Economic surveys were conducted for the electric power industry, the gas industry and the domestic air passenger transport industry. A study group of academic experts was commissioned to examine the issues and direction of regulatory reform in these industries from the viewpoints of competition policy. This study group published a report on domestic air passenger transport in March 1997 and another on electricity and gas in April 1997.

I. Changes to Competition Laws and Policies

A) *Outline of New Regulations in Competition Law and Related Legislation*

1) *Amendment of the Antimonopoly Act*

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

2. During the reporting period, the amendment bill of the AMA, including the review of the entire prohibition of holding companies and the repeal of the international contract notification requirement, was passed by the Diet on June 11, 1997 and came into effect on December 17, 1997. Additionally, the so-called Omnibus Act - legislation to revise the exemption systems of the AMA - was passed by the Diet in June 13, 1997 and came into effect in July 20, 1997. This law repealed the exemption systems and limited and clarified the range of exemptions for 35 systems under 20 industrial laws other than the AMA (see paragraph 6).

2) *Guidelines for Holding Companies Which Constitute an Excessive Concentration of Economic Power*

3. Prior to the implementation of the amendment of the AMA (December 17, 1997), which includes revision of the total prohibition of holding companies, the JFTC released "Guidelines for Holding Companies Which Constitute an Excessive Concentration of Economic Power" on December 8, 1997 in order to clarify its interpretation of prohibited holding companies, and to increase the ability of businesses to foresee the enforcement of the amended Section 9 and to ensure transparency of enforcement. These Guidelines provide businesses with a specific explanation of the definition of excessive concentration of economic power in Section 9 (5) of the amended Act based on the interpretation of the JFTC; three types of holding companies prohibited by the amended Act are explained in detail¹.

4. Holding companies which do not constitute an excessive concentration of economic power are also illustrated in the guidelines as follows:

- splitting off company operating divisions;
- venture capital;

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- mutual entry of finance companies;
- small-scale holding companies.

3) *Proposals of New Legislation*

a) Reform of the Exemption Systems of the AMA

5. 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.

6. The exemption systems are based on: (1) the AMA itself; (2) the AMA Exemption Act; or (3) provisions in industrial laws. The JFTC believes that the exemption systems of the AMA should be limited to the absolute minimum, with a view to greater utilisation of market forces, and has long actively pursued that reform. In addition, the exemption systems of the AMA based on industrial laws have been reformed through subsequent Cabinet Decisions. Recently, the plan to "submit an Omnibus bill to the Diet to abolish 35 systems under 20 laws, and, as far as the other systems to be examined further, to reach definite conclusions by the end of FY 1997" was included in the "Revised Deregulation Action Plan" (Cabinet Decision, March 1997).

7. In terms of exemption systems based on industrial laws, 35 systems under 20 laws were abolished through the Omnibus Act, which was passed by the Diet on June 13, 1997 and came into effect on July 20, 1997 (see Table 1 of Attachment 3 for details). Amendments have already been implemented or scheduled for other six systems under six laws. The JFTC also held talks with the relevant ministries and agencies on the 7 systems under 8 laws which were under examination at that time, with the aim of reaching definite conclusions by the end of FY 1997 (see Tables 2 and 3 of Attachment 3 for details).

8. Additionally, the exempted cartel systems based on the AMA and those based on the AMA Exemption Act were targeted for reform by Cabinet Decisions which mandated "reviewing the entire range of exempted acts and associations, including a repeal of the system itself, reaching final conclusions by the end of FY 1997; conducting radical reform of the AMA Exemption Act, including a repeal of the Act itself." Of these systems, the depression cartel system and the rationalisation cartel system based on the AMA were scheduled for repeal in the Action Plan for Reform and Creation of Economic Structure (first follow-up) (Cabinet Decision of December 24, 1997). With regard to the AMA Exemption Act, "radical reform of the exemption systems based on the Act, with a view to repealing the Act itself" was mandated.

9. In accordance with these Cabinet Decisions, the JFTC has held talks with the relevant ministries and agencies on the reform of all exemption systems, with the aim of reaching final conclusions which would be included in the new three-year Deregulation Action Plan to be devised at the end of March 1998.

b) Reform of the Resale Price Maintenance Exemption

10. Reform of the resale price maintenance system has been decided by a succession of Cabinet Decisions.

11. There are arguments both for and against the resale price maintenance exemption permitted for copyrighted works (books, magazines, newspapers, music CDs, cassettes and records). In an effort to encourage debate amongst the general public, academics, industrial representatives, consumers and other parties throughout Japan, seven symposiums were held in various locations across the country from December 1996 to March 1997. In addition, hearings were held for the relevant industries, and opinions were gathered, with a view to clarifying the main points for discussions based on each industries' trading practices and conditions. These issues were examined by the "Study Group on Government Regulations and Competition Policy for the Examination of Resale Price Maintenance Issues" which was set up by the JFTC in February 1997 and whose report was released in January 1998.

12. The report consists of the following three proposals:

- 1) from the viewpoint of competition policy, there are few reasons for the resale price maintenance exemption to be continued and basically the issue should be examined with a view to repealing the exemption;
- 2) until now, the resale price maintenance exemption for copyrighted works, however unintentional, has played the role of overly protecting copyright holders and the dissemination of copyrighted works. The need to address this issue has arisen from both a cultural and public point of view;
- 3) the relevant industries should therefore start making determined efforts to reduce the adverse effects of this system.

13. In future, the JFTC will take into full consideration the views of all parties concerned regarding the issue of the resale price maintenance exemption for copyrighted works, basing its conclusions on the essence of the Study Group's report. These conclusions were scheduled for release by the end of March 1998.

c) Reform of the Regulations for Corporate Combinations

14. In June 1996, the JFTC established the "Subcommittee on the Review of Regulations on Combinations of Enterprises" under the "Study Group of Issues Relating to the Amendment of Chapter 4 of the AMA". This subcommittee examined the merger notification system, the stockholding reporting system and other procedural aspects of Chapter 4 of the AMA, and its report was released in July 1997. Based on this report, the JFTC considered amending the AMA in order to revise regulations on corporate combinations, and a bill to this effect was submitted to the 142nd Session of the Diet on February 24, 1998.

15. The contents of the bill are as follows:

(1) *Stockholding Reporting System (Section 10)*

- a) a smaller number of companies will be made subject to reporting requirements, the range being reduced from companies with total (unconsolidated) assets of at least 2 billion yen to those with total assets of at least 10 billion yen (combined total assets of a parent company and its subsidiaries);

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- b) the reporting system will be changed from the current system where all stockholdings are reported at the end of every fiscal year to a new system where acquisition of over a certain percentage of the stock of a company whose total (unconsolidated) assets exceeds 1 billion yen is reported at the time of acquisition.

(2) *Interlocking Directorate Notification System (Section 13) and Reporting System for Stockholding by Non-company Persons (Section 14)*

Both systems will be abolished.

(3) *Merger Notification System (Section 15)*

- a) the range of mergers subject to notification requirements will be reduced from all mergers to mergers between companies with at least 10 billion yen in total assets (combined total assets of a parent company and its subsidiaries) and companies with at least 1 billion yen in total assets (combined total assets of a parent company and subsidiaries);
- b) notification will not be necessary for mergers between a parent company and its subsidiaries and mergers between closely related companies sharing the same parent company (whose stockholding exceeds 50 percent);
- c) if the JFTC requests additional materials within 30 days of receipt of notification, the examination period for a recommendation or decision to initiate hearing procedures will be extended. Also, the JFTC will be able to take measures to guarantee that the merger plan described in the notification will be implemented as stated.

(4) *Business Acquisition Notification System (Section 16)*

- a) the range of business acquisitions subject to notification requirements will be reduced from acquisitions of all or substantial part of business operations to acquisitions by a company with more than 10 billion yen in total assets (combined total assets of a parent company and its subsidiaries). In this case, notification will be required: (1) when the total (unconsolidated) assets of the acquired company exceeds 1 billion yen (for the acquisition of all business operations), or (2) when the acquired operations or fixed asset account for at least 1 billion yen in annual sales (for acquisitions of a substantial part of business operations or fixed assets);
- b) notification requirements will be waived for business transfers between a parent company and its subsidiaries, and those between closely related companies sharing the same parent company whose stockholding exceeds 50 percent, business leasing, management undertaking and profit-and-loss-sharing contracts;
- c) the examination procedures for business acquisitions covered by notification requirements will be identical to the examination procedures for mergers (see above (3) c).

(5) *Corporate Combinations in Foreign Countries (Sections 10, 13, 14, 15, and 16):*

- a) the provisions of Japan's AMA will extend to corporate combinations in foreign countries;
- b) notification of mergers and reporting of stockholding is required of a foreign company when the annual sales of a business office or a subsidiary of the foreign company in Japan exceeds 1 billion yen.

(6) *Other Provisions*

The amended Act will come into effect on January 1, 1999 (repeal of the interlocking directorate notification system and stockholding reporting system by a person other than a company will take effect on the date of the promulgation).

B) *Other Related Measures*1) *Upgrading of the Executive Office and Reinforcement of Investigation Resources*

16. The Executive Office, charged with the administrative functions of the JFTC, was replaced by the General Secretariat in June 1996. The Secretariat, Economic Affairs Bureau and Investigation Bureau were established under the General Secretariat. This expansion of the organisational structure was carried out with the understanding and co-operation of the ministries and agencies concerned. The number of staff at the Investigation Bureau was increased to 248 from 236 in the previous fiscal year, with the aim of strengthening investigation activities against violations of the AMA. Despite severe difficulties in continuing administrative and fiscal reform of the Japanese Government, the staffing and organisational structure of the JFTC has been increasing year by year, mainly in the investigation sector. The personnel has almost doubled in eight years from 129 in FY 1989 to 248 in FY 1997.

2) *Dissemination of the Guidelines*

17. Transparency of enforcement is of crucial importance for the effective enforcement of the AMA. This will enable firms and consumers to understand the purpose of the AMA, the contents of the regulations and the implementation policies. The JFTC has been making efforts to formulate and publicise various guidelines regarding specific matters dealt with by the AMA.

18. In formulating guidelines, the JFTC makes it a policy to elicit opinions on draft guidelines from relevant authorities, consumers, firms and trade associations both inside and outside Japan. Some guidelines provide for prior consultation systems. Even in the case where there is no system, the JFTC has willingly engaged in consultations with the parties concerned.

19. During the reporting period, the JFTC released a draft of "Antimonopoly Act Guidelines with regard to Abuse of Dominant Bargaining Positions in Consigned Service Transactions" in order to prevent violations of the AMA and to promote correct conduct in business activities, asking for comments from all interested parties. Also, "Major Cases of Consultation Concerning the Activities of Trade Associations" and "Major Cases of Corporate Combinations in FY 1996" were released as compilations of actual consultations with firms and associations

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3) *The Future Role of the Fair Trade Commission*

20. The proper future role of government administrative bodies was debated by the Administrative Reform Committee in 1997. The results were released in its final report in December 1997, proposing that, inter alia, the JFTC would be placed as an external bureau of the Ministry of General Affairs which would be newly created. Moreover, the report stated that the JFTC's investigation system would be expanded due to the importance of vigorous enforcement of the AMA and that competition policy, driven by antimonopoly policy, sometimes works at cross purposes to industrial policy, and in conclusion the JFTC must not be subsumed by industrial policy authorities.

II. Enforcement of Competition Law and Policy

A) *Measures against Violations*

1) *Investigation*

21. The number of cases investigated by the JFTC in 1997 was as follows:

a) carried over from the previous year	66
b) newly taken up in 1997.....	161
c) total (a+b)	227
d) investigation completed.....	136
e) carried over to the next year	91
f) total (a+b)	227

22. The JFTC has been making continuous efforts to eliminate bid-rigging. In 1997, the number of cases in which the JFTC took measures was 27, out of which 13 cases 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 1997 a conference was held for the period covered by this report. The JFTC organized another conference for liaison officers of the local offices of national agencies in nine locations across Japan, and also helped local governments to organize anti-bid-rigging seminars by sending lecturers and compiling text books.

23. The JFTC considers it particularly important that AMA violations be eliminated in those economic sectors where government regulations are still influential, because such violations could nullify the benefits of deregulation. Accordingly, the JFTC has been paying special attention to the economic fields where regulations play a dominant role. Moreover, the JFTC vigorously takes legal measures towards obstructing imports (including parallel imports) which cause price differences inside and outside Japan.

2) *Situation regarding Measures*

24. Of the 136 cases for which the JFTC completed investigations, cease and desist orders were issued in 27; in 26 of these, recommendation decisions were issued. In the remaining 1 case, orders to pay surcharges without a recommendation decision were issued. In addition, warnings were issued in 13 cases and cautions were issued in 92, where AMA violations were suspected but not substantiated. There were four cases in which investigations were discontinued .

a) Legal Measures

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

- Private Monopolisation..... 1
- Bid-rigging 13
- Price Cartels 4
- Unfair Trade Practices 9
- Others 0
- Trade associations were involved in 4 of the above 27 cases.

b) Orders to Pay Surcharges

26. The AMA states that when cartels are formed by firms or trade associations, surcharges 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.

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 1997, the JFTC issued surcharge payment orders to 170 firms involved in 16 cases of price cartels and bid-rigging. The total amount of surcharges was 5 911 840 000 (approximately \$47.3 million).

c) Criminal Accusations

27. The JFTC has adopted a more active policy to make criminal accusations and apply criminal penalties to violations which substantially restrict competition in a particular field of trade, such as price cartels, supply restricting cartels, market allocation agreements, bid-riggings and boycotts, which either:

- 1) constitute serious violations that are likely to have a widespread influence on society; or:

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- 2) 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.

28. Based on the above policy, the JFTC made criminal accusations concerning a bid-rigging case of water supply meters awarded by the Tokyo Metropolitan Government to the Prosecutor-General on February 4, 1997. In December 1997, the Tokyo High Court ruled a guilty verdict on 25 companies involved in the bid-rigging and 34 employees who dealt with Tokyo Metropolitan Government's bidding for the water supply meters. The companies were fined a total of 155 million yen (approximately \$1.24 million) and the employees received prison sentences of six to nine months (suspended for two years). In addition to the fines, in December 1997 the JFTC imposed administrative surcharges totalling 386.56 million yen (approximately \$3 million) for 24 of the 25 companies

d) Hearing Procedures

29. In 1997, the JFTC initiated hearing procedures for five cases concerning the AMA and one case involving the Premiums and Representations Act. There were nine cases undergoing hearing procedures as of December 31, 1997. The JFTC issued three hearing decisions based on hearing procedures in 1997: a case in which an association of petroleum product retailers in the Hiroshima region decided to raise the retail price of regular gasoline; a bid-rigging case involving electrical construction contracts ordered by Shiga Prefecture, and a bid-rigging case involving specific electrical construction contracts ordered by Otsu City. In addition, there was one case in which it was decided that a hearing procedure should be cancelled.

3) *Main Cases*

30. The main cases of legal measures taken by the JFTC in 1997 are as follows:

a) Case against the Japanese Federation for Machinery Insurance

31. The Japanese Federation for Machinery Insurance colluded to underwrite machinery insurance and assembly insurance at fixed premium rates. On February 5, 1997, the JFTC issued a decision that this constituted violation of Section 8(1) (prohibited acts of trade associations) of the AMA.

b) Case against Bid-rigging by Manufacturers of Water Supply Meters Awarded by the Tokyo Metropolitan Government

32. 25 designated vendor companies for water supply meters tendered by the Tokyo Metropolitan Government colluded to rig bids and predetermine which companies would receive contracts for water supply meters, through competitive bidding by designated bidders or other methods. On April 18, 1997, the JFTC issued a decision that this constituted violation of Section 3 (prohibition of unreasonable restraint of trade) of the AMA.

c) Case against Häagen Dazs, Japan Inc.

33. Häagen Dazs Japan, Inc. supplied retailers with Häagen Dazs ice cream products on the condition that they would maintain the retail price suggested by Häagen Dazs themselves or by wholesalers, and also unfairly hindered the transactions of competing domestic importers dealing in parallel imports and of product vendors residing outside Japan. On April 18, 1997, the JFTC issued a decision that this constituted violation of Section 19 (prohibition of unfair trade practices) of the AMA.

d) Case against Pachinko Machine Manufacturers and Others

34. A patent management company eliminated the business activities of companies wanting to manufacture Pachinko machines by not granting them owned or managed patent rights and by pending patent usage rights. On August 6, 1997, the JFTC issued a decision that this constituted violation of Section 3 (prohibition of private monopolisation) of the AMA.

e) Case against Bid-rigging by Construction Companies on the Works Awarded by the Metropolitan Expressway Public Corporation

35. The designated vendors for construction contracts from the Metropolitan Expressway Public Corporation colluded to rig bids and to predetermine which companies would receive construction contracts, through competitive bidding by designated bidders and other methods. On August 6, 1997, the JFTC issued a decision that this constituted violation of Section 3 (prohibition of unreasonable restraint of trade) of the AMA.

f) Case against Mobile Telephone Companies

36.

- i) NTT Mobile Communications Network, Inc. forced agencies to sell mobile telephones bearing the "NTT DoCoMo" trademark to general consumers at prices identical to those at stores managed directly by the company's branches;
- ii) Tokyo Digital Phone Co., Ltd. and TU-KA Cellular Tokyo Inc. forced agencies to sell mobile telephones bearing their companies' trademarks to general consumers at prices determined by them. Agencies were also forced to display those selling prices on the shelves and in advertisements inserted in newspapers.

On December 16, 1997, the JFTC issued decisions that the above acts were a violation of Section 19 (prohibition of unfair trade practices) of the AMA.

4) *Litigation*

37. In terms of lawsuits seeking to overturn JFTC decisions, three cases were decided by the Tokyo High Court in 1997, one new lawsuit was filed, and five cases were still pending at the end of December 1997.

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a) Lawsuit filed by Dai-Nippon Printing Co., Ltd. and Two Other Companies

38. On September 24, 1993, the JFTC ordered for administrative surcharges to be applied to Dai-Nippon Printing Co., Ltd. and two other companies in a bid-rigging case involving payment notices and other adhesive seals tendered by the Social Insurance Agency. However, all three companies requested the initiation of hearing procedures. These took place, and the order for administrative surcharges was confirmed in a JFTC decision on August 6, 1996. In response, all three companies filed lawsuits with the Tokyo High Court on August 28 1996, September 2 1996 and September 3 1996 respectively with the aim of overturning this decision. On June 6, 1997, the Tokyo High Court ruled that the criminal penalties and administrative surcharges did not violate the prohibition of double jeopardy under Article 39 of the Constitution, as criminal penalties and administrative surcharges for cartel acts differed in terms of intent, purpose and nature. Furthermore, the civil system of recovering undue profits and that of administrative surcharges differed in terms of intent and purpose, and both had differing legal requirements and effects. The Court therefore ruled that there was no need to adjust these systems, there being no leeway to take measures for the adjustment of the two systems at the time of the imposition of administrative surcharges in the light of the framework of the administrative surcharge system, and the suits of the three companies were completely dismissed. Subsequently, all three companies appealed to the Supreme Court.

b) Lawsuit filed by Hiroshima City Federation of the Hiroshima Prefecture Petroleum Retailers' Co-operative

39. On June 24, 1997, the JFTC issued a decision through hearing procedures that the Hiroshima City Federation of the Hiroshima Prefecture Petroleum Retailers' Co-operative had decided to raise the retail price of regular gasoline, ordering that the necessary measures be taken. The Federation appealed against this decision by filing a lawsuit with the Tokyo High Court on June 26, 1997.

B) Mergers and Acquisitions

1) Statistics Relating to Mergers and Acquisitions

40. 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 1997, the JFTC was notified of 2,162 planned mergers in accordance with Section 15 of the AMA, and 1,434 planned acquisitions of businesses, in accordance with Section 16 of the AMA.

Number of Notified Mergers and Acquisitions:

	FY1995	FY1996	FY1997
Mergers	@ 2,262	@2,420	2,162
Acquisitions	1,426	@1,468	1,434
Total	3,668	@3,888	3,596

41. The JFTC did not take any legal measures with respect to mergers or acquisitions in 1997.

42. 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 Mitsui Petrochemical Industries, Ltd. and Mitsui Toatsu Chemicals, Inc.

43. This case involved a proposed merger between Mitsui Petrochemical Industries, Ltd. (hereafter referred to as Mitsui Petrochemicals), a petrochemical products manufacturer, and Mitsui Toatsu Chemicals, Inc. (hereafter referred to as Mitsui Toatsu), an integrated chemical products manufacturer. As this merger affected competition, a careful examination was conducted of seven products for which the share of production capacity or sales volume of the merged company would exceed 15 percent and take the lead within the industry. These seven products were polypropylene, phenol, acetone, alpha-methylstyrene (hereafter referred to as AMS), aniline, bisphenol A and tertiary butyl alcohol (hereafter referred to as TBA). There was also concern that integration of these related products would expand the merged company's overall economic power in the petrochemical industry and have an adverse impact on competition for these petrochemical products.

44. In this merger: (1) concerning the relationship of existence of imported products, there are no differences in the quality of phenol between manufacturers, users do not have problems such as adjusting to the use of a different product, major users have experience with imports, and users can easily increase imports. It also appears that price determination is common to domestic and foreign markets. Therefore, despite high sales shares after the merger, the new company would not have the power to control prices and volumes in the domestic market. Additionally, while import ratios are low for phenol, acetone, aniline, and bisphenol A, this is because domestic and foreign prices are at essentially the same levels. Moreover, domestic manufacturers currently have excess supply capacity, which suggests that imports would not be necessary. (2) Other strong competitors exist in the fields of polypropylene, phenol, acetone, aniline, bisphenol A and TBA. (3) AMS is gradually being displaced by PMI in applications to improve the heat resistance of acrylonitrile butadiene styrene (ABS) resin, and sales volume is in annual decline. (4) Users appear to conduct price negotiations for phenol, acetone, aniline and bisphenol A while monitoring foreign prices, and the users' view is that the merger would not be disadvantageous in terms of transaction volumes or prices. (5) For aniline and TBA, Mitsui Toatsu uses all production volume in downstream processes and does not have shipment facilities. (6) The overall economic power of the merged company would be offset by Mitsubishi Chemical Corporation, which is the leader in sales and share of ethylene production capacity, and the existence of other leading companies in the petrochemical industry. Overall consideration of these factors indicates that that the proposed merger would not immediately substantially restrain competition in these fields. Moreover, early reduction and elimination of duties on products with an especially high degree of concentration is needed to foster a stronger competitive environment, including imports, in the future, and it is hoped that these measures will be adopted by the authorities having jurisdiction.

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

45. 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 concern that the laws and ordinances will include exemption clauses from the AMA or provisions which may restrict competition.

46. In 1997, the JFTC took appropriate action with regard to a bill amending the Telecommunications Business Act, in order to promote deregulation in the telecommunications industry and to support fair and free competition through the establishment of effective connection regulations. For the sake of competition policy, the JFTC was also involved in consultation procedures for the amendment of the NTT Act, the KDD Act and other economic laws and ordinances.

2) Administrative Co-ordination

47. The JFTC liaises with administrative bodies as necessary when they take administrative measures and give administrative guidance based on specific policy requirements which the JFTC recognises as problematic in terms of 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 fair and free competition or induce violations of the AMA. In addition, it was decided in the "Deregulation Promotion Plan" (March 1995 Cabinet Decision revised in March 1996 and March 1997) that, based on the "Guidelines", the JFTC would liaise as necessary with the relevant ministries and agencies so that after deregulation any administrative guidance restricting competition will not substitute similarly restrictive regulation. Accordingly, the JFTC is taking the necessary action in conjunction with the relevant ministries and agencies.

3) Reform of Government Regulation

48. 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.

49. 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.

a) Domestic Airline Industry

50. The JFTC has been carrying out a number of research activities on the issue of government regulations and issues relating to competition policy and since 1985 it has been organizing a Study Group

composed of scholars and experts in order to examine this research. The contents of the Study Group's work have been published in successive reports. The JFTC has paid due attention to the views expressed in these reports, and has worked with the relevant government ministries towards reviewing the regulations in question. In 1997, three reports were published: one on the domestic airline industry in March, and the others on the electric power industry and the gas industry, both in April, the outlines of which are as follows:

51. The field of domestic air passenger transport has seen deregulatory progress such as the development of double and triple track systems, a change in the fare discount system by company policy from an approval system to a new notification system, introduction of a fare band system, etc. This caused a higher rate of decrease in fares, and other effects such as further discounting of fares for individuals. However, several things have been observed: for example, the oligopolistic structure of the three major airline companies has not undergone many changes since deregulation, and competition in regular fares for competing routes has been limited since the introduction of the fare band system.

52. In the report, it was noted that further promotion of deregulation is necessary for the promotion of greater competition in domestic air passenger transport. Issues to be examined were cited as: (1) the elimination of the supply and demand adjustment clause; (2) the establishment of rules for reallocation of existing departure and arrival slots; (3) the elimination of floor prices in the fare bands and the reconsideration of standard prices; (4) the elimination of the notification system for fares discounted by company policy.

b) *Electric Power Industry*

53. The report on the electric power industry emphasised the need for comprehensive regulatory reform from the three points of view: i) deregulation; ii) the fostering of competitive conditions and iii) the strict enforcement of the AMA. The report proposes the following reforms with regard to introducing more competition in the fields of electric power generation and retailing:

- 1) improvement of the operation of the bidding system and of the system itself so that they apply pressure on the power generation divisions of electric power companies to initiate greater efficiency and cost reductions;
- 2) expansion of retail supply, including active utilisation of household power generation, together with the promotion of direct competition with electric power companies;
- 3) in addition to active utilisation of a wholesale consignment system, the legalisation of self-consignment to promote new entries.

54. The report also stressed the need for the strict enforcement of the AMA when competition is restricted in deregulated fields and crucial sectors. The report also refers to the following as future issues for discussion: liberalisation of retail supply, a review of the efficiency of vertically integrated systems of power generation, transmission, and distribution, development of competition between energy sectors and the examination of the correct role of regulation through specific business laws.

55. In December 1997, the ministry and agency with jurisdiction compiled a report advocating the implementation of competition in the power generation sector amongst power companies, Power Generation and Development Co., Ltd (previously a public corporation) and IPP (Independent Power

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Producers), for the introduction of competitive principles and deregulation in the electric power industry on a level playing field. The liberalisation of retail division is also currently under examination.

c) *Gas Industry*

56. The report on the gas industry proposes reducing the range of liberalisation of large-scale supply in city gas operations with the aim of deregulating entry to city gas operations and so fostering competitive conditions. It also proposes that the consignment of city gas operations are legalised and that licensed gas operators are permitted to form small-scale networks within supply districts.

57. The Study Group's report also cites the following as future issues for discussion: the reform of uniform regulations for the city gas industry; examination of the framework for supply districts of city gas operators; reform of vertically integrated production systems; transmission; retailing city gas operations and the possibility of crossover entry in the electric and gas industries.

4) *The JFTC's 50th Anniversary Symposium*

58. The JFTC's 50th Anniversary Symposium was hosted jointly by the JFTC and the Fair Trade Institute and took place in Tokyo on December 1 and 2, 1997. It was attended by competition authorities and academics from Australia, Canada, Finland, France, Germany, Hungary, India, Korea, Norway, Poland, Russia, Sweden, the United States and representatives of the European Union and the OECD. Japanese attendees included representatives of the JFTC, the Ministry of Foreign Affairs, the Ministry of International Trade and Industry, university professors and other distinguished guests. Items under discussion included "technical innovation, international trade and competition policy" in session 1, "the role of fairness in competition policy in session 2 and international co-operation in competition policy" in session 3.

IV. Resources of the Fair Trade Commission

1) *Budget of the Fair Trade Commission*

59. Trends in the budget of the Fair Trade Commission (unit: 100 million Yen/ percent) are shown below:

Fiscal Year	1989	1990	1991	1992	1993	1994	1995	1996	1997
Budget of the JFTC - budget amount (100 million)	35.2	37.6	40.8	44.1	46.2	52.4	52.4	53.8	55.6
- change over previous year (%)	8.4	6.7	8.6	7.9	4.9	13.4	-0.1	2.7	3.3
General Expenditures Budget - change over previous year (%)	3.3	3.8	4.7	4.5	3.1	2.3	3.1	2.4	1.5

1. The FTC budget for FY 1994 includes office relocation costs (230 million Yen).

2. 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.

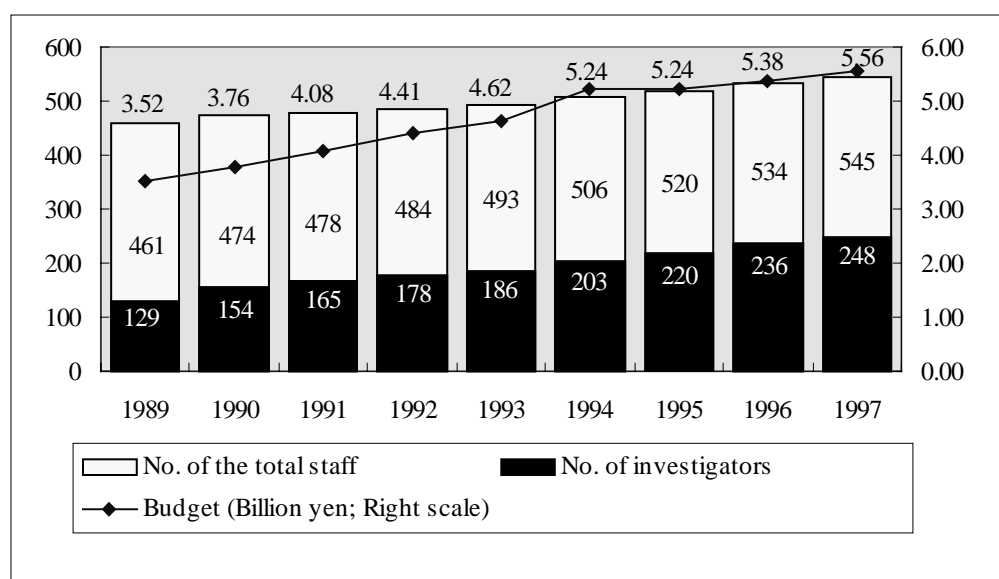
2) *Number of Officials*

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

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

1. Up until FY 1995, the secretariat office was the Executive Office.
2. The number of officials engaged in enforcement against anticompetitive practices refers to the Investigation Bureau ("Investigation Department" up until FY 1995).
3. The number of officials engaged in merger review enforcement refers to the Acquisitions Division ("Enterprise Division" up until FY 1995).
4. The number of officials' advocacy efforts refers to the General Affairs Division of Economic Department ("Co-ordination Division" up until FY 1995) and the Co-ordination Division.

Staff and Budget (FY1989 - 1998)



V. Surveys Relating to Competition Policy

1) Survey of Transaction among Firms Regarding Photographic Colour Film for General Use and Photographic Colour Paper

62. In the market for photographic colour film for general use (hereinafter "colour film") and the market for photographic colour paper in Japan, long-term business relationships have been observed. There has been considerable interest, both in Japan and abroad, in the state of competition in these markets, which is the reason for conducting this survey. On July 23 1997, the JFTC published the report

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"Survey of Transaction among Firms Regarding Photographic Colour Film for General Use and Photographic Colour Paper".)

63. The survey observed the recent structural changes in retail fields, including the diversification of outlets handling film sales, developing and printing (DP) and the decreases in DP charges. It also found the diversification of distribution channels, including the continuing presence of re-imported film, and entry into wholesale business by companies of other business fields. The above-mentioned changes in the distribution structure have resulted in structural changes at manufacturing level. Under these circumstances, the survey concluded that manufacturers have the opportunity to sell their colour film to a variety of retailers through special agents (tokuyakuten), sales subsidiaries, secondary wholesalers and others.

64. From the viewpoint of competition policy, the JFTC made the following suggestions:

- a) the JFTC has come across with no evidence indicating possible violations of the AMA with regard to the business relationship between Fujifilm and tokuyakuten. However, it suggested that Fujifilm conduct a review of the sales deposit system, as well as on sales promotional payment, with a view to increasing flexibility for tokuyakuten in their business activities;
- b) the JFTC suggested that each manufacturer would not sell minilab equipment at excessively below-cost prices on a continuous basis, and would not tie the purchase of photographic colour paper to the purchase of minilab equipment;
- c) the JFTC also suggested that businesses concerned clearly display DP charges;
- d) with regard to the procurement of colour film by local governments, the JFTC suggested that certain brands of colour film should not be specially designated or referred to as an example without justifiable reason.

The JFTC will continue to focus on business practices in these business fields, and will vigorously apply the laws when violations of the AMA or related laws are detected. The JFTC will pay special attention to progress with regard to the suggestions stated above.

2) *Survey of the Distribution and Business Practices of Medical Equipment*

65. Issues have been raised in Japan and abroad concerning the complex business practices in Japan's medical industry and the price differences between Japan and other countries. The JFTC has conducted a study on medical devices including pacemakers, PTCA catheters, MRIs and contact lenses from the viewpoint of competition policy. A report on contact lenses was published on June 25 1997, and another on pacemakers, PTCA catheters and MRIs was published on August 4, 1997.

66. With regard to pacemakers and PTCA catheters, the report observed conditions leading to fixed business relationships; for example, attaching greater importance to familiarity with particular medical devices when selecting them, providing benefits such as "tachiai" (a labour-related service provided to doctor, either by a manufacturer and import wholesalers or just wholesalers); standing beside doctors during operations in order to advise and assist with equipment, and the existence of favoured suppliers. Under these circumstances, hospitals continuously trade specific brand products with the same wholesalers. In particular, it is observed in many cases that only one person tendered a bid of MRIs.

With regard to the price differences in pacemakers and PTCA catheters between Japan and other countries, competition is distorted by the fixed transaction and the manufacturers' interference.

67. The JFTC therefore requested the Ministry of Health and Welfare (MHW) and other government agencies concerned that hospitals, especially public ones, make efforts to purchase from as many suppliers as possible; that they consider the functions and prices of more than one form of equipment, and that they ensure the smooth running of the bidding system. In addition, the brand-by-brand evaluation system of pacemakers easily leads to hospitals' purchasing behaviour by brands, and could hinder price competition. The JFTC pointed out to the MHW that consideration must be given to the promotion of competition by implementing such policies as a swift change from brand-by-brand evaluation to function-by-function evaluation.

68. It was observed that manufacturers request wholesalers to get their approval before going ahead with transactions and to inform them of the sales prices given to hospitals before delivery. Accordingly, the JFTC pointed out that these practices could be in violation of the AMA and requested the manufacturer to comply with the law by revising the provisions.

69. Regarding contact lenses, it is observed that some manufacturers intervened in retailers' sale prices, etc. There were also cases such as ophthalmologists and their associations discussing discount rates of contact lenses or putting pressure on large-volume retailers not to introduce discounts or open new stores. The JFTC thus outlined each manufacturer's problem from the view point of competition policy with the expectation that it would be resolved voluntarily, and requested that the manufacturers make the relevant associations familiarise its members with the JFTC's distribution guidelines .

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Appendix 1

**SURVEYS AND REPORTS RELATING TO COMPETITION POLICY
PUBLISHED IN 1997 - 1998**

1997

January:

Interim report on the measures relating to deregulation

Cancellation of the designation of several commodities as exempted from the RPM prohibition

Survey of the situation resulting from the reduction of the RPM exemption of designated products

March:

Review of government regulations in domestic air passenger transportation services - Report by the Study Group on Government Regulations and Competition Policy -

March: Active implementation of competition policy in the Second Revised Deregulation Action Plan

April:

Deregulation in the electricity sector and issues from the perspective of competition policy

Deregulation in the gas sector and issues from the perspective of competition policy

June:

Major cases of mergers and acquisitions in FY 1996

Trends in the notifications relating to Chapter 4 of the Anti-Monopoly Act in FY 1996

Major cases of consultation concerning the activities of trade associations in FY 1996

Survey of the distribution and business practices of contact lenses

Consigned service transactions- Report by the Study Group on Transactions by Firms

July:

Procedural provisions of regulations for merger and acquisitions - report by the Subcommittee of the Revision of the Regulation for Combinations of Enterprise

Survey of transaction among firms regarding photographic colour film for general use and photographic colour paper

August:

Survey of the distribution and business practices of medical equipment, including pacemakers, PTCA catheters and MRIs

October:

Survey of the situation of unfair trade practices in the market after deregulation

Draft of "Antimonopoly Act Guidelines with regard to Abuse of Dominant Bargaining Positions in Consigned Service Transactions "

1998

January: Dealing with the resale price maintenance exemptions of copyrighted works

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Appendix 2

FTC/JAPAN VIEWS PUBLISHED IN 1997

No. 28, June 1997

Recent Development of Competition Policy in Japan(January-December 1996)

Outline of the Draft Amendment of the Antimonopoly Act Concerning the Holding Company Regulations

Active Implementation of Competition Policy in the Second Revised Deregulation Action Plan

No. 29, July 1997

Outline of the Partial Amendment of the Antimonopoly Act Concerning the Holding Company Regulations, etc.

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

Recommendation to the Union of Machinery Insurers of Japan, etc.

* Review of Government Regulations on Domestic Regular Passenger Air Transport

No. 30, October 1997

Survey of Transaction among Firms Regarding Photographic Colour Film for General Use and Photographic Colour Paper (Press Release and Summary)

Draft Interpretations of Holding Companies which Constitute an Excessive Concentration of Economic Power and Draft Amendment of Administrative Procedure Standards for the Authorisation of Stockholding by Financial Companies

Major Cases of Corporate Combinations in Fiscal 1996

Trends in the Notifications Relating to Chapter Four of the Antimonopoly Act in Fiscal 1996

No. 31, March 1998,

Interpretations of Holding Companies Which Constitute an Excessive Concentration of Economic Power

Point of View for Authorisation of Stockholding by Financial Companies under the Provisions of Section 11 of the Antimonopoly Act

Report Concerning the Procedural Provisions of Regulations for Mergers and Acquisitions

Recommendation to the Japan Medical Foods Association and Nisshin Medical Food Co., Inc.

Recommendation with respect to Pachinko Machine Manufacturers

Deregulation in the Gas Sector and Issues from the Perspective of Competition Policy

Deregulation in the Electricity Sector and Issues from the Perspective of Competition Policy

Appendix 3

REVISION OF EXEMPTIONS FROM APPLICATION OF THE ANTIMONOPOLY ACT

Table 1.

Systems on which measures, including the submission of the omnibus bill to the Diet, were taken

Relevant Ministries/ Agencies	Name of legislation	System	Details of measure taken
Ministry of Finance	Law Concerning Liquor Business Associations and Measures for Securing Revenue from Liquor Tax	-- cartels to prevent excessive competition	abolished
		-- rationalisation cartels	reduced the scope of the exemption system
		-- resale price maintenance contracts	abolished
	Tobacco Cultivators' Union Law	-- economic business by co-operatives	changed co-operatives to eligible ones under Article 24 of the AMA
	Securities Investment Trust Law	-- acquisition or possession of shares by companies with entrusted assets	abolished
Ministry of Health and Welfare	Law Concerning Co- ordination and Improvement of Hygienically Regulated Business	-- special contracts	abolished
Ministry of Agriculture, Forestry and Fisheries	Law of Production of Fruit Agriculture	-- cartels on trading of materials for processed fruits	abolished
	Wholesale Market Law	-- mergers and acquisitions among wholesalers	abolished
		-- cartels to prevent excessive competition	abolished
	Law relating to Stabilisation of Sugar Price	-- designated cartels	abolished
	Law of Special Measures for Rebuilding the Fisheries Industry	-- plan to reduce number of fishing vessels	deleted the exemption clause

Relevant Ministries/Agencies	Name of legislation	System	Details of measure taken
Ministry of International Trade and Industry	Law Relating to Promotion of the Export Business of principal raw Fisheries Products	-- purchase cartels of material	abolished
		-- cartels to prevent export competition	abolished
		-- certain activities by designated organisations	abolished
	Temporary Measures Law for Adjustment of Pearl Culture	-- cartels to prevent excessive competition	abolished
		-- cartels to improve and maintain quality	abolished
		-- cartels to restrict production facilities	abolished
	Law on Co-operatives for Fisheries Production Adjustment	- cartels to adjust hauls of fish	abolished
	Export-Import Trading Law	-- cartels on domestic trading of exports by exporters and exporters' trade associations	abolished
		-- cartels on domestic trading of exports by producers and distributors	abolished
		-- cartels on import by importers and importers' trade associations	abolished
-- cartels on domestic trading by importers and importers' trade associations		abolished	
-- cartels for adjustment of export and import by exporters, importers and export-import trade associations		abolished	
-- activities by trade unions		abolished	
-- activities by designated organisations		abolished	

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Relevant Ministries/ Agencies	Name of legislation	System	Details of measure taken
Ministry of Transport	Laws Relating to Organisation of Small- and Medium-Sized Business Associations	-- business stability cartels	abolished part of the exemption system
		-- rationalisation cartels	abolished part of the exemption system
		-- economic business by co-operatives	limited the scope of exemptions
		-- special contracts	abolished
	Law on Co-operatives for the Promotion of Shopping Areas	-- economic business by co-operatives	changed co-operatives to eligible ones under Article 24 of the AMA
	Warehousing Business Law	-- warehousing cartels	abolished
	Road Transportation Law	-- transportation cartels	limited the scope of exemptions
	Freight Automobile Transportation Business Law	-- transportation cartels	abolished
	Maritime Transportation Law	-- port-related cartels	abolished
	Port Transportation Business Law	-- port-related cartels	abolished
Civil Aeronautics Law	-- aviation cartels (domestic)	limited the scope of exemptions	

Table 2.

**Implementation of individual measures (including those scheduled)
such as amendment of laws (six systems under six laws)**

Relevant Ministries / Agencies	Name of legislation	System
Ministry of Finance	Insurance Business Law	-- insurance cartels
	Law Concerning Foreign Insurance Groups	-- insurance cartels
Ministry of Agriculture, Forestry and Fisheries	Sericultural Industry Law	-- price cartels of cocoons
Ministry of International Trade and Industry	Export-Import Trading Law	-- cartels on exports by exporters and exporter Japan's trade associations
Ministry of Transport	Maritime Transportation Law	-- coastal shipping cartels
	Automobile Terminal Law	-- transportation cartels

Table 3.

Systems for which review will be continued (8 systems under 7 laws)

Relevant Ministries / Agencies	Name of legislation	System
Ministry of Justice	Co-operation Reorganisation Law	-- acquisition of shares of companies under rehabilitation
Ministry of Education	Copyright Law	-- cartels on fees for commercial usage of music records
Ministry of Health and Welfare	Law Concerning Co-ordination and Improvement of Hygienically Regulated Business	-- cartels to prevent excessive competition
Ministry of International Trade and Industry	Law on Investment Companies for the Development of Small- and Medium-Sized Companies	-- underwriting and possession of shares of small- and medium-sized companies
Ministry of Transport	Maritime Transportation Law	-- underwriting and possession of shares of small- and medium-sized companies
	Civil Aeronautics Law	-- aviation cartels (international)
	Coastal Shipping Association Law	-- coastal shipping cartels -- joint shipping businesses

NOTE

1. The Guidelines state that the three types of holding companies which are prohibited are:

(1) Type₁; A holding company group that is large in scale (whose consolidated total assets of the holding company group, excluding the total assets of finance companies, are more than 15 trillion yen), which owns large companies (companies with unconsolidated total assets of at least 300 billion yen) in a substantial number (at least five) of principal business fields (in principle, a holding company with sales of at least 600 yen billion in a 3-digit classification of the Japans Standard Industrial Classification System).

(2) Type₂; A holding company group which owns large finance companies (finance companies with unconsolidated total assets of at least 15 trillion yen) and which owns large non-finance companies (companies with unconsolidated total assets of at least 300 billion yen) other than companies that engage in finance or businesses closely related to finance.

(3) Type₃; A holding company group that is highly interrelated (which means close trading relationships in business sectors that supply goods and services, or the fact that goods and services in these business sectors is highly complementary or substitutable for users) which owns large companies (sales share of at least 10 percent or a company that ranks in the top three in sales in that business sector) in a substantial number (at least five. If the said holding company has companies that possess a substantial position over a principal field of business whose scale is extremely vast, three or more, depending on the degree of influence which the said companies possess.) of principal business fields (in principle, with sales of at least 600 billion yen in a 3-digit classification of Japans Standard Industrial Classification System).