

**JAPAN**

*(January-December 2000)*

**Table of contents**

**Executive Summary**

**Changes to competition laws and policypolicies – the outline of new regulations in competition laws and related legislation**

1. Amendment of the Antimonopoly Act (AMA) accompanying the creation of a corporate separation schemedivision system
2. Improvements in the civil remedy system against AMA violations
3. The guidelines for appropriateproper gas transactions

**The enforcement of competition laws and policypolicies**

1. Measures against violations
  - 1) Situation regarding measures
    - A) Legal measures
    - B) Orders to pay surcharges
    - C) Criminal accusations
    - D) Hearing procedures
  - 2) A summary of main cases
  - 3) Litigation
    - A) A lawsuit applying for annulment of a JFTC decision that has been rescinded
    - B) A lawsuit applying for annulment of a JFTC decision that has been newly launched
2. Mergers and acquisitions
  - 1) Statistics relating to mergers and acquisitions
  - 2) A major case of mergers and acquisitions

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

1. Coordination between the AMA and other economic laws and ordinances
2. Administrative coordination
3. Reform of government regulations

**Resources of the JFTC**

1. Budget amount (fiscal 2000 budget)
2. Number of officials (fiscal 2000)

**Surveys related to competition policy**

1. A report of the Economic Research Study Group “Competition Policy and Structural Economic Change”
2. A report on the survey of changing distribution structure and the use of information technology

Annex : Outline of the law revisions

Appendix : Surveys and reports relating to competition policy published in 2000

## Executive Summary

1. The main features of the 2000 activities of the Japan Fair Trade Commission (hereinafter referred to as the JFTC) are as follows.
2. With the creation of a corporate separation scheme division system, the Antimonopoly Act (hereinafter referred to as the AMA) was revised to incorporate provisions for the separation divisions either through the joint establishment of a new joint enterprise or through absorption acquisitions, that are similar to those for mergers and acquisitions. The revision was promulgated on May 31, 2000 and came into force on April 1, 2001.
3. The JFTC held meetings of the Study Group on the Civil Remedy System against AMA Violations to improve the system. The JFTC received a final report from the Study Group in October 1999 and then published it. Taking account of the above report and opinions from various parties, a revision to the AMA was adopted that introduced, among others, a system of request for injunction orders against AMA violations. The revision was promulgated on May 19, 2000 and came into force on April 1, 2001.
4. Following the amendments to the Gas Utilities Industry Law in 1999, the JFTC, in co-operation with the Ministry of International Trade and Industry, drew up guidelines for proper trading practices in the gas market consistent with the Gas Utilities Industry Law and the AMA in order for the gas market to function competitively. The guidelines were published in March 2000. (Note: Similar guidelines for electricity were published in December 1999.)
5. The JFTC has cracked down on AMA violations. In 2000, the JFTC took legal measures (recommendations and orders to pay administrative surcharges without recommendations) against 18 cases of AMA violations, and issued warnings on 12 cases, ordering the payment of surcharges totalling ¥9,233.77 million. (The orders to pay ¥1,907.56 million of the amount were nullified because the JFTC had begun to hear procedures for six firms.)
6. The JFTC received 383 prior notifications of mergers and acquisitions (170 merger cases and 213 acquisition cases) in 2000 under Article Section 15 and Article Section 16 of the AMA. The figures represent an increase from the previous year.

## **Changes to competition laws and policies – the outline of new regulations in competition laws and related legislation**

### **1. *Amendment of the Antimonopoly Act (AMA) accompanying the creation of a corporate separation/division system***

7. With the creation of a corporate separation/division system, the AMA was amended to require, as in the case of mergers and acquisitions, the notification to the JFTC of any plans regarding corporate separation/division either through the joint establishment of a joint enterprise or through absorption/acquisitions no later than 30 days before such division. The amendment was promulgated on May 31, 2000 and came into force on April 1, 2001.

### **2. *Improvements in the civil remedy system against AMA violations***

8. Concerning the improvement in the civil remedy system against AMA violations, from March 1998 the JFTC held meetings of the Study Group on the Civil Remedy System against AMA violations, to study the introduction of an injunctive relief through civil litigation against AMA violations and measures to improve the present damage action system against AMA violations. The JFTC received a final report from the Study Group, which was published in October 1999.

9. Taking account of the above report and opinions from various parties, the AMA was amended to introduce a system that permits private parties to seek and obtain injunction orders from the courts against parties acting in violations of AMA (relating to unfair trade practices) as well as to enlarge the scope of the parties liable to compensation for non-negligence damage after the final decision of the JFTC. The amendment was promulgated on May 19, 2000 and came into force on April 1, 2001.

### **3. *The guidelines for proper gas transactions***

10. Following the amendments to the Gas Utilities Industry Law in 1999, the JFTC, in co-operation with the Ministry of International Trade and Industry, drew up guidelines for proper trading practices in the gas market consistent with the Gas Utilities Industry Law and the AMA in order for the gas market to function competitively. The guidelines were published in March 2000.

11. The guidelines consist of “Part 1: The necessity and constitution of guidelines for proper gas trading practices” and “Part 2: The guidelines for proper gas trading practices.”

12. The guidelines describe “The proper trading practices in the liberalised retail field (large-scale gas supply, large-scale specified gas supply),” “The proper gas trading practices in the connecting supply field,” “The proper gas trading practices in the wholesale field,” and “The proper gas trading practices in the retail field where some regulations are still in force (optional clause).” The guidelines then show examples of desirable practices from the viewpoint of fair and effective competition and practices that could violate the Gas Utilities Industry Law or the AMA.

## The enforcement of competition laws and policies

### 1. Measures against violations

#### 1) Situation regarding measures

13. Of the 66 cases for which the JFTC completed investigations in 1999/2000, formal legal measures (recommendations or surcharge payment order without recommendations) were taken in 18 cases (recommendations were issued in all of them) to eliminate the violations. In addition, warnings were issued in 12 cases and cautions were issued in 33, where the AMA violations were suspected but not substantiated. There were seven cases in which investigations were discontinued as no violations were found to have been committed.

#### A) Legal measures

14. The breakdown of the 18 cases in which legal measures were taken is as follows:

- |                                   |   |
|-----------------------------------|---|
| – Private monopolisation          | 1 |
| – Bid-rigging                     | 9 |
| – Cartels (excluding bid-rigging) | 2 |
| – Unfair trade practices          | 5 |
| – Others                          | 1 |
- A trade association was involved in one of the above 18 cases.
  - The JFTC has made continuous efforts to eliminate bid-rigging.
  - In 2000, nine of the JFTC's formal measures were against bid-rigging.

#### B) Orders to pay surcharges

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

- cartels related to the price of goods or services; or
- cartels that affect the price of goods or services through effectively restricting the volume of supply.

16. The amount of the surcharge is calculated by multiplying the amount of sales during the period of the cartel by a certain percentage. In the case of trade associations, the surcharges are levied on the firms constituting the association. In 2000, the JFTC issued surcharge payment orders to 492 firms amounting to ¥3,780.62 million. In addition, decisions, ordering the payment of the surcharge totalling ¥5,453.15 million,

were made to other 24 firms in 2000 on cases for which hearing procedures had been initiated concerning the previous surcharge payment orders.

17. Of the 492 firms that were ordered to pay surcharges not as a form of decisions, six firms requested hearings in 2000. As the JFTC initiated hearings on all of these six firms, surcharge payment orders amounting to ¥1,907.56 million in total were nullified.

C) Criminal accusations

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

19. There were no criminal accusations in 2000. Recent cases include the accusation against firms supplying petroleum products. In this case 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. Considering that this act constituted a criminal offence in violation of Section 3 of the AMA (Prohibition of unreasonable restraint of trade), 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.

D) Hearing procedures

20. The JFTC initiated hearing procedures for eight cases in 2000, and as of December of the same year, there were ongoing hearing procedures for 14 cases. (The hearing procedures for six cases thereof were consolidated because they had common substance.)

21. The JFTC issued decisions on 31 cases in 2000 after hearing procedures, including the case against Iwatani & Co., Ltd., the case against Japan Association of Refrigerated Warehouses and the case against The Tokyo Marine and Fire Insurance Co., Ltd. and other firms on a surcharge payment order.

2) *A summary of main cases*

A) Case against medical firms

22. It was found that four firms dealing with hospital administration works had colluded to designate who would win each of the competitive tenders for hospital administration works ordered by hospitals established by the Ministry of Health and Welfare, the Ministry of Posts and Telecommunications and the Labour Welfare Corporation, as well as by national universities. On March 30, 2000, the JFTC issued a recommendation to medical administration firms for the elimination of the practice on the ground that the

JAPAN

act violated Section 3 (Prohibition of unreasonable restraint on trade) of the AMA (decision issued on April 24, 2000).

## B) Case against constructors and surveyors located in the Kamikawa district of Hokkaido

23. It was found that 203 construction firms and 94 survey firms had colluded to designate who would win each of the competitive tenders for agricultural civil engineering works or related survey and design services regarding the agricultural and rural development projects to be implemented by the Kamikawa district office of Hokkaido. Accordingly, the JFTC issued a recommendation for the elimination of the practice on May 15, 2000, for violation of Section 3 of the AMA (Prohibition of unreasonable restraint of trade) (decision issued on June 16, 2000). As those in charge of procurement were found to have been involved in the collusion, the JFTC requested the government of Hokkaido to take appropriate measures. As requested, the government of Hokkaido took necessary measures to ensure fair bidding.

## C) Case against dealers of normal-sized trucks

24. It was found that three firms including Hino Motors Kumamoto had colluded to sell normal-sized trucks at target prices fixed according to a common calculation formula and within the quota set for each dealer based on prior allotment. Accordingly, the JFTC issued a recommendation for the elimination of the practice on October 31, 2000, for violation of Section 3 of the AMA (Prohibition of unreasonable restraint of trade) (decision issued on December 6, 2000).

## D) Case against Nippon Telegraph and Telephone (NTT) East Corporation

25. It was alleged that NTT East Corporation had hindered DSL operators wishing to secure connection to line loops from entering the market and impeded the business activities of DSL operators, thereby putting those operators at a major competitive disadvantage. Accordingly, the JFTC issued a warning on December 20, 2000, for possible violation of Section 3 of the AMA (Prohibition of private monopolisation).

## E) Case against Sagisaka, Co., Ltd.

26. It was found that Sagisaka Co., Ltd. had made the purchase of bicycle goods from manufacturers on the condition that the manufacturers would not bypass the company to sell such goods to large-scale retail stores, whether directly or indirectly. The firm was also found to have required its wholesalers not to sell to its specified competitors any bicycle goods manufactured by Oaks that feature a popular character. Accordingly, the JFTC issued a recommendation for the elimination of the practice on April 27, 2000, for violation of Section 19 of the AMA (decision issued on May 16, 2000).

## F) Case against construction firms using Lockman method and Wakita Co., Ltd.

27. It was found that 17 construction firms using Lockman method (a propulsion method used mainly for drainage works) and Wakita Co., Ltd., a supplier of specialized machinery used in the method, had colluded to refuse the lease, transfer and sale of the machinery to non-members of the Construction Subgroup of the Lockman Method Association. Accordingly, the JFTC issued a recommendation for the elimination of the practice on October 6, 2000, for violation of Section 19 of the AMA (decision issued on October 31, 2000).

## JAPAN

### 3) *Litigation*

28. One lawsuit applying for annulment of a JFTC's decision was rejected in an appeal court while two new lawsuits were filed in 2000. As of December 2000, there were four ongoing lawsuits.

A) The lawsuit rejected in the appeal court – application for annulment of a JFTC's decision by Tokyo Mochi Co., Ltd.

29. After a series of hearing procedures, the JFTC issued a decision on September 29, 1994, against Tokyo Mochi, Co., Ltd. for violation of Section 4-1 of the Premiums and Representations Law Act. Although the firm filed a lawsuit on October 19, 1994, applying for annulment of the decision, the court dismissed the claim on March 29, 1996. The JFTC's decision was finalised as the Supreme Court rejected the appeal on March 14, 2000.

B) The lawsuit newly launched in the appeal court – application for annulment of a JFTC's decision by The Tokyo Marine and Fire Insurance Co., Ltd. and 19 persons including The Sumitomo Marine and Fire Insurance Co., Ltd.

30. The JFTC, after a series of hearing procedures, issued a decision on June 2, 2000, ordering the payment of surcharges to 20 persons including The Tokyo Marine and Fire Insurance Co., Ltd. and The Sumitomo Marine and Fire Insurance Co., Ltd. In response, Tokyo Marine and Fire Insurance filed a lawsuit with the Tokyo High Court on July 3, as did the other 19 persons including Sumitomo Marine and Fire Insurance on July 4, applying for annulment of the decision.

## 2. *Mergers and acquisitions*

### 1) *Statistics relating to mergers and acquisitions*

31. Sections 15 and 16 of the AMA provide for prior notification of any mergers and acquisitions to the JFTC. The JFTC examines the content of the notifications. If a planned merger or acquisition is found likely to substantially restrict competition in a certain particular field of trade, the JFTC has the power to prohibit it. In 2000, the JFTC was notified of 170 planned mergers in accordance with Section 15 of the AMA, as well as 213 planned acquisitions of businesses with Section 16 of the AMA. The figures represent an increase from the previous year.

**Table: Number of mergers and acquisitions**

	1998	1999	2000
Mergers	2,160	139	170
Acquisitions, etc.	1,653	186	213
Total	3,813	325	383

32. The JFTC did not take any legal measures with regard to mergers or acquisitions in 2000.

33. In Japan, prior consultations with the JFTC are common before formally submitting merger or acquisition notifications when there are concerns about problems in relation to the AMA in such mergers or acquisitions. In these consultations, the JFTC carries out a thorough examination of 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 or acquisition, or revises its contents in line with the AMA, and then formally files notification for the merger or acquisition to be effected.

2) *A major case of mergers and acquisitions -- Business integration through the establishment of a holding company by The Dai-Ichi Kangyo Bank, Ltd., The Fuji Bank, Ltd. and The Industrial Bank of Japan, Ltd.--*

34. Under the plan, The Dai-Ichi Kangyo Bank, Ltd., The Fuji Bank, Ltd. and The Industrial Bank of Japan, Ltd attempted to fully integrate their businesses as the “Mizuho Financial Group” by jointly establishing a holding company. The three banks were to be placed under the auspices of the holding company, while the three securities subsidiaries of the banks (Dai-Ichi Kangyo Securities, Fuji Securities and Kogin Securities) and the two trust bank subsidiaries (Dai-Ichi Kangyo Fuji Trust Bank and Kogin Trust Bank), were to be merged.

35. As regards the impact on competition in the financial market, the JFTC made a careful examination by defining a certain particular field of trade as each of the deposits, loans, foreign exchange, securities business and trust banking business. Although the Mizuho Financial Group would be the leader in such fields as deposits and loans, the JFTC judged that it would not substantially restrict competition in any business areas taking into consideration various factors including competitive pressure from neighbouring markets, the existence of strong competitors and entries from other industries.

36. As regards the impact on the industry as a whole, the JFTC conducted questionnaire and interview surveys on firms financed by the three banks as they would be financing about 70% of the listed companies. From the result of the surveys, the JFTC judged that the integration might lead to the interference in the management of firms for which the group would have increased share in financing and ownership (for example, by requesting such firms to conduct (or increase) transactions other than borrowing such as deposits), as well as to the formation of exclusive and closed trading relationships through the selection of trading partners based on whether they belong to the corporate group or not. Accordingly, the JFTC informed the three banks that necessary measures should be taken to prevent such concern from being realised.

37. The three banks responded as follows:

- As regards the concern of the interference by the new bank with management on the strength of its increased share in loans and stockholdings, the three banks are currently doing their utmost to ensure full compliance with the AMA by thoroughly informing their directors, officers and employees of its importance. Such efforts will be continued after the integration. In the holding company to be created, a regime will be built to monitor the compliance of the group as a whole so as to prevent such acts as pointed out by the JFTC.
- As regards the concern about closed relationships within the corporate group, the Mizuho Financial Group will be operating its businesses as an impartial and open financial group. The group does not intend to initiate the formation of any specific or exclusive corporate group. By the spring of 2002, when the member banks will be integrated and restructured, they will review the operation of corporate groups which formed with banks as cores and consider possibility of their dissolution.

## JAPAN

38. As regards the business integration plans, the JFTC concluded that the proposed establishment of a holding company, under which the three banks were placed, and the merger of the three banks' subsidiaries, including 3 securities companies and 2 trust banks, would not be likely to violate the provisions of the AMA. When the further organisational restructuring of the three banks will take place in spring 2002, the JFTC will also examine the case as necessary. As to the proposals made by the three banks in response to the indications by the JFTC concerning the impact of the consolidation on various industrial sectors, the JFTC will carefully monitor how the proposals are being carried out and will strictly deal with whatever activities may constitute violations of the AMA.

### **The role of competition authorities in the formulation and implementation of other policies**

#### **1. *Co-ordination between the AMA and other economic laws and ordinances***

39. 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 co-ordination 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.

#### **2. *Administrative co-ordination***

40. The JFTC consults 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 "AMA Guidelines concerning Administrative Guidance" lest any guidance by administrative bodies concerned should hinder free and fair competition or lead to violation of the AMA. Furthermore, the revised "Three-Year Programme for Promoting Deregulation" (Cabinet decision in March 1999) states that, based on the guidelines mentioned above, ministries and agencies concerned are required to hold prior consultations with the JFTC to ensure that any anti-competitive administrative guidance does not substitute for similar restrictive regulations. The JFTC ensures necessary co-ordination with the ministries and agencies concerned.

#### **3. *Reform of government regulations***

41. 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.

42. 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 ministries and agencies concerned to carry out reform through legal and administrative co-ordination. The JFTC has also organised meetings of the Study Group on Government Regulations and Competition Policy, which consists of academics and other experts, and commissioned its members to address problems of government regulation and competition policy in individual sectors.

43. 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 market on a sector-by-sector basis. In 2000, the group studied the situation of the domestic air passenger transport sector and the telecommunications sector and published its reports on these two sectors in February and June 2000, respectively.

44. The report on the telecommunications sector includes the following policy recommendations:

- The division between Class 1 and Class 2 based on whether the firm has telecommunication facilities should be abolished.
- Infrastructure should be developed to ensure transparency in connecting with NTT lines and encourage access charges to be reduced through competition.
- Networks should be created with new technologies and methods to build the foundation of competition in line loop networks.
- The introduction of an auction system for allocating frequencies should be considered.
- The holding company-style restructuring of NTT will not sufficiently promote competition. The share of the NTT holding company in the ownership of NTT DoCoMo should be reduced.
- The review of legislation related to communications should be continued.
- The ministries and agencies concerned should collaborate in developing rules for promoting competition.

45. A working group on the postal business was also established under the Study Group in May 2000 to discuss introducing competition into the postal market as well as issues related to competition policy. A report prepared by the Study Group was made public in November 2000.

46. This report on the postal business included the following policy recommendations, based on the view that the development and operation of home delivery services have been impeded due to the unclear definition of “letters” and that competition should be introduced progressively, although from the viewpoint of competition policy, the delivery of letters should be fully liberalised in principle to promote competition between postal businesses and private delivery services.

- The delivery of bulk mail sent by firms (such as DM) and value-added mail should be liberalised.
- Quantitative standards (such as a fixed value standard or a volume standard) should be adopted in determining the scope of businesses to be placed under competition.
- The levels of such quantitative standards should be set as low as possible.
- The scope of businesses to be placed under competition should be thoroughly reviewed in the future.
- Conditions for fair competition between postal businesses and private delivery services should be ensured in the liberalised markets.

## JAPAN

- The AMA should be strictly implemented against any acts that restrict competition in the liberalised markets.
- The efficiency of postal businesses should be promoted by active disclosure of managerial information.

### Resources of the JFTC

#### 1. Budget amount

##### Trend in the budget of the JFTC (unit: \100 million, %)

Fiscal Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Budget of the JFTC Budget amount (\100 million)	40.8	44.1	46.2	52.4	52.4	53.8	55.6	56.2	57.8	59.0
-change over previous year (%)	8.6	7.9	4.9	13.4	Δ0.1	2.7	3.3	1.1	2.8	2.1
General Expenditures Budget -change over previous year (%)	4.7	4.5	3.1	2.3	3.1	2.4	1.5	Δ1.3	5.3	2.6

(Notes)

1. The FTC budget for FY1994 includes office relocation costs (230 million Yen).
2. The General Expenditures Budget refers to the total budget of the Japanese Government and is the amount of General Account Budget Expenditures less National Debt Service and Local Allocation Tax Grants.

#### 2. Number of officials

##### Trend in the number of officials in the General Secretariat of the JFTC (unit: persons) are shown below

Fiscal Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number of officials	478	484	493	506	520	534	545	552	558	564
Enforcement against anti-competitive practices	165	178	186	203	220	236	248	254	260	263
Merger review enforcement	19	18	19	18	18	18	18	19	19	22
Advocacy efforts	15	15	15	15	14	23	23	23	22	22

(Notes)

1. Up until FY 1995, the secretariat office was the Executive Office.
2. The number of officials engaged in enforcement against anticompetitive practices refers to the Investigation Bureau (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 Co-ordination Division up until FY 1995) and the Co-ordination Division.

## Surveys related to competition policy

### 1. *A report of the Economic Research Study Group "Competition Policy and Structural Economic Change"*

47. In order to grasp correctly sweeping and structural changes of economic and social conditions with which Japan is currently faced and to explore what the competition policy should be in accordance with those movements, the JFTC held the Economic Research Study Group since June 1999. The research group prepared a report entitled "Competition Policy and Structural Economic Change," which was publicised by the JFTC in June 2000.

48. The report points out the directions to which the competition policy should address in future as below. It also proposes how to deal with the specific issues emerging from the structural economic change and to strengthen the foundation of implementation of competition policy.

#### 1) Affirmative Action for the Creation of Competitive Conditions

49. In order to bring about "fair and free competition", the JFTC should go beyond eliminating barriers to competition, and affirmatively create conditions necessary to effective competition.

#### 2) Better Adaptation to Changes in Economic and Social Conditions

50. Competition policy should be adapted to the rapid changes taking place in the economy and society.

#### 3) Soliciting Understandings of Competition Policy and Spurring Public Initiatives

51. In the process of implementing competition policy, it is essential to make efforts to build consensus on the policy through promoting comprehensive national debates on this matter.

### 2. *A report on the survey of changing distribution structure and the use of information technology*

52. The JFTC conducted the survey on the current condition of the development of distribution systems based on (i) EOS (Electronic Ordering System)/EDI (Electronic Data Interchange) and (ii) SCM (Supply Chain Management) in the business transactions of consumer goods (daily/sundry goods, processed foods and stationery/office supplies), as well as their impact on competition. The JFTC published a research report on June 28, 2000.

53. In business transactions, no cases have been observed in which trading partners formed a fixed and closed relationship between themselves or in which firms in the same industry restricted competition through information exchange using EOS/EDI. Thus, situations that could constitute a violation of the AMA have not arisen so far.

54. Some firms are moving towards developing distribution systems based on SCM to ensure a quick and appropriate response to consumer needs. However, traditional business trading practices in Japan, such as the current quotation, rebate and sole agent arrangements, may undermine the ability of such systems to improve business efficiency. In the final analysis, this movement is considered favourable to competition policy, as such trading practices will be adapted to the new distribution systems.

## JAPAN

55. At the same time, it will be possible to select suppliers based on the price and quality of products, regardless of traditional business relationships, thus ensuring a quick and appropriate response to consumer needs. This may lead to changes in the existing distribution structure consisting of manufacturers, wholesalers and retailers, with retailers becoming involved in direct transactions with manufacturers, for example.

56. Distribution systems using EOS/EDI or based on SCM aim at achieving a quick and appropriate response to consumer needs as well as reducing costs. Such systems allow firms to supply consumers with a wide range of consumer goods in a timely manner, while increasing consumer benefit mainly through lower prices. Thus, the distribution systems are considered favourable to competition policy.

## ANNEX I.

## OUTLINE OF THE LAW REVISIONS

**1. Revision to the AMA for creating a corporate separation scheme division system (Section 15-2)**

- (1) Corporate separation division, either through the joint establishment of a new joint enterprise or through absorption acquisition, shall be prohibited if it substantially restricts competition in a certain particular field of trade.
- (2) For example, when a company capitalised at ¥10 billion or over and a company capitalised at ¥1 billion or over plan a corporate separation division through the joint establishment of a new joint enterprise or through absorption acquisition, the companies are required to inform the JFTC of the plan prior to such separation division.
- (3) The companies that have made this notification shall not effect the planned separation division within 30 days counting from the date of reception of the notification.
- (4) The JFTC may order necessary measures concerning the corporate separation division as appropriate.

**2. Improvement of the civil remedy system against AMA violations**

- (1) Introduction of an injunctive relief system against AMA violations
  - The right of demanding an injunction (Section 24)  
Any consumer or business that has suffered or is likely to suffer serious damage by AMA violations (relating to unfair trading practices) may file a lawsuit with a court demanding an injunction of the violations.
  - The system to seek opinions (Section 83-3)  
When an injunction suit is filed with a court, the court shall inform the JFTC of the suit and may seek opinions from the JFTC with respect to the application of the AMA to the case, etc. The JFTC may state its opinions with the permission of the court, including on the application of the AMA to the case.
  - Jurisdiction of courts and transfer of suits to another court (Section 84-2 and Section 84 3)  
In accordance with the principles of the Code of Civil Procedure, a lawsuit for injunction may be filed with a district court that has jurisdiction over the site where the plaintiffs have suffered damages from AMA violations. Such a suit may also be filed with any of the district courts located where high courts are also located as well as with the Tokyo District Court. A court in charge of such a suit may transfer the case to one of the above-mentioned courts if the court deems it necessary.
  - Order to offer deposits (Section 83-2)

## JAPAN

In order to prevent the litigation system from being abused, the court in charge may order the plaintiffs to promise a certain amount of security when the defendants complain and demonstrate that the suit has been filed for illegal purposes.

(2) Improvement of the compensation system for AMA violations

– Addition of violations committed by trade associations (Section 25)

Under previous provisions of the AMA, an entrepreneur that enters into private monopolisation or unreasonable trade restrictions, or employs unfair trade practices, was liable for damage compensation without negligence. Trade associations that have violated the provision of Section 8-1 of the AMA were newly added to the list of persons that assume such liabilities.

JAPAN

## APPENDIX

Surveys and reports relating to competition policy published in 2000

April

- A report on the survey of the auto-mechanic industry, etc.

May

- JFTC's activities against unfair trade practices in deregulated markets

June

- A report on the survey of changing distribution structure and the use of information technology: Focus on the distribution of consumer goods

September

- A report on price listing in "Estimation Data," "Construction Prices," etc. by constructors' associations

December

- A report on the survey of consignment transactions in the trucking and software development industries