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Executive Summary

1. The main features of the 2001 activities of the Japan Fair Trade Commission (hereinafter referred to as the JFTC) are as follows.

1. 2. In order to review the Antimonopoly Act (hereinafter referred to as the AMA) regarding the provisions of overall concentration regulation and procedure, etc., the JFTC held meetings of “the Study Group on reviewing the AMA” in February 2001. The findings of the Study Group were summarised in a report published on October 31, 2001. Regarding the revision to overall concentration regulation, the report points out that although the current state of the Japanese economy still points to the relevance of the regulation, some of the current provisions should be revised. As regards the revision of procedure, it concludes, following an examination of the various clauses of the AMA, that provisions on the service of documents, including introduction of provision for the service of documents to parties overseas enforcement, should be added to improved in terms of strengthening power of the Commission. The report also points out that the JFTC should consider, as soon as possible, a systematic revision of the measures against violations, such as surcharges and penal sanctions. Following the report and other recommendations, the JFTC prepared a draft amendment of the AMA, providing for the service of documents, such as those on the elimination of the regulation on the maximum amount of shareholding by large-scale firms, as well as the increase of the maximum fine applicable to corporations. And the amendment act was enacted on May 29, 2002

3. In his policy speech on May 7, 2001, Prime Minister Jun-ichiro Koizumi referred to “the enhancement of the JFTC system as the guardian of the market to establish a competition policy appropriate for the 21st century.” In this regard, the JFTC held meetings “The Committee Considering Competition Policy Appropriate for the 21st Century” from July 2001, composed of external experts, to consider the method of competition policy appropriate for this century and necessary systems and functions to carry out this method. The findings were submitted to the JFTC in the form of recommendation, which were published by the Commission on November 14, 2001.

4. Changes to the AMA and related regulations include the thorough amendment of the Rules Concerning the Investigation and Hearing Procedures of the JFTC. Under Section 76 of the AMA, the Commission issued the Rules concerning the Investigation and Hearing Procedures of the JFTC (JFTC Rule No.5 of October 10, 1953) to provide for the proceedings against the AMA and other violations. Based on the Rule, the Commission has been working to ensure proper and prompt investigation and hearing. The thorough amendment of the Rule is intended to increase the transparency of the proceedings and update its provisions to accommodate changes in the economic environment. The new Rule (JFTC Rule No.8 of December 26, 2001) was promulgated and took effect on April 1, 2002.

5. As the promotion of free and fair competition in the telecommunications business has been one of the major policy agenda of the Japanese Government, the JFTC, in cooperation with the Ministry of Public Management, Home Affairs, Posts and Telecommunications, formulated “Guidelines for Promotion of Competition in the Telecommunications Business Field”. The guideline was published in November 2001.

6. The JFTC has cracked down on AMA violations. In 2001, the JFTC took legal measures (recommendations and orders to pay administrative surcharges without recommendations) against 42 cases of AMA violations, and issued warnings in 12 cases, ordering the payment of surcharges totalling ¥3,765.35 million. (Orders to pay ¥805.06 million of the amount were nullified because the JFTC had begun hearing procedures for some of the cases.)

7. The JFTC received 345 prior notifications of mergers, acquisitions and corporate divisions (136 merger cases, 12 division cases and 197 acquisition cases) in 2001 under Sections 15, 15-2 and 16 of the AMA. The notification of divisions (either through joint establish divisions or acquisition divisions) was newly added as an amendment to the AMA creating the corporate division system that took effect in April 2001.

1. Changes to competition laws and policy – the outline of new regulations in competition laws and related legislation

1.1 Amendment of the Rules concerning the Investigation and Hearing Procedures of the JFTC

8. Under Section 76 of the AMA, the Commission issued the Rules on the Investigation and Hearing Procedures of the JFTC (JFTC Rule No.5 of October 10, 1953) to provide for the proceedings against AMA and other violations. Based on the Rule, the Commission has been working to ensure proper and prompt investigation and hearing. The Commission decided on a thorough amendment of the Rules to increase the transparency of the proceedings and update its provisions in light of the changing economic environment.

9. The draft Rules were opened for public comment on September 26, 2001. After thorough consideration of the comments received, the JFTC decided to modify some of the provisions in the draft Rules. The finalised text (JFTC Regulation No.8 of December 26, 2001) was promulgated on December 26, 2001 and took effect on April 1, 2002. The features of the amendment are as follows.

10. As regards investigation, the Rules provides for (1) the clarification of current procedures (explicit description of the procedure to be followed when interrogation is conducted through an interpreter), and (2) the development of a procedure that accommodates electronic channels (explicit description of the notification procedure for declarations via e-mail and other electronic channels and the procedure to be followed when submitting documents by facsimile).

11. As regards hearing, the Rules provide for (1) the clarification of current procedures (seven clauses including explicit description of the hearing procedure conducted by two or more investigators), (2) the development of a procedure that accommodates electronic channels (explicit description of the procedure to be followed when submitting documents by facsimile), and (3) the procedure necessitated by the implementation of laws and regulations related to law firms (the creation of a clause for the procedure to be followed when a law firm acts as a representative).

1.2 Guidelines Concerning Joint Activities for Recycling

12. The Basic Law to Promote a Recycling-oriented Society, enacted in June 2000, provides for the establishment of a basic framework to promote a recycling-oriented society, including the clarification of the duties and obligations of the central and local governments, businesses and the general public. Against this backdrop, the JFTC prepared a guideline to identify the AMA concept concerning joint activities for recycling. The guideline was published in June 2001.

13. The guideline comprises “Part 1: On Joint Development of Recycling Systems,” “Part 2: On Joint Action Concerning Recycling, etc.” and explains eight specific cases.

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14. The guideline provides the AMA concept for the following areas: product market; recycling market; the determination of a target recycling rate; uniform standards for easily-recycled parts and the development of common parts; joint research and development on easily-recycled parts; the development of a unified manifest format and the enforcement of its use; joint activities concerning recycling cost; and the development of a deposit system.

1. 1.3 Guidelines Concerning Activities of Associations of Qualified Professions

15. The establishment of a professional association is legally required for eight qualified professions: certified public accountants, administrative scriveners, attorneys in private practice, judicial scriveners, registered land and building investigators, certified tax accountants, public consultants on social and labour insurance and patent agents. Those qualified to practice these professions must become members of the relevant professional associations (hereinafter referred to as “associations of qualified professions”). The eight associations of qualified professions are required by applicable laws to self-regulate their activities. Following the Three-Year Programme for Promoting Deregulation, adopted by a Cabinet meeting in March 2001, the self-regulation is now being reviewed by each of the associations. In this light, the JFTC drew up an AMA guideline to help the associations in revising the self-regulation and ensuring proper activities after the revision. The Guideline was published in October 2001.

16. The guideline consists of “Part 1: Certified Professional Associations and the AMA,” “Part 2: AMA Concept for Main Activities of Associations of Qualified Professions” and explains three specific cases.

17. Part 2 of the guideline provides the AMA concept for the following areas: activities related to remuneration; activities related to advertisement; and activities related to clients.

1.4 Guideline for Promotion of Competition Policy in the Telecommunications Business Field

18. As the promotion of free and fair competition in the telecommunications business field has been one of the major policy agenda for the Japanese Government, the JFTC, in cooperation with the Ministry of Public Management, Home Affairs, Posts and Telecommunications, drew up a guideline for the promotion of competition in the telecommunications industry to encourage free and fair competition in telecommunications. The guideline was published in November 2001.

19. The guideline consists of “Part I: The Necessity and Composition of the Guideline on the Promotion of Competition in the Telecommunications Business Field,” “Part II: Activities that might violate the AMA or Telecommunications Business Law,” “Part III: Desirable Activities of Business Operators in Terms of Further Promotion of Competition,” and “Part IV: Response to Reports, Consultations, Proposals, etc.”

20. In Part II, desirable voluntary actions to be taken by telecommunications operators for the promotion of competition in the telecommunications business fields are indicated by the JFTC, responsible for implementing the AMA, as well as by the Ministry of Public Management, Home Affairs, Posts and Telecommunications, responsible for regulating the telecommunications industry.

21. Part IV provides for reporting AMA or Telecommunications Business Law violations, the services for confirmations or consultations regarding the applicability of specific provisions of laws and regulations to concrete actions related to the business activities to be undertaken, as well as the coordination between the JFTC and the Ministry of Public Management, Home Affairs, Posts and Telecommunications.

2. The enforcement of competition laws and policies

2.1 Measures against violations

2.1.1 Situation regarding measures

22. Of the 101 cases for which the JFTC completed investigations in 2001, formal legal measures (recommendations or surcharge payment orders without recommendations) were taken in 42 cases (41 recommendations and one surcharge payment order without recommendation) to eliminate violations. In addition, warnings were issued in 21 cases and cautions were issued in 32, where AMA violations were suspected but not substantiated. There were 6 cases in which investigations were discontinued as no violations were found to have been committed.

A) Legal measures

• Private monopolisation	0
• Bid-rigging	36
• Price cartels, etc. (excluding bid-rigging)	3
• Unfair trade practices	3
• Others	0

The JFTC has been making continuous efforts to eliminate bid-rigging. In 2001, 36 of the JFTC's formal measures were against bid-rigging.

B) Orders to pay surcharges

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

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

24. The amount of the surcharge is calculated by multiplying the amount of sales during the period of the cartel by a certain percentage. In the case of trade associations, the surcharge is levied on the firms constituting the association. In 2001, the JFTC issued surcharge payment orders to 479 firms amounting to ¥3,765.35 million. In addition, an order was issued to a firm totalling ¥10.76 million following a decision in 2001 on a case for which a hearing procedure had been initiated concerning a previous surcharge payment order.

25. Of the 479 firms that were ordered to pay surcharges without decisions, 43 firms requested hearings in 2001. As the JFTC initiated hearings on all of the cases, surcharge payment orders amounting to ¥805.06 million in total were nullified.

C) Criminal accusations

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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, such as 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 do not take 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.

27. There was no criminal accusation in 2001. Recent cases include the accusation against petroleum product suppliers, after it was found that they had colluded to designate who would win each of the competitive tenders by the Self Defence Agency's Central Procurement Office for petroleum products during the period between April 1998 and March 1999. For this reason, the JFTC filed an accusation with the Public Prosecutor General against the 11 petroleum product suppliers (October 13, 1999) and 9 persons involved in receiving orders (November 9, 1999). The Tokyo High Public Prosecutors Office instituted a public prosecution against the 11 firms and 9 persons on November 9. A total of 41 hearings have been conducted for this case, which is still pending.

D) Hearing procedures

28. The JFTC initiated hearing procedures for 18 cases in 2001, and as of December of the same year, there were ongoing hearing procedures for 27 cases, of which seven concern allegations of AMA violations and 21 concern surcharge payment orders.

29. The JFTC issued decisions on five cases in 2001 after hearing procedures, including the case against Sony Computer Entertainment Co., Ltd., where the company had allegedly violated Section 19 of the AMA by restricting trading activities of wholesalers and retailers in terms of the sales price of software for the Playstation household games machine.

2.1.2 *A summary of main cases*

A) Case against polypropylene manufacturers

30. It was found that seven polypropylene manufacturers had colluded in a decision to raise the sales price of polypropylene for users (excluding the products for which sales prices are determined by the naphtha-link method), effectively restricting competition in the sales of polypropylene in Japan. On May 30, 2001, the JFTC issued a recommendation for the elimination of the act on the ground that it violated Section 3 of the AMA (Prohibition of unreasonable restraint on trade) (decision issued for three manufacturers and hearing procedures initiated for four manufacturers on June 27, 2001).

B) Case against Matsushita Industrial Equipment Co., Ltd.

31. It was found that, regarding the trade of its electrical products, Matsushita Industrial Equipment Co., Ltd. had colluded with its affiliate sales companies to a) identify the distribution channels of the products following a complaint from a retailer involved in a trading relationship with an affiliate sales company about the discount sales of the said products by a retailer that had not concluded a regular trading contract with any of the affiliates, and b) direct the wholesalers and retailers with regular trading relationships to refuse to sell Matsushita products to such discount retailers. The JFTC issued a recommendation for the elimination of the act on June 29, 2001, for violation of Section 19 of the AMA (Paragraph 2 (other refusals to deal) of Designation of Unfair Trade Practices(JFTC notification No.15 June 18, 1982)) (decision issued on July 27, 2001).

C) Case against import fruits fumigators at New Tokyo International Airport

32. It was found that two firms operating the fumigation business at the New Tokyo International Airport had colluded to fix various prices receivable from custom house brokers for the import fruits fumigation service provided in fumigating warehouses of bonded shed firms at the Airport. Accordingly, the JFTC issued a recommendation for the elimination of the act on August 9, 2001, for violation of Section 3 of the AMA (Prohibition of unreasonable restraint of trade) (decision issued for one of them on September 17, 2001 and hearing procedures initiated for the other on September 28, 2001).

D) Case against bidders for agricultural engineering works in Shinjo City and Mogami District, Yamagata Prefecture, ordered by Yamagata prefectural government

33. It was alleged that 61 bidders for agricultural engineering projects in the Shinjo and Mogami district, Yamagata Prefecture, which were ordered by the Yamagata prefectural government through designated competitive bidding or negotiation with estimates, had colluded to designate the winners in advance, effectively allowing them to receive the orders. Accordingly, the JFTC issued a recommendation for the elimination of the act on July 31, 2001, for violation of Section 3 of the AMA (Prohibition of unreasonable restraint of trade) (decision issued on September 6, 2001).

E) Case against bidders for linen services ordered by public hospitals, etc.

34. It was found that 22 persons in Tokyo, 19 in Kanagawa, 14 in Chiba, 12 in Saitama, 6 in Toyama, 6 in Ishikawa, 8 in Osaka and 7 in Hyogo had colluded to designate in advance the winners of biddings for linen services ordered by public hospitals, etc. located in each prefecture, effectively allowing them to receive the orders. Accordingly, the JFTC issued a recommendation for the elimination of the act on August 10, 2001, for violation of Section 3 of the AMA (Prohibition of unreasonable restraint of trade) (decision issued on September 19, 2001).

F) Case against bidders for automobile inspection instruments ordered by District Transport Bureaux, Ministry of Land, Infrastructure and Transport, etc.

35. It was found that four manufacturing/sales companies of automobile inspection instruments had colluded to designate in advance the winners of biddings for the said instruments ordered by nine District Transport Bureaux of the Ministry of Land, Infrastructure and Transport, including the Hokkaido Transport Bureau, and the Okinawa General Bureau of the Cabinet Office, as well as by the Light Motor Vehicle Inspection Organization, effectively allowing them to receive the orders. Accordingly, the JFTC issued a recommendation for the elimination of the act on October 4, 2001, for violation of Section 3 of the AMA (Prohibition of unreasonable restraint of trade) (decision issued on November 6, 2001).

G) Case against bidders for large-scale landscaping works ordered by Tokyo Metropolitan Government

36. It was found that 106 bidders for landscaping projects ordered by the Tokyo Metropolitan Government had colluded to designate in advance the winners of biddings for those projects whose target prices set by the Metropolitan Government amounted to ¥80 million or over, effectively allowing them to receive the orders. Accordingly, the JFTC issued a recommendation for the elimination of the act on November 30, 2001, for violation of Section 3 of the AMA (Prohibition of unreasonable restraint of trade) (decision issued on January 17, 2002).

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- H) Case against bidders for national forest research and survey services in Aomori Branch Office, Tohoku Forestry Office, Forestry Agency

37. It was found that 10 firms involved in research and surveys concerning the utilisation of national forests, eight firms involved in research and design concerning conservation and four firms involved in research and design concerning forest roads, had colluded to designate in advance the winner of biddings for research and survey activities concerning the utilisation of national forests, research and design activities concerning conservation projects and research and design activities concerning forest road projects, ordered by national agencies and local authorities in the Aomori Branch Office area, as well as by public entities funded by those agencies or authorities, including public corporations, effectively allowing them to receive the orders. Accordingly, the JFTC issued a recommendation for the elimination of the act on December 11, 2001, for violation of Section 3 of the AMA (Prohibition of unreasonable restraint of trade) (decision issued on January 24, 2002).

- D) Case against NTT East and NTT West

38. It was alleged that, in providing ADSL service, NTT East and NTT West had implemented the following, free of charge at the request of their own users: a) the replacement of protective devices that might cause the ADSL connection to be interrupted when receiving phone calls, and b) the replacement of capacity from optical fibre cables to metal cables, while charging the users of their competitors for the same works. Accordingly, the JFTC issued a warning on December 25, 2001, for possible violation of Section 19 of the AMA (Paragraph 9 (Customer Inducement by unjust benefits) or Paragraph 15 (Interference with a competitor's transaction) of Designation of Unfair Trade Practices(JFTC notification No.15 June 18, 1982)).

2.1.3 *Litigation*

39. One lawsuit applying for the annulment of a JFTC decision was rejected in a court decision while three new lawsuits were filed in 2001. As at the end of December 2001, there were five ongoing lawsuits.

- A) Lawsuit applying for annulment of a JFTC decision that has been rescinded – lawsuit filed by Kannonji City-Mitoyo County Medical Association

40. After a series of hearing procedures, the JFTC issued a decision on October 26, 1999, against the Kannonji City-Mitoyo County Medical Association on the ground that it violated Section 8 Subsection 1-3 of the AMA (Restriction of the number of present or prospective firms in a particular business field) by restricting the establishment of new medical institutions, as well as Section 8 Subsection 1-4 of the AMA (unreasonable restraint of functions or activities of members) by restricting the creation of new departments, additional beds and the expansion/reconstruction of buildings in medical institutions, and the creation of new health care facilities for the elderly. Although the Association filed a lawsuit with the Tokyo High Court on November 24, 1999, for annulment of the decision, the court dismissed the claim on February 16, 2001. The court decision became definitive as the Association rescinded its appeal as well as its claim for the reception of the appeal.

- B) Lawsuit applying for annulment of a JFTC decision that has been newly launched - lawsuit filed by International Geology Co., Ltd.

41. The JFTC, after a series of hearing procedures, issued a decision against International Geology Co., Ltd. and 26 other firms on September 20, 2001, on the ground that they had violated Section 3 of the

AMA (Prohibition of unreasonable restraint of trade) by colluding to decide in advance the winners of biddings for specific geological survey services ordered by Chiba City, etc. The case had been subject to a series of hearing procedures since September 1999, when the decision was made to initiate the hearings. In response, International Geology Co., Ltd. filed a lawsuit with the Tokyo High Court on October 19, 2001, for annulment of the decision.

2.2 *Mergers and acquisitions*

2.2.1 *Statistics relating to mergers and acquisitions*

42. Sections 15, 15-2 and 16 of the AMA provide for prior notification of any mergers, acquisitions and corporate divisions of significant scale. The JFTC examines the content of the notifications. If a planned merger, acquisition or corporate division is deemed likely to substantially restrict competition in a particular field of trade, the JFTC has the power to take measures including its preclusion. In 2001, the JFTC was notified of 136 planned mergers in accordance with Section 15 of the AMA, 12 planned corporate divisions under Section 15-2, as well as 197 planned acquisitions of businesses under Section 16.

Table: Number of mergers, acquisitions and corporate divisions

	1999	2000	2001
Mergers	189	170	136
Corporate divisions	-	-	12
Acquisitions, etc.	186	213	197
Total	325	333	345

Note: The corporate division system (either through joint establishment or acquisition) was created by the amendment to the AMA in May 2000 and came into force in April 2001.

43. The JFTC did not take any legal measures with regard to mergers, acquisitions or corporate divisions in 2001.

44. In Japan, prior consultations with the JFTC are common before formally submitting notifications of mergers, acquisitions or corporate divisions when there are concerns about problems in relation to the AMA in such mergers, acquisitions or corporate divisions. In these consultations, the JFTC thoroughly examines each case for potential problems with regard to the AMA. If the JFTC detects any problem at the stage of prior consultations, the company either abandons the merger, acquisition or corporate division, or revises its contents in line with the AMA, and then formally files notification for the merger, acquisition or corporate division to be effected.

2.2.2 *A major case of merger and acquisition*

-- Business integration through the establishment of a holding company by Nippon Kokan K.K. and Kawasaki Steel Corporation

45. Under the plan, Nippon Kokan K.K. and Kawasaki Steel Corporation will establish a holding company as their common parent to cope with recent changes in business environment including the reorganisation of user industries on a world scale and the increase in global procurement, thus enabling them to gain competitiveness in the international market in particular. Subsequently, the two companies will integrate their businesses by reorganising themselves into several operating arms.

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46. As regards this case, the JFTC considered that some of the products manufactured and sold by both companies constitute particular trade fields.

47. The JFTC examined each of the trade field thus identified, with particular focus on non-directional electromagnetic sheet steel (about 35% market share, ranked 2nd), sheet steel for containers (about 35%, ranked 1st), steel tubes for piping (about 45%, ranked 1st) and high tensile steel.

48. The sales shares and rankings for the four products will be as described above after the planned integration. However, in light of the general conditions as described below for non-directional electromagnetic sheet steel and sheet steel for containers, the Commission considered that the new company would not substantially restrict competition in any of the four trade fields. Therefore, the Commission concluded that the integration would not restrict competition in any of the trade fields identified, including the four products.

49. As regards non-directional electromagnetic sheet steel, the new company will account for about 35% of total sales volume and rank 2nd in the market, but the following facts have been confirmed.

50. (1) There exist several strong competitors including the top-ranked firm with a market share of almost 50%. (2) Leading electric machinery manufacturers, accounting for most of the company's users, have been transferring their production facilities overseas in recent years, and procurements of non-directional electromagnetic sheet steel from local manufacturers are also increasing. Under these circumstances, the import ratio of the product is likely to increase in the coming years, due also to improved quality of Asian products. Indeed, some user companies now consider importing Asian products. (3) As no difference in product quality has been recognised among steel makers, user companies are procuring the product from two or more steel manufacturers in principle.

51. In price negotiations, the users focus on procurement at lower prices, actually increasing the share in their procurement of manufacturers presenting lower prices. They also refer in price negotiations to the procurement price from Japanese manufacturers at their overseas production facilities and that from other Asian manufacturers.

52. Thus, users maintain an advantage in price negotiations, and the price of non-directional electromagnetic sheet steel has been declining.

53. As regards sheet steel for containers, the JFTC confirmed the following facts, although the new company will have a 35% share in total sales volume, thus becoming the top manufacturer in this field.

54. (1) Two strong competitors exist, with market shares of about 35% and 25% respectively. (2) Steel cans, for which most of the sheet steel is being used, are now increasingly being replaced by competing products including aluminium cans and small PET bottles, leading to a decline in the sales volume of steel can, and therefore, of sheet steel. (3) Sheet steel for general cans and 18-litre cans has been increasingly imported. (4) The users, i.e. can makers, have a strong price negotiating power as they also produce products competing with steel cans, such as aluminium cans and small PET bottles. Furthermore, user companies are procuring the product from two or more steel manufacturers in principle, as no difference in product quality has been recognised among steel makers.

55. In price negotiations, reference is made not only to the price of steel cans, for which the sheet steel is used, but also to that of aluminium cans, which compete with steel cans. In the case of general cans and 18-litre cans, reference is also made to the prices of imports.

56. Thus, users maintain an advantage in price negotiations, and the price of sheet steel for containers has been declining, as steel cans are being replaced with small PET bottles, etc.

3. The role of the competition authorities in the formulation and implementation of other policies

3.1 Coordination between the AMA and other economic laws and ordinances

57. When administrative bodies propose to enact or amend any economic law or ordinance from a specific policy requirement, the JFTC, in consultation with these bodies, ensures the coordination of the proposed provisions with the AMA and competition policy at the planning and drafting stage, if there is a concern that the proposed amendment or enactment will include exemption clauses from the AMA or provisions which may restrict competition.

3.2 Administrative coordination

58. The JFTC coordinates as necessary with administrative bodies when they take administrative measures based on specific policy requirements, in order to prevent such measures from causing problems concerning the AMA and competition policy. In June 1994, the JFTC published the “ Guidelines concerning Administrative Guidance Under the AMA” lest any guidance by competent authorities should hinder free and fair competition or lead to any violation of the AMA. Furthermore, the revised “Three-Year Programme for Promoting Deregulation” (Cabinet decision in March 1999) states that ministries and agencies concerned are required to hold prior consultations with the JFTC to ensure that any anti-competitive administrative guidance does not replace similar restrictive regulations. The JFTC ensures necessary coordination with the ministries and agencies concerned.

3.3 Reform of government regulations

59. In order to achieve specific policy objectives, the government regulates the free economic activities of businesses, such as market entry or prices, according to applicable laws and ordinances. However, because economic conditions have greatly changed since the regulatory systems were introduced, such regulations may lack purpose, and may even suppress economic vitality and efficiency.

60. The JFTC has conducted medium- and long-term reviews of the government regulatory systems from the viewpoint of competition policy. Based on the recommendations of the OECD Council of 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 reform through legal and administrative coordination. The JFTC has also organised meetings of the Study Group on Government Regulations and Competition Policy, which is made up of academics and other experts, and commissioned its members to address problems of government regulation and competition policy in individual sectors.

61. Since June 1999, the Study Group has examined how to encourage market entries and ensure fair competition between newcomers and existing companies in the public utility markets that have been subjected to deregulation on a sector-by-sector basis, preparing a report on the electricity, gas, domestic airline passenger transport and telecommunications sectors. Building on the findings for those sectors, the Study Group continued to examine the best competition policy and future challenges in the public utility

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sector in general, and prepared a report entitled “Deregulation and Competition Policy in the Public Utility Sector,” which was made public in January 2001.

62. Based on the consideration that mere deregulation would not effectively facilitate entries into the markets, and that a significant gap in competitiveness exists between newcomers and the existing operators that control the market, the report on the public utility sector argues that:

1. It is necessary to open up the networks owned by existing operators based on the principles of equity, fairness and transparency and to promote competition in infrastructure.
2. It is required to ensure fair conditions for competition between newcomers and existing operators.
3. Strict enforcement of the AMA against anti-competitive practices is important.
4. It is crucial to prepare a guideline for each business field, identifying the acts that may violate the AMA.

63. A working group for the integration of communications and broadcasting was created under the Study Group in May 2001 to consider necessary measures for the promotion of free and fair competition in view of the integration of the communications and broadcasting industries. The working group prepared an interim report entitled “Competition Policy Issues for the Integration of Communications and Broadcasting.”

64. Based on the consideration that the current system may hinder the expansion of services that fall somewhere between the communications and broadcasting businesses, or new entries into such services, as it cannot keep pace with the actual integration of the two businesses and may even impede the provision of quality services at lower prices according to the market principle, the report on the integration of communications and broadcasting states that:

- a) The current system needs to be reconstructed to respond to the integration of communications and broadcasting, including through the revision of the distinction between the two businesses.
- b) The deregulation of new entries into the broadcasting market is required, including the consideration of a bidding system on the allocation of airwaves.
- c) It is necessary to develop a competitive environment for the promotion of contents distribution, including through the establishment of a rule to handle copyrights.
- d) It is important to eliminate any acts that restrict free and fair competition.

65. Regarding revision to resale price maintenance system for copyrighted works

66. Based on successive Cabinet meeting decisions regarding the promotion of deregulation, the JFTC has considered revision to the exemption of the resale price maintenance for copyrighted works (hereinafter referred to as the “resale price maintenance system”) as part of the comprehensive review of the exemption from AMA provisions. In this context, the JFTC made public its view in March 1998 that, although the abolition of the system should be considered from the viewpoint of competition policy, further examination of this issue is necessary, including possible implications of its abolition to cultural promotion and development, to which the resale price maintenance system may be contributing. Thus, the

JFTC announced that a certain period of time would be necessary to reach a final conclusion as to whether the system should be abolished.

67. Following this announcement, the JFTC engaged in dialogue with the industries concerned and requested public comments regarding possible implications of the abolition of the resale price maintenance system. The conclusion drawn from such consultations was made public on March 23, 2001.

68. The resale price maintenance system is an exception to the prohibition of retail-price maintenance stipulated in the AMA. Being in charge of competition policy including the implementation of the AMA, and taking account of the contemporary requirement to promote free and fair competition, the JFTC is of the opinion that the resale price maintenance system should be abolished, so as to promote competition in the distribution of copyrighted works.

69. However, the public comments gathered indicate that a national consensus has not been reached on the abolition of the resale price maintenance system. While some agree to the abolition of the system, others are opposed for fear that it may have adverse effects on cultural and public life. Such people argue that the abolition will not only undermine diversity in the planning of books, magazines and music CDs but also result in the demise of the house-to-house delivery system for newspapers, affecting the population's right to know.

70. Therefore, the JFTC considers at this stage that measures for the amendment of the AMA should be taken without actually abolishing the resale price maintenance system, which will remain effective for some time to come.

71. In fact, the resale price maintenance system may be implemented in a manner that would benefit consumers, and some efforts in this direction have been observed in the industries concerned. Some still argue, however, that the system has been enforced too rigidly.

72. The JFTC therefore proposes and requests the industries concerned to implement measures such as the expansion of the publication and distribution of products that are not subject to the resale price maintenance system, and the diversification of pricing including through the introduction of various discount schemes, so as to allow maximum flexibility in implementing the current system for the benefit of consumers. A council was established with the membership of the JFTC, related firms, consumers, experts, etc., to exchange opinions on the distribution of literary works, including the verification of the effectiveness of such measures and the exploration of more effective ways. The first meeting of the council was held in December 2001.

73. The JFTC will continue to make every effort to promote national consensus for the abolition of the no-discount resale system. In addition, the Commission will enhance its investigation and verification of actual trading practices regarding literary works, lest any rigid enforcement of the system should affect consumer benefit.

74. The scope of the resale price maintenance system will continue to be limited to the six products according the traditional interpretation and practice of the JFTC: books, magazines and newspapers, as well as records, music tapes and music CDs.

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4. Resources of the JFTC

4.1 Budget amount

Trends in the budget of the Fair Trade Commission (unit: \1 billion, %)

Fiscal Year	199 2	199 3	199 4	199 5	199 6	199 7	199 8	199 9	200 0	200 1
Budget of the JFTC Budget amount (\100 million)	4.41	4.62	5.24	5.24	5.38	5.56	5.62	5.78	5.90	6.0 4
– change over previous year (%)	7.9	4.9	13.4	-0.1	2.7	3.3	1.1	2.8	2.1	2.3
General Expenditures Budget – change over previous year (%)	4.5	3.1	2.3	3.1	2.4	1.5	-1.3	5.3	2.6	1.2

Notes:

1. The JFTC 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.

4.2 Number of officials

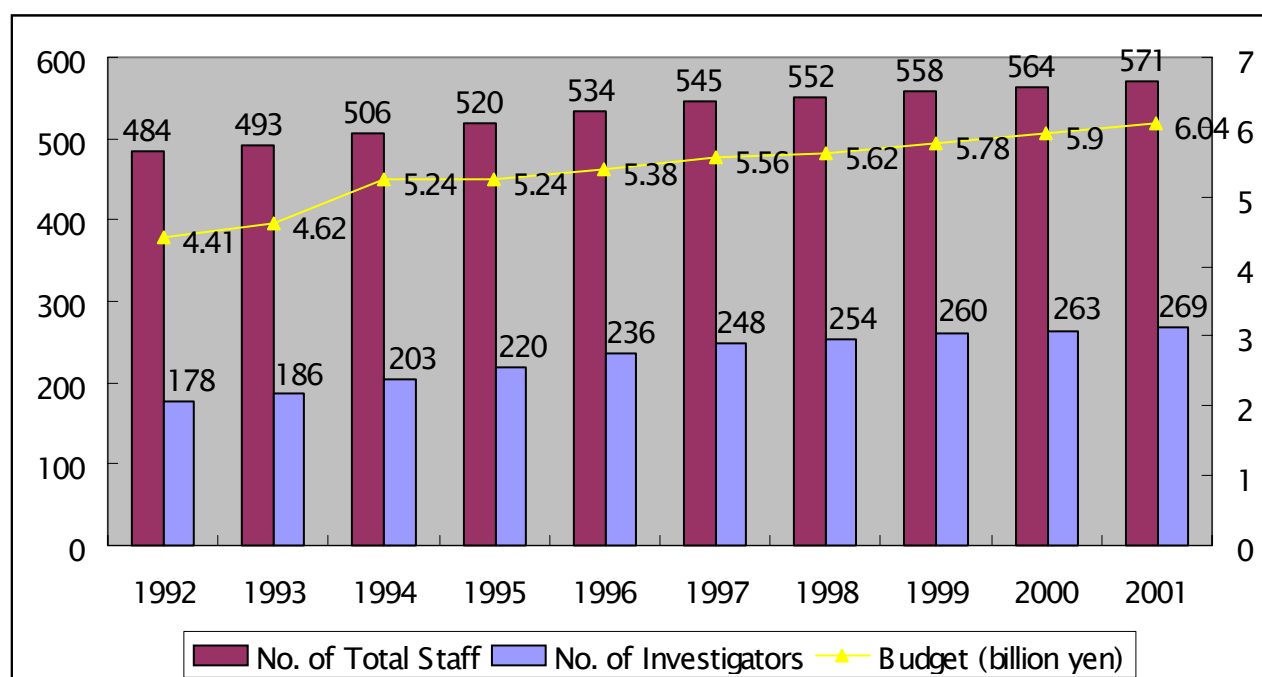
Trends in the number of officials in the General Secretariat of the Fair Trade Commission (unit: persons) are shown below.

Fiscal Year	199 2	199 3	199 4	199 5	199 6	199 7	199 8	199 9	200 0	200 1
Number of officials	484	493	506	520	534	545	552	558	564	571
Enforcement against anti-competitive practices	178	186	203	220	236	248	254	260	263	269
Merger review enforcement	18	19	18	18	18	18	19	19	22	22
Advocacy efforts	15	15	15	14	23	23	23	22	22	22

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).
4. 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 1992-2001)



5. Surveys related to competition policy

5.1 *The report on the 7th survey of the actual conditions of the corporate groups State of Corporate Groups in Japan (the 7th survey report)*

75. The JFTC has been conducting surveys on the six major corporate groups (Mitsui, Mitsubishi, Sumitomo, Fuyo, Sanwa and Dai-ichi Kangyo Bank) to observe regularly their importance in the Japanese economy, ties among companies within groups, etc. The most recent survey report was published on May 18, 2001.

76. The relative importance of the six corporate groups in the Japanese economy has been declining, and the ties among member companies through capital, personnel and business relationships are weakening in general.

77. Although exchanges of information, etc. are perceived as primary benefits of being a member of the meeting of presidents (*shachokai*) in a corporate group, mutual support functions can still be observed within corporate groups, such as financial assistance at the time of financial crisis.

78. Most affiliates say that current corporate groups will be maintained in spite of the ongoing reorganisation of the banking sector. However, the dominant perception among the bank-centred groups is that the role of the group will decline, while many *ex-zaibatsu* companies think that their relationships will become stronger. Banks in some corporate groups say that they will not take the initiative in strengthening or expanding the ties among the affiliates, or in supporting and promoting the integration of the affiliates. We should carefully monitor developments.

5.2 *The report on the survey of the actual conditions of the big companies and group management*

79. The JFTC conducted surveys on (1) the conditions of group management by the top 100 companies in capitalisation and (2) the conditions of use of holding companies, which was made possible with the amendment to the AMA in 1997. The findings of the survey were published in a report on May 18, 2001.

80. The following can be said about the corporate relationships of large-scale businesses.

- (1) As regards capital (shareholding) relations, companies are expected to become selective about cross-shareholdings, leading to the decline of such relationships. However, few companies intend to eliminate cross-shareholdings. Most of the companies say that the purpose of cross-shareholdings is the maintenance and enhancement of business relationships.
- (2) As regards financing, many companies have a main financing bank, in expectation of secure and stable financing. Usually, companies also have important relations with banks other than the main financing bank. It is observed that larger ownership by banks indicates a higher borrowing ratio.
- (3) As regards business relations, transactions with owner companies still tend to be significant, particularly with those affiliates subjected to the consolidation of financial statements.

81. Most of the large-scale businesses form a corporate group with their subsidiaries and affiliates. With the introduction of the consolidated accounting system, however, more companies are now emphasising the profit of the group as a whole, rather than focusing on their own earnings.

82. Although holding companies have rarely been established, they are considered as an option in restructuring businesses and organisations as more companies adopt the method of consolidated group management. The use of holding companies is expected to increase with the development of legal and taxation systems related to corporate organisations, such as the consolidated return system. Note: The taxation scheme for corporate reorganisation was developed with the revision of the taxation system in fiscal 2001. The revision in fiscal 2002 created the consolidated return system.

5.3 *The report on the survey of trade practices between banks and firms*

83. Taking account of changes in financial transactions in Japan with the progress of financial-sector deregulation and the development of the business environment, the JFTC conducted a survey on business practices between financial institutions and corporations to ensure fair trade. The survey covered corporations receiving bank financing and its findings were published in a report in July 2001.

84. A survey was conducted on requests from financial institutions to borrowing corporations in return for financing. The results were as follows.

- a) Medium- and small-scale enterprises are highly dependent on financial institutions for financing, and find it difficult to change their financing partners. Therefore, financial institutions are often in a position to exert strong influence on them.

- b) Among the various requests made by financial institutions, the setting or change of financing conditions and the purchase of their financial products or services are most common, . Many of the corporations accept such requests against their will.
- c) 40% of the corporations feel compelled to accept any requests from the financial institutions. Many companies cite possible difficulties in obtaining subsequent loans or concerns about the business relationship as the reason for accepting the requests, sometimes against their will.

85. Thus, companies may accept any request from financial institutions against their will for fear of adverse effects on future financing, etc., leading to potential violations of the AMA for the abuse of dominant bargaining position. Accordingly, the JFTC explained to the banking associations concerned the result of the survey and AMA concept, requesting them to ensure the concept is thoroughly understood by their member institutions.

5.4 Survey on the situation of competition in the domestic air transportation sector

86. The JFTC conducted a survey to follow up on the result of a previous research (December 1999) on the setting of fares and the use of airport facilities in the domestic airline industry after the entry of two newcomers (Skymark and Air Do). The findings of the survey were published in July 2001.

87. Airfare pricing has been diversified with the expansion of discount fares for specific flights, the creation of an across-the-board advance purchase discount system and the introduction of fares for reservations made on the Internet. The expansion of discount fares for specific flights should widen the choice for users, despite exceptions for some lines and flights and limitations in the number of seats covered. The Commission expects further expansion in fare options through increased competition.

88. The new allocation of arrival and departure slots at Haneda Airport in March 2000 allowed the two newcomers to double their services to six shuttle flights, indicating some improvement in competition. Any future allocation of new slots should equally consider the interest of newcomers to ensure fair competition. With the doubling of services by the two newcomers, the three major airlines (JAL, ANA and JAS) have introduced discount fares for all flights between Tokyo and Fukuoka as well as between Tokyo and Sapporo. The two newcomers have led all the subsequent fare revisions, promptly followed by the three major airlines. As regards the above two routes, the entry of the newcomers is considered to have had a desirable impact on competition in the domestic airline industry, with increased availability of discount fares for specific flights.

89. The two newcomers cannot use any boarding bridges at Haneda. Although they have established their own check-in counters, indicating a certain improvement, they are still at a disadvantage as compared with the three major airline companies, including the unavailability of belt conveyors for baggage transport. Any future refurbishment or relocation of airport facilities should consider their availability based on more fair and transparent criteria.

5.5 *Report on the transactions between franchiser and franchisee in the convenience store chains*

90. In the Japanese retail industry, convenience stores utilising the franchise system have been growing significantly in recent years. In this light, the JFTC conducted a research on transactions between their head offices (franchiser) and affiliates (franchisee) affiliates to clarify issues related to the AMA, with focus on (1) the methods of acquiring franchisees, and (2) transactions between franchiser and franchisee after the conclusion of franchise contracts. The findings of the survey were published in October 2001.

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91. The research identified possible AMA violations including (1) insufficient disclosure of information by the franchiser to prospective franchisees, and (2) acts that may constitute the abuse of dominant bargaining position in transactions between the franchisers and franchisees after the conclusion of franchise contracts.

92. Accordingly, the JFTC pointed out the possibilities of AMA violations to the franchisers, requesting them to improve materials for, and the method of, disclosure and establish in-house mechanisms to ensure compliance with the AMA. At the same time, the Commission requested the Japan Franchise Chain Association to ensure that the content of the report is thoroughly understood by its member companies.

93. Based largely on this research, the Commission decided to revise “the Guidelines Concerning Franchise System under the AMA”, formulated in 1988, to clarify the AMA concept on this issue. The draft text was opened for public comment in February 2002, and the finalised text was published in April 2002.