



COMPETITION COMMITTEE

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN JAPAN**

2003

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Executive Summary

1. The main features of the 2003 activities of the Japan Fair Trade Commission (hereinafter referred to as the JFTC) are presented below:

Consideration of the amendment of the Antimonopoly Act

2. In order to conduct a study concerning the amendment of the Antimonopoly Act, the JFTC convened meetings of the Study Group on the Antimonopoly Act beginning in October 2002. The JFTC released the report the Study Group submitted in October 2003, and requested the public opinions about the report. The JFTC then released the outlines of the amendment of the Antimonopoly Act in December 2003 based on proposals and opinions about the report.

Actions against violations of the Antimonopoly Act

3. The JFTC has cracked down on violations of the Antimonopoly Act. In 2003, the JFTC took legal measures (recommendations and orders to pay administrative surcharges without recommendations) against 35 cases of AMA violations, issued warnings in 16 cases, and ordered the payment of surcharges totalling 7083.01 million yen. (Orders to pay 2340.56 million yen out of this amount were nullified because the JFTC had begun hearing procedures for some of the cases.)

Merger and acquisitions restrictions

4. Based on the provisions of Section 15, Section 15-2 and Section 16 of the Antimonopoly Act, company mergers, divisions and business acquisitions of a particular size must be reported in advance to the JFTC.

5. During 2003, the JFTC received prior notifications of 118 mergers, 19 corporate divisions and 168 acquisitions under Sections 15, 15-2 and 16 of the Antimonopoly Act.

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

1. Transition of the JFTC to an external organ of the Cabinet Office

6. A cabinet decision in June 2001 entitled “Basic Policy Stance on Future Economic and Fiscal Management and Reform of Economy and Society” stated: “transition of the JFTC to a more appropriate position shall be considered from the viewpoint of independence and neutrality from regulating authorities.” A bill to establish related laws based on changes in the situation surrounding the reorganization of central government ministries was submitted to the 156th ordinary session of the Diet on January 31, 2003. It was thus decided to transfer the JFTC from an external organ of the Ministry of Public Management, Home Affairs, Posts and Telecommunications to an external organ of the Cabinet Office. This bill was approved and enacted on April 2 of the same year and promulgated and put into effect on April 9 of the same year.

2. Outlines of the amendment of the Antimonopoly Act

1) Meeting of the Study Group on the Antimonopoly Act

7. The JFTC convened meetings of the Study Group on the Antimonopoly Act (Chairperson: Kenichi Miyazawa, Emeritus Professor, Hitotsubashi University) in order to conduct a study concerning

review of Antimonopoly Act enforcement systems and monopoly and oligopoly regulations. The JFTC released the report the Study Group submitted in October 2003, and requested the public opinions about the report.

2) *Release of the outlines of the amendment of the Antimonopoly Act*

8. The JFTC released the outlines of the amendment of the Antimonopoly Act in December 2003 based on proposals in the Study Group Report and opinions about the report:

- Review on the surcharge system
- Introduction of a leniency program
- Introduction of compulsory measures for criminal investigations and review on penal regulations
- Review on hearing procedures
- Review on monopoly and oligopoly regulations

3. ***Bilateral Cooperation Agreements***

1) *Agreement between the Government of Japan and the European Community concerning cooperation on Anticompetitive Activities*

9. On July 10, 2003, the Government of Japan and the European Community signed the “Agreement between the Government of Japan and the European Community concerning cooperation on anticompetitive activities,” which came into effect on August 9, 2003. It prescribes notification, cooperation, coordination, requests for enforcement activities and consideration of the important interests of the other party between the competition authorities.

2) *Others*

10. The Government of Japan is continuing activities such as TV conferences, aimed at concluding an agreement with the Government of Canada regarding cooperation in competition sectors. The government is also conducting discussions concerning the sectors of a competition policy in the negotiation aimed at reaching economic partnership agreements with some East Asian countries. Furthermore, the Government of Japan and Mexico signed the Economic Partnership Agreement on September 17, 2004. The competition chapter of the Agreement prescribes appropriate enforcement against anticompetitive activities, notification, cooperation, coordination, requests for enforcement activities and consideration of important interests of the other party between the competition authorities.

II. Enforcement of competition laws and policies

I. Measures against violations

1) Measures taken in 2003

11. The JFTC conducts necessary investigations based on Section 46 of the Antimonopoly Act, and when the JFTC finds that there exists any fact of violation, it recommends to take measures to eliminate a violation (Section 48 (1) and (2) of the Antimonopoly Act), or initiates hearing procedures (Section 49 (1) of the Antimonopoly Act). If it is unable to recommend because it has passed over one year since the

termination of conduct of the violation, but it can issue surcharge payment orders, it does (Section 48-2 of the Antimonopoly Act). Even if it doesn't have enough evidence to take legal measures, when it identifies suspicions of violations of the Antimonopoly Act, it issues warnings and instructs parties concerned to take measures. In addition, the JFTC issues cautions from the standpoint of preventing from violations, when it doesn't have enough evidence to identify the suspicions of the conduct of violation of the Antimonopoly Act, but it finds the conduct which could lead to violations of the Antimonopoly Act.

12. Out of 130 examinations concluded by the JFTC in 2003, the JFTC took legal measures in 35 cases ordering actions such as cease and desist orders for violations. The JFTC also issued warnings in 16 cases in which it identified suspicions of violations of the Antimonopoly Act, issued cautions in 75 cases, and terminated examinations in 4 cases in which it did not uncover evidence of illegal conduct. The JFTC has been especially engaged in continuous efforts to eliminate bid rigging. In 2003, 26 of the JFTC's formal measures were against bid rigging.

A) Legal measures

• Private monopolization	1
• Bid rigging	26
• Price cartels, etc. (excluding bid rigging)	3
• Unfair trade practices	4
• Others	1

B) Surcharge payment orders

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

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

14. The amount of the surcharge payment is calculated by multiplying the amount of sales of concerned goods or services during the period of the cartel by a certain percentage. In the case of trade associations, the surcharge payment is levied on the firms constituting the association. In 2003, the JFTC issued surcharge payment orders to 540 firms amounting to 7,083.01 million yen. In addition, the JFTC issued 5 orders to firms totalling 19.66 million yen following decisions in 2003 on a case for which a hearing procedure concerning a previous surcharge payment order conducted.

15. Of the 540 firms ordered to pay surcharges (except for surcharge payment orders as decisions via hearing procedures), 39 firms requested hearings in 2003. The JFTC initiated hearings on all of the cases, and surcharge payment orders totalling 2,340.56 million yen were nullified.

C) Criminal accusations

16. The JFTC has adopted an active policy to apply criminal penalties to violations that (a) substantially restrict competition in a particular field of trade, including price cartels, supply restraint cartels, market allocation agreements, bid rigging and boycotts, which constitute serious cases that are likely to have a widespread influence on the national economy; or (b) involve firms or industries that are

repeat offenders or which do not take appropriate measures to eliminate a violation, and where the administrative measures of the JFTC are not considered sufficient to meet the aims of the Antimonopoly Act.

17. There was one criminal accusation in 2003. The JFTC investigated a bid rigging case concerning water meters purchased by the Tokyo Metropolitan Government, and in July 2003 filed an accusation based on Section 73-1 of the Antimonopoly Act with the Public Prosecutor General against four companies and five individuals who were engaged in the sale of water meters purchased by the Tokyo Metropolitan Government. The Tokyo High Court sentenced 5 accused persons to 12-14 months imprisonment with a three-year stay of execution and 4 accused companies to fines of 20-30 million yen, on March 26, April 30 and May 21, 2004.

D) Hearing procedures

The JFTC initiated hearing procedures on 77 cases in 2003. As of December 2003, the JFTC was conducting pending hearing procedures for 148 cases, of which 15 concerned allegations of violations of the Antimonopoly Act and 133 concerned surcharge payment orders. The JFTC issued decisions on 10 cases in 2003 after hearing procedures, (including bid rigging cases the JFTC found that Toshiba Co., Ltd. and Nippon Denki Co., Ltd had colluded to designate in advance the winners of bids and effectively allow them to receive the orders, concerning the automatic post code perception machines ordered by the Ministry of Post and Telecommunications through general competitive bidding.)

E) Act Concerning Elimination and Prevention of Involvement in Bid Rigging, etc.

18. The JFTC can demand improvement measures to the heads of ministries and agencies, etc., when it finds their officers involved in bid rigging as the result of its investigation of bid rigging cases. Heads of ministries and agencies, etc., must perform a necessary investigation and take improvement measures on the basis of the result of the investigation. They must also investigate the reasons for disciplinary actions to take disciplinary measures against employees and perform a necessary investigation if there is any damage to the government, etc., due to the said involvement in bid rigging, etc. The administrative institutions concerned are called on to coordinate and cooperate among them regarding elimination and prevention of involvement in bid ridding. There was one case based on this law in 2003.

2) *Summary of main cases*

A) Case against bidders for construction work in Iwamizawa City

19. The JFTC found that 126 contractors of engineering works for general construction/landscaping, building construction, pipe laying, paving and electricity works ordered by Iwamizawa City through designated competitive bidding had colluded to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on January 30, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 3 (prohibition of unreasonable restraint of trade) of the Antimonopoly Act. (Decision issued on March 11, 2003.)

20. In addition, on the same day, the JFTC demanded the mayor to take necessary measures to confirm the elimination of the involvement in order to prevent the below conducts according to Section 3, Subsection 2 of the Act Concerning Elimination and Prevention of Involvement in Bid Rigging, etc. The JFTC found that before putting a contract to tender some city officials, with consent or complicity from supporting staff members, had fixed the target amount for annual order placements allotted to each company, designated potential bid winners for each construction work to almost ensure the target amount for annual order placements, and communicated the name of an expected bidder as well as the rough

amount of a contract to the board members of trade associations, who then transferred the tip-off to each expected bidder.

B) Case against bidders for clinical laboratory tests ordered by national or public hospitals

21. The JFTC found that 10 bidders for clinical laboratory tests ordered through general competitive bidding or designated competitive bidding by national or public hospitals located in the area of Tokyo, Nagoya, Osaka and Fukuoka had colluded to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on February 13, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 3 (prohibition of unreasonable restraint of trade) of the Antimonopoly Act. (Decision issued on March 14, 2003, with hearing procedures initiated against 3 companies in the area of Nagoya and 2 companies respectively in other areas on April 18.)

C) Case against bidders for engineering works for traffic signs ordered by the Metropolitan Police Department

22. The JFTC found that 17 bidders for engineering works for traffic signs ordered by the Metropolitan Police Department through designated competitive bidding had colluded to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on February 20, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 3 (prohibition of unreasonable restraint of trade) of the Antimonopoly Act. (Decision issued on March 28, 2003, and hearing procedures initiated against a company on April 21.)

D) Case against the Hospital Diet Wholesale Cooperative in Japan

23. The JFTC found that the Hospital Diet Wholesale Cooperative in Japan had conducted market segmentation by allocating a sales territory in a prefectural basis to each member in order to prevent internal collision. The cooperative forced each member not to sell diet food, which was purchased from the cooperative itself or supporting members, to a third company outside its sales territory. Faced with conflicts of interest regarding sales territory, the cooperative arbitrated in a dispute among members and further prohibited resale of its own brand food to non-members by concluding sales contracts with members. Accordingly, on March 14, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 8-1(4) (unjustly restricting the functions or activities of constituent entrepreneurs) of the Antimonopoly Act. (Decision issued on April 9, 2003.)

E) Case against bidders for construction material price survey activities ordered by government offices under Kanto Regional Development Bureau of the ministry of the Infrastructure and Transport

24. The JFTC found that 2 bidders for construction material price survey activities ordered through designated competitive bidding or designated estimating by government offices under Kanto Regional Development Bureau of the ministry of the Infrastructure and Transport and Ibaraki, Tochigi, Gunma, Saitama, Chiba, Tokyo, Kanagawa and Yamanashi Prefecture, had colluded to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on June 13, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 3 (prohibition of unreasonable restraint of trade) of the Antimonopoly Act. (Decision issued on July 14, 2003.)

F) Case against bidders for water meters procured by Tokyo Metropolitan Government

25. The JFTC found that 19 bidders for specified water meters ordered by the Tokyo Metropolitan Government through general competitive bidding had colluded to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on July 15, 2003, the JFTC issued a

recommendation for elimination of the conduct for violation of Section 3 (prohibition of unreasonable restraint of trade) of the Antimonopoly Act. (Decision issued to 18 entrepreneurs on August 7, 2003. Hearing procedures initiated to one contractor on August 25, 2003 and consent decision issued on February 5, 2004.)

G) Case against a company concerned with mobile communications service and ancillary business

26. The JFTC found that J-PHONE Co., Ltd. (a company concerned with mobile communications service and ancillary business) had made its agencies and retailers (through the agencies) display in shops and on leaflets “reference prices” or “assumed prices” designed by J-PHONE as guides to selling prices to consumers regarding new and popular models of J-PHONE brand mobile phones with cameras that were sold to consumers who had newly signed on for mobile phone service in Kanto Koushin district (the area of Ibaraki, Tochigi, Gunma, Saitama, Chiba, Tokyo, Kanagawa, Yamanashi and Nagano Prefectures). Accordingly, on July 28, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 19 (Article 13 of the Designation of Unfair Trade Practices: “dealing on restrictive terms”) of the Antimonopoly Act. (Decision issued on September 4, 2003.)

H) Case against manufacturers and sellers of rubber bearings for bridges

27. The JFTC found that 13 companies, through mutual communications and in a series of meetings with the participation of the directors of sales departments or higher-ranking executives, had agreed to sell rubber bearings for bridges at 70% (movable, fixed, dispersed and sliding bearings) or 80% (anti-seismic bearings) of their jointly estimated prices. In order to ensure the effectiveness of the agreement, the quotation of rubber bearings from a buyer was to be reported to the managing company appointed among the 13 companies. When two or more companies competed with each other, they were to collude to determine the winner and allow it to win. As it turned out, the 13 companies were able to maintain the sales price of rubber bearings. Accordingly, on September 12, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 3 (prohibition of unreasonable restraint of trade) of the Antimonopoly Act. (Decision issued on October 21, 2003.)

I) Case against karaoke seller and renter.

28. The JFTC found that Daiichikosho (a company concerned business use karaoke selling and renting) had instructed Nippon Crown Co., Ltd. and Tokuma Japan Communications Co., Ltd. not to allow XING Inc. to use their managed music, and had issued notices to users (client wholesalers, entertainment and dining establishments, etc.) that it did not allow said managed music in XING online karaoke machines. Accordingly, on October 31, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 19 (Article 15 of the Designation of Unfair Trade Practices: “interference with a competitor’s transactions”) of the Antimonopoly Act. (Hearing procedures initiated on December 5, 2003.)

J) Case against bidders for construction work in the former City of Shimizu in Shizuoka Prefecture

29. The JFTC found that 25 bidders for construction works ordered by the former City of Shimizu through limited general competitive bidding or designated competitive bidding for contractors limited to an “A” rating, had colluded with 11 bidders for paving works ordered by the former City of Shimizu through designated competitive bidding to designate in advance the winners of bids and effectively allow them to receive the orders. Accordingly, on September 13, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 3 (prohibition of unreasonable restraint of trade) of the Antimonopoly Act. (Decision issued to 24 entrepreneurs on December 8, 2003, and hearing procedures initiated to one contractor on January 7, 2004.)

(Note: The City of Shimizu in Shizuoka Prefecture was incorporated into the City of Shizuoka on April 1, 2003.)

K) Case against manufacturers and sellers of cold-rolled stainless steel sheets and steel strips

30. 6 companies had held meetings between directors in charge of sales and had agreed to mark-up the selling price of cold-rolled stainless steel sheets and steel strips to distributors and consumers. Thus the 6 companies had been substantially restricting the competition in their trading field in Japan. Accordingly, on December 2, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 3 (prohibition of unreasonable restraint of trade) of the Antimonopoly Act. (Decision issued on January 27, 2004.)

L) Case against a telecommunications carrier

31. Nippon Telegraph and Telephone East Corporation (hereinafter referred to as “NTT East”) sells a “New Family Type” service from among its “B Flets” line of FTTH services¹ for individual houses (sales beginning in June 2002). While charging other telecommunications companies a “connection fee”² and a New Family Type user’s fee (4,500 yen) through a “branch system”³ (which in actuality was not used), NTT East was actually making the other companies use one fiber per one user when providing this service and selling the same service at a rate that is for all practical purposes lower than the connection fee for a single optical fiber (5,074 yen). NTT East thus admitted that it was in fact restricting competition in the FTTH services business for houses in eastern Japan, as this act obstructed new entry into the FTTH services business for individual houses by other telecommunications companies selling FTTH services that connect to NTT East’s optical fibers for subscribers⁴. Accordingly, on December 4, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 3 (prohibition of private monopolization) of the Antimonopoly Act. (Hearing procedures initiated on January 15, 2004.)

M) Case against manufacturers and sellers of modifires used for polyvinyl chloride plastic

32. The JFTC found that 2 companies had agreed on marking-up the selling price of modifires used for polyvinyl chloride plastic. Accordingly, on December 11, 2003, the JFTC issued a recommendation for elimination of the conduct for violation of Section 3 (prohibition of unreasonable restraint of trade) of the Antimonopoly Act. (Hearing procedures initiated on February 2, 2004.)

¹ “FTTH service” refers to a service that lays optical fibers from a telecommunications company’s station to users’ residences and that provides Internet connections that make high-speed, high-volume broadband communications possible.

² “Connection fee” refers to a fee that is paid to NTT East when another telecommunications carrier connects to optic fiber facilities owned by NTT East.

³ “Branch system” refers to a system by which an optic fiber is split using branching devices so that multiple users can share a single optic fiber.

⁴ “Optical fiber for subscribers” refers to an optic fiber that connects a telecommunications company’s station to a user’s residence.

3) *Litigation*

A) Lawsuits seeking to overturn a JFTC decision

33. One lawsuit seeking to overturn JFTC decisions was accepted by court decisions while plaintiffs' claims (including an appellant's claim) were rejected in two cases. As of the end of December 2003, there were three pending lawsuits including two new cases filed in 2003.

a) Lawsuit seeking to overturn a JFTC decision that has been rescinded

34. After a series of hearing procedures, the JFTC issued a decision on July 25, 2002, against Okazaki Kanko Co., Ltd. on the grounds it had violated Section 3 of the Antimonopoly Act (prohibition of unreasonable restraint of trade) by colluding to decide in advance the winners of bids for specific water-main works procured by the Water Bureau of Hiroshima City. Okazaki Kanko Co., Ltd. filed a lawsuit with the Tokyo High Court on August 21, 2002, to overturn the decision, but the court dismissed the suit on March 7, 2003. Okazaki Kanko Co., Ltd. then appealed to the final court on March 14, 2003, but the court dismissed the suit on July 11, 2003, and the court's decision became final.

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

35. After a series of hearing procedures, on June 13, 2003, the JFTC issued a decision against Tsuchiya Kigyo Co., Ltd. on the grounds it had violated Section 3 of the Antimonopoly Act (prohibition of unreasonable restraint of trade) by colluding to decide in advance the winners of bids for specific engineering works for Machida City.

36. The case had been subject to a series of hearing procedures since October 9, 2001, when the decision was made to initiate the hearings. In response, Tsuchiya Kigyo Co., Ltd. filed a lawsuit with the Tokyo High Court on July 12, 2003, to overturn the decision.

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

37. As of the end of December 2003, there were two lawsuits seeking compensation for damages based on Section 25 of the Antimonopoly Act.

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

38. During 2003, one lawsuit for injunction claims was reconciled and seven new lawsuits were initiated based on Section 24 of the Antimonopoly Act. As of December 31, 2003, there were 18 pending lawsuits.

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

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

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

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

2. *Mergers and acquisitions*

1) *Publication of Guideline for Merger investigations on Cases concerning Corporate and Industrial Revitalization*

41. Based on the fact that corporate and industrial revitalization is a topic of current importance, and that quick action is required, on April 9, 2003, the JFTC established operating guidelines for Merger investigations on Cases concerning Corporate and Industrial Revitalization in order to further accelerate review, with the cooperation of firms concerned, on mergers related to projects that become the subject of the revised Law on Special Measures for Industrial Revitalization.

42. Furthermore, the JFTC has organized a special team within relevant departments in charge and has made efforts toward structural improvement toward faster review of projects that will become the subject of the revised Law on Special Measures for Industrial Revitalization.

2) *Statistics relating to mergers and acquisitions*

43. Based on the provisions of Section 15, Section 15-2 and Section 16 of the Antimonopoly Act, company mergers, divisions and business acquisitions of a particular size in Japan must be reported in advance to the JFTC. The JFTC conducts an examination of reported cases, and when it determines a transaction will substantially restrict competition in a particular field of trade, the JFTC has the power to take measures including its prohibition. During 2003, 118 company mergers were reported to the JFTC based on the provisions of Section 15 of the Antimonopoly Act, 19 company divisions were reported based on the provisions of Section 15-2, and 168 cases of business acquisitions were reported based on the provisions of Section 16. None of the merger, division or business acquisition cases reported in 2003 were cases in which the JFTC adopted legal measures.

Number of reports concerning company mergers, divisions and business acquisitions

	2001	2002	2003
Mergers	136	110	118
Divisions	12	24	19
Business acquisitions	197	215	168
Total	345	349	305

3) *Main mergers and acquisitions cases*

A) Merger between Meiji Life Insurance Co., Ltd. and Yasuda Mutual Life Insurance Co., Ltd.

44. Meiji Life and Yasuda Life planned to merge their operations as mutual life insurance companies on January 1, 2004, with a view to achieving purposes such as efficiently reallocating their managerial resources, improving their growth potential, profitability and financial soundness, and meeting the diversifying needs of their customers. The JFTC replied to the parties concerned that the proposed merger would unlikely violate the provisions under the Antimonopoly Act, judging from the explanations given by

the parties concerning the subject matter under the prior consultation, and announced it in April 2003. This was the first case of merger between major life insurance companies in Japan.

45. In this case considering the prospective situation of the market after the merger, the FTC undertook a detailed examination of the following two insurance services:

- Group term life insurance (i.e. insurance against death to which company employees are encouraged to subscribe and for which they can sign up at their own discretion in accordance with the terms of a group insurance contract concluded by their employer);
- Group credit life insurance (i.e. insurance designed to cover credit guarantee organizations that guarantee the obligations of housing loan users as well as credit-providing organizations such as banks).

46. As a result of the proposed merger, the total market share and ranking of the parties concerned in the respective fields of trade, in terms of the combined total amount of insurance in force (see Note), would increase to approximately 39%, ranking first, for group term life insurance, and approximately 30%, ranking first, for group credit life insurance if only the existence of life insurance companies is taken into consideration. (however, the field of trade in respect to group credit life insurance should include non-life insurance as described below.) However, acknowledging the existence of the following situations, the FTC judged that competition might not be substantially restrained in each particular field of trade.

(Note: “The total amount of insurance in force” means the total of insured amounts under insurance contracts currently retained by life insurance companies.)

- Group term life insurance

47. Users, such as companies, normally deal with more than one life insurance company in order to spread risk. Furthermore, group term life insurance is a one-year contract so users are able to review the terms of contract every year. In addition, the market shares of life insurers, in terms of the amount of newly written group term insurance contracts (see Note), are subject to wild fluctuations from year to year. These aspects seem to prove that it is fairly easy for users to switch their contracts to other life insurers if they are not satisfied with the premium charged and/or coverage provided by the existing contracts.

(Note: “The amount of newly written contracts” means the total or insured amounts under the new insurance contracts underwritten by life insurance companies during any particular year.)

48. There is one competitor with a market share of approximately 15% and another competitor with a market share of approximately 10%, in terms of total amount of insurance in force. These competitors, respectively, enjoy higher market shares than the parties in the sector of individual insurance and are considered to possess the will and capacity to capture a larger share of the group term life insurance market.

49. Neighbouring markets to group term life insurance include insurance sold by Post Offices to certain workers’ groups (postal life insurance) and the group term mutual aid life insurance marketed by cooperatives such as the National Federation of Consumers’ Cooperative Society of Workers’ Unions. These insurance services can be considered putting effective competitive pressure on group term life insurance.

50. Group term life insurance is an insurance against death covering all or part of corporate employees. Although the insurance contract itself is concluded by the corporations, their employees are

encouraged to subscribe to the insurance scheme on an individual basis. Such employees have their own discretion to decide whether to join or not, and pay their insurance premiums out of their own purse. It is, therefore, quite similar to life insurance for individual policyholders and can easily be switched to individual policies covering death. In this regard, individual life insurance (against death) can also be perceived as a competitive pressure on group term life insurance in view of an individual employee.

- Group credit life insurance

51. It is normal for users, such as banks, to deal with more than one life insurance company in order to spread risks. Furthermore, group credit life insurance is an annual contract, enabling users to review the terms of contract every year. In addition, the market shares of life insurance companies in terms of total amounts of newly written group credit life insurance are subject to wild fluctuations from year to year. These aspects seem to prove that the contracts can be switched fairly easily to other life insurance companies if the users are not satisfied with the level of premiums charged or the terms of coverage provided by the existing contracts.

52. It is considered appropriate that the particular field of trade in respect to group credit life insurance should also include non-life insurance, such as housing loan guarantee insurance and housing finance insurance, which can be considered similar services to group credit life insurance with respect to utility and function. If so, the total share of parties concerned after the merger would be around 26% in terms of the combined total amount of insurance in force when estimated on the basis of loans provided by banks and others. On the other hand, in this particular field of trade, which includes trade in non-life insurance, there are also some other major competitors with a market share of more than 10% in terms of total amount of insurance in force.

53. As a neighbouring market to group credit life insurance, a group credit life special clause exists that can be attached to the group term mutual aid life insurance provided by the National Mutual Insurance Federation of Agricultural Cooperatives. This insurance with the special clause can exert effective competitive pressure on group credit life insurance.

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

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

54. When administrative bodies propose to enact or amend an economic law or ordinance from the standpoint of a specific policy requirement, the JFTC acts in consultation with these bodies to ensure coordination among the proposed provisions, the Antimonopoly Act and competition policy. In 2003, the JFTC acted in consultation about a part of the revision of the Electricity Utilities Industry Law and Gas Utilities Industry Law with the administrative bodies concerned.

2. Administrative coordination

55. As necessary, the JFTC also coordinates with administrative bodies when they take administrative measures based on specific policy requirements, in order to prevent such measures from causing problems concerning the Antimonopoly Act and competition policy. Considering the "Guidelines Concerning Administrative Guidance Under the Antimonopoly Act," the "Revised Three Year Plan for Regulatory Reform" (Cabinet Decision on March 28, 2003) states that ministries and agencies concerned are required to hold prior consultations with the JFTC to ensure that anticompetitive administrative guidance does not replace similar restrictive regulations. The JFTC ensures the necessary coordination with the ministries and agencies concerned.

3. *Trade of surplus electricity generated from waste biomass in line with commencement of the RPS system*

56. With regard to trading electricity generated from new energy in line with the commencement of the RPS system (from April 2003) based on the Special Measures Law Concerning the Use of New Energy in Electric Power Retailers, the JFTC conducted a survey to gain an understanding of the situation surrounding the trade of surplus electricity generated from waste biomass. Taking the results of this survey, the JFTC presented the position of the Antimonopoly Act (August 2003) from the standpoint of preventing violations of the Act with regard to future trade of electricity generated from waste biomass.

57. (Note: RPS (Renewables Portfolio Standard) system is intended to further expand the use of new energies by obligating electricity retailers to supply at least a certain percentage of new energy-related electricity each year in a manner that corresponds to the amount of electricity they sell.)

58. Following points were described as basic approaches:

- With the exception of trade between electric power companies, until now the wholesale trade of electric power has not taken place on a national scale in Japan. Even as liberalization of retail sales in the electric power sector progresses, the PPS share has remained small (0.87% of the liberalized segment as of January 2003); thus, it is recognized that suppliers of electricity generated from waste biomass depend largely on electric power companies in their area of jurisdiction to be purchasers.
- Based on this situation, there is a concern that problems with the Antimonopoly Act may emerge if electric power companies exercise their monopoly power when purchasing surplus electricity and if electric power companies force suppliers of electricity generated from waste biomass to accept disadvantageous conditions in the trade of electricity generated from new energies.
- There is a concern that problems with the Antimonopoly Act may arise if electric power companies unfairly secure the “renewable energy certificates” of suppliers of electricity generated from waste biomass, and if this has a negative impact on PPS business activity.

(Note: PPS (Power Producer and Supplier))

4. *Report of the Study Group on Public Procurement and Competition Policy*

59. In the interest of realizing a more active competitive environment in public procurement and to effectively prevent bid rigging, the JFTC held a Study Group (entitled “Study Group on Public Procurement and Competition Policy”) made up of academic experts beginning June 2003 with the purposes of extracting fundamental and specific issues regarding public procurement and presenting recommendations. The basic philosophies collected by the Study Group were released to the public in November of the same year in the form of a report entitled “Aiming for Complete Competitiveness in Public Procurement.”

60. The above-mentioned report recommends the following:

- In order to allow national and regional public entities to provide inexpensive and high-quality services to the Japanese public, it is important to procure inexpensive and high-quality goods and services based on the “Value for Money” (VFM) concept, which

considers ways to “procure the highest value items (against a certain cost).” In order to achieve this, maximum competitiveness must be ensured.

- Bid rigging is not only a malicious violation of the Antimonopoly Act, it is also an act that obstructs appropriate budget administration by destroying the essence of competitive bidding. Thus its elimination and prevention are required.

IV. Japan Fair Trade Commission Resources (FY2003)

1. Budget

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

Fiscal Year	1995	1996	1997	1998	1999	2000	2001	2002	2003
Budget of the JFTC Budget amount (billion yen)	5.24	5.38	5.56	5.62	5.78	5.9	6.04	6.16	7.85
Change over previous year (%)	-0.1	2.7	3.3	1.1	2.8	2.1	2.3	2.0	2.2
General Expenditures Budget Change over previous year (%)	3.1	2.4	1.5	-1.3	5.3	2.6	1.2	-2.3	0.1

Notes:

1. 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. The rate of increase for the JFTC budget of FY2003 is compared to the post-reclassification budget (7.69 billion yen) in order to avoid the effects of an increase in personnel expenses, which required independent calculation, in line with the JFTC's transfer to the Cabinet Office.

2. Number of officials

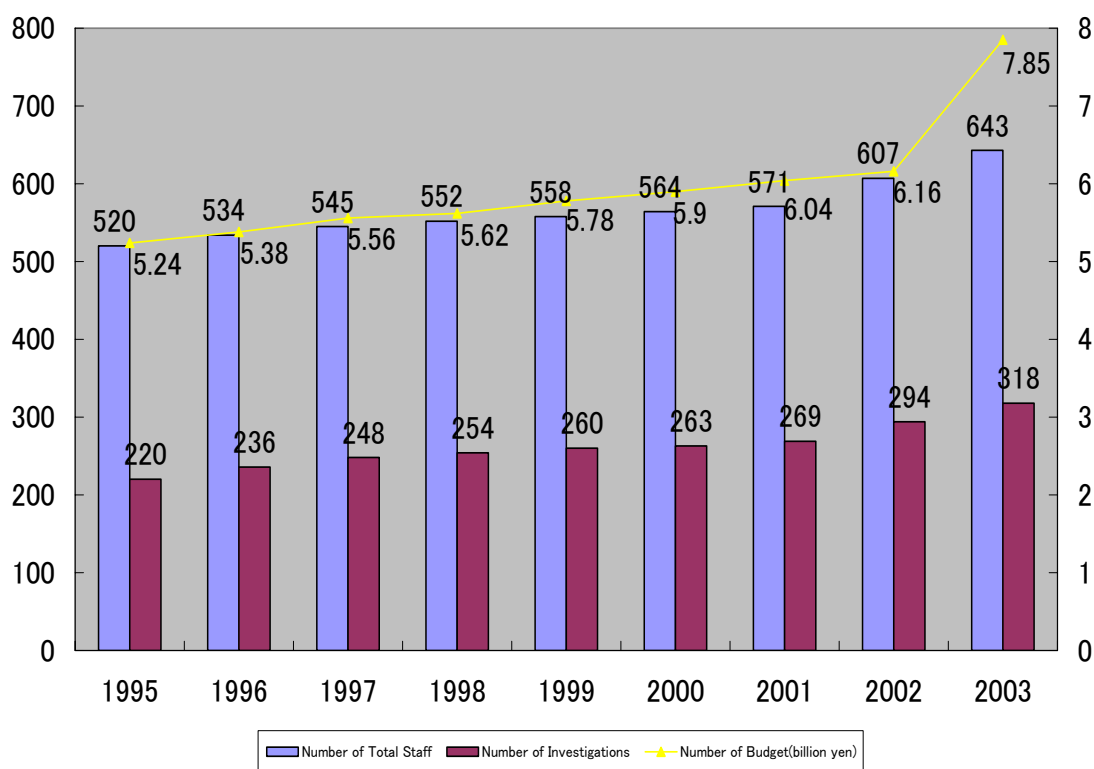
61. The number of officials in the General Secretariat of the Fair Trade Commission (unit: persons)

Fiscal Year	1995	1996	1997	1998	1999	2000	2001	2002	2003
Number of officials	520	534	545	552	558	564	571	607	643
Enforcement against anticompetitive practices	220	236	248	254	260	263	269	294	318
Merger review enforcement	18	18	18	19	19	22	22	28	30
Advocacy efforts	14	23	23	23	22	22	22	25	30

Notes:

- 1 Until FY1995, the secretariat office was the Executive Office.
- 2 The number of officials engaged in enforcement against anticompetitive practices refers to the Investigation Bureau (the Investigation Department until FY1995) 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 until FY1995).
- 4 The number of officials devoted to advocacy efforts refers to the General Affairs Division of the Economic Affairs Bureau (the Coordination Division until FY1995) and the Coordination Division.

Staff and budget (FY 1995-2003)



3. Inauguration of the Competition Policy Research Center

1) Inauguration and Activity of the Competition Policy Research Center

62. The JFTC established the Competition Policy Research Center within its General Secretariat on June 17, 2003, not only to collaborate between outside researchers and JFTC staff to create a functional and continuous collaborative platform, but also to strengthen basic ideas on implementing the Antimonopoly Act, planning, and evaluating competition policies in the mid-long term. (The first head of the Center is Prof. Kotaro Suzumura, Institute of Economic Research, Hitotsubashi University) Visiting researchers of economists and jurists (11 persons at the end of December 2003), mainly engage in collaborative studies with in-home researchers on competition policy.

63. In 2003 the visiting researchers and in-home researchers of the Center carried out collaborative studies on two reports, which were both released. The visiting researchers studied the reports in detail, as well as the texts of lectures by experts at home and abroad, and 10 discussion papers were released in 2003.

Those reports (in Japanese) are available at: <http://www2.jftc.go.jp/cprc/reports/reports.html>.

Those discussion papers (in Japanese) are available at: <http://www2.jftc.go.jp/cprc/DP/discussionpapers.html>.

Reports

Economic Analysis of Network Externality ~A proposal for competition policy under externality
(September 5, 2003)

Efficiency of Merger and Economic Analysis Concerning Effects on the Market (September 5, 2003)

Discussion Papers

1. Network Externalities in the Japanese Market of Routers] Tatsuo Tanaka (Associate Professor, Faculty of Economics, Keio University, Visiting Researcher, Competition Policy Research Center) Reiko Murakami (Researcher, Competition Policy Research Center)
2. Network Effects in the Japanese Word-Processing Software Market] Yoshihito Yasaki (Research Associate, Research Center for Advanced Science and Technology, University of Tokyo, Visiting Researcher, Competition Policy Research Center) Reiko Murakami (Researcher, Competition Policy Research Center)
3. Competition, Welfare, and Competition Policy] Kotaro Suzumura (Professor, Institute of Economic Research, Hitotsubashi University, Director, Competition Policy Research Center)
4. Competition Policy and Regulatory Reforms: Means and Ends] Todd J. Zywicki (Director, Office of Policy Planning, Federal Trade Commission, US)
5. The Relationship between Regulation and Competition Policy for Network Utilities] David M. Newbery (Professor, Director of the Department of Applied Economics, University of Cambridge)

6. Political Economy of Competition Policy in Japan: The Case of Airline Service] Takatoshi Ito (Professor, Research Center for Advanced Science and Technology, University of Tokyo)
7. The New Shape of European Competition Policy] Mario Monti (Commissioner, European Commission)
8. Beating Cartels at Their Own Game - Sharing Information in the Fight against Cartels] Scott D. Hammond (Director of Criminal Enforcement, Antitrust Division, Department of Justice, US)
9. The Benefits of Cooperation between Competition Authorities] Holger Dieckmann (International Affairs Unit, Competition Directorate-General of the European Commission)
10. Pro-Innovation Competition Policy: Microsoft and Beyond] Timothy F. Bresnahan (Professor of Economics, Stanford University)

(Note: □ and □ are studies by researchers at the Center, while □ to □ are texts of lectures by experts at home and abroad)

2) *International Symposium on Competition Policy to commemorate the inauguration of the Competition Policy Research Center*

64. The JFTC, to commemorate the inauguration of the Center, co-hosted the International Symposium on Competition Policy on November 20, 2003. The theme of the symposium was “How should competition policy transform itself?” Mr. Suzumura (Director of the Competition Policy Research Center) and EC Commissioner Mario Monti gave lectures and there were 3 panel discussions. The subjects of the panel discussions were “The role of regulation reform and competition policy,” “International business activity and competition policy,” and “Pro-innovation and competition policy.” Active discussion took place among panellists and between panellists and the floor about important problems confronting competition policy.

65. The documents are available at: <http://www2.jftc.go.jp/cprc/events/2003sympo/symposium-english.htm>

V. Main surveys related to competition policy

1 Survey Report on competition conditions surrounding the management and maintenance of apartment houses

66. In October 2003, the JFTC announced the results of a survey on competition conditions surrounding apartment house maintenance and management.

67. Interest in apartment house management and maintenance has been increasing in recent years, and it is expected that management associations will review their trade relations with management and facility maintenance firms more and more. Based on the survey report, the JFTC explained its views on the case where possible problems with the Antimonopoly Act would arise to relevant organizations from the standpoint of compliance with the law, and explained the importance for review of the business content and business partners of management associations. These activities were in the interests of preventing activities that would violate the Antimonopoly Act (unfair obstruction of efforts by management associations to review business content and business partners, etc.) and of ensuring a competitive base.

68. With regard to the maintenance work of facilities, such as maintenance of elevators, there is insufficient competition among maintenance firms affiliated with major manufacturers, which have a large share of the market. In this market environment, competition becomes almost nonexistent if actions are taken to exclude independent maintenance firms that, despite having a low share, exist as competitive units. Consequently, sufficient supervision will be required in the future to ensure that fair competition is not obstructed in the market.

2. *Fact-finding survey report on brand power and competition policy*

a Purpose of the survey

69. In recent years, the influence that brands have on competition (caused by maturation of the economy and diversification of consumer preferences) is becoming increasingly important. With this in mind, the JFTC implemented this survey with the purposes of gaining an understanding of actual conditions and of organizing issues related to competition policy. Targeting major manufacturers of consumable goods, wholesalers, retailers, and consumer monitors of the JFTC, this survey sought to identify the impact that brand power has on the market activities of businesses and consumers (released in June 2003).

b Survey results and issues related to competition policy

70. In some cases improved competitiveness caused by brand power functions to generate ease of entry into other markets and to promote competition. However, there are other cases (like those shown below) where brand power functions to limit competition. It will be important to pay attention to the effects that brand power has on competition while giving consideration to the following points:

i. Reinforcement of price control and barriers to market entry caused by brand power

71. According to a questionnaire, consumers feel a high degree of loyalty to brand products that they like, and individual brand products have the ability to control prices to a certain degree. Furthermore, it is thought that there may be cases in which activities to prevent new market entry by maintaining and reinforcing brand power through, for example, investment of excessive advertising expenses, are problematic in terms of the Antimonopoly Act. Accordingly, it is important to pay attention to conditions in markets that have been built around a dominant brand.

ii. Adverse effects caused by brand concentration

72. According to a questionnaire, many customers indicated that, if they could not buy their favourite brand because of a major price hike, etc., they would buy the next famous brand. In cases where, in a market such as this, corporate groups concentrate dominant brands having high substitutability into certain businesses, there is a high probability that prices will be raised. According to a questionnaire that targeted manufacturers, companies are not actively forming corporate groups with the objective of gaining a dominant brand; however, there are many companies that are considering capturing other companies' brands should they get the opportunity. Thus, it is important to pay attention to brand concentrations.

iii. Unfair trading that is motivated by brand power

73. According to a questionnaire, there appear to be many businesses that hope to trade with businesses having brand power in order to expand sales opportunities. Because conditions also indicate that businesses are responding to various demands made by their partners in actual trading, it will be important to pay attention to ensure that unfair trading that is motivated by brand power (maintenance of resale prices, trading with exclusionary conditions, abuse of a dominant position, etc.) does not occur.

3. *Report of the Study Group on Digital Content and Competition Policy*

74. In recent years, rapid progress in information and telecommunications technology (including improvements to the Internet environment) has led to expectations that there will be a rapid expansion of the digital content market. With this in mind, the JFTC began this Study Group—made up of academics and businesspersons—in June 2002. The Study Group released its report in March 2003.

75. Based on a basic recognition that it is important to create and maintain an environment in the digital content market in which businesses can display originality and ingenuity and engage in business activities freely, the Study Group presented problems with regard to the Antimonopoly Act and competition policies in the market and the Act's position toward these problems. The major points identified in the Study Group report are presented below:

a Distribution of content through networks

76. In the provision of content through networks, it is standard practice to move through various layers of trading that involve numerous concerned parties. These include copyright holders, content providers, platform businesses, and transmission path companies. In this case, problems emerge with regard to the Antimonopoly Act in some situations. These may include, for example, 1) cases in which a dominant content provider restricts a platform business that delivers content so that it can only deliver the provider's content, thus obstructing new entry into markets or hindering the business activities of competitors, and 2) cases in which a content provider and platform business work together to block new entry into the market by competitors or exclude competitors from the market.

b Technical means of protecting content

77. Digital content is easy to reproduce and alter. Thus, technical means to prevent copying by users are commonly employed.

78. These technical means assure opportunities to secure profit for content producers, provide incentive for production and distribution, and contribute toward promotion of competition in the market. On the other hand, when these means are used to an excessive degree, they may, have a major impact on users, for example, by limiting usage that was traditionally possible. Accordingly, it is important to continue studying the impact that technical means have on competition in the market.

c Reinforcement of the legal protection of content

79. Reinforcement of intellectual property rights forms a basic guideline of the government, which is moving forward with its pro-patent policy. However, there is a possibility that there will be a negative effect on fair and free competition in the marketplace if, together with the granting of new intellectual property rights and expansion of the scope of rights, insufficient consideration is given to the fair use of rights.

80. Thus, the JFTC will have to actively address the anticompetitive behaviour that no longer be deemed use of intellectual property rights, and take strict measures.

4 *Economic analysis using new market structure indicators: using data on the degree of concentration of production and shipping*

a Purpose of the survey

81. Using data on market concentration, market share, etc., that it has collected until now, the JFTC derived indicators that show the concentration of purchasers and (in a new development) the degree of fluctuation in the ranking and shares of companies, as these items are thought to have an impact on market performance (competition, prices, etc., in the market). The JFTC also conducted a positive analysis on the impacts that factors in the market structure (including these indicators) have on such market performance sectors as corporate profitability ratios and prices (released in June 2003).

b Main results of analysis

i. Analysis using concentration of purchasers

82. The JFTC calculated the concentration of purchasers for 52 items. For items that are final commodities, such as consumable goods, the degree of concentration was relatively low; however, for items that are intermediate commodities, there was a spread from items having high purchaser concentrations (e.g., the automobile parts manufacturing industry) and those with low concentrations (e.g., construction materials).

83. When performing a regression analysis using relative purchaser indicators (purchaser concentration divided by share of sellers) that indicate the relative strengths of sellers and purchasers, it was discovered that the stronger the purchasers' position against sellers, the lower the sellers' corporate profitability ratio becomes. Thus, it is apparent that the market structure of purchasers has an impact on the corporate profitability ratios of sellers.

ii. Analysis using fluctuation indicators for rank and share

84. Although all indicators—a two-point rank fluctuation indicator (Spearman rank correlation coefficient), a two-point share fluctuation indicator (a new indicator), a multiple-point rank fluctuation indicator (Kendall's rank correlation coefficient), and a multiple-point share fluctuation indicator (a new indicator)—were put into numerical form, the multiple-point share fluctuation indicator gave the most accurate expression of competition conditions in the market.

85. In measuring the rank and share fluctuation indicators for 145 items for which 12 years of continuous data could be used, among those items for which there was almost no fluctuation in rank or share, there were many items in highly oligopolistic industries or were targeted by levy reports on coordinated price hikes.

86. Looking at multiple-point share fluctuation indicators, a tendency became apparent whereby the higher the share fluctuation an item had (i.e., a state of active competition), the lower its corporate profitability ratio and the more tendency its price decreased.