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OECD Global Forum on Competition

**THE OBJECTIVES OF COMPETITION LAW AND POLICY
AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY**

-- JAPAN --

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JAPAN

“THE OBJECTIVES OF COMPETITION LAW AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY WITHIN THE OVERALL GOVERNMENT.”

1. Introduction

Section 1 of the Antimonopoly Act, the competition law of Japan, sets out the purpose of the Act, as follows. Namely, *This Act, by prohibiting private monopolisation, unreasonable restraint of trade and unfair trade practices, by preventing excessive concentration of economic power and by eliminating unreasonable restraint of production, sale, price, technology and the like, and all other unjust restriction of business activities through combinations, agreements and otherwise, aims to promote free and fair competition, to stimulate the creative initiative of entrepreneurs, to encourage business activities of enterprises, to heighten the level of employment and people's real income, and thereby to promote the democratic and wholesome development of the national economy as well as to assure the interests of consumers in general..* This clause is interpreted to mean that the direct objective of the Act is the promotion of fair and free competition, and the assurance of the interests of consumers in general and the democratic and wholesome development of the national economy is the objective to be achieved by promoting fair and free competition.

The above objective of the Antimonopoly Act has not changed since the legislation of the Act in 1947. However, the demands of the Fair Trade Commission, the competition authority, have shifted with changes in economic conditions and other circumstances.

At present, the environment surrounding Japan's economy and society is experiencing sweeping change, for example with the globalisation of the economy and remarkable technological innovation. Consequently, important problems in Japan include building a competitive economy and society by promoting structural economic reform and encouraging the free activities, creativity and ingenuity of private entrepreneurs and by changing government from one that emphasises advance control to one that employs ex post facto checks through regulatory reform throughout the economy and society. The structural conversion of the economy and society should be achieved through an internationally open, fair and free economy and society based on the principles of self-responsibility and market principles. For that purpose, competition policy, which sets the rules for fair and free competition in the market, plays a critical role.

In his general-policy speech on May 7, 2001, Japanese Prime Minister Junichiro Koizumi said that, “we will strengthen the structure of the Fair Trade Commission, which should serve as the guardian of the market, thereby establishing competition policies appropriate for the 21st century.” In response, the Fair Trade Commission held a meeting named “The Committee Considering Competition Policy Appropriate for the 21st century” to consider competition policy appropriate for the 21st century, inviting outside experts to consider the form of competition policy required, along with the systems and functions needed to implement such a policy. The Committee compiled the results of the meeting's examination as Recommendation on “the Method Concerning Competition Policy and the Japan Fair Trade Commission Appropriate for the 21st Century” The Fair Trade Commission is fully aware of the importance of the proposals made by the committee, and will endeavor to act on the proposals. In the meantime, it makes efforts to deepen public understanding about competition policy.

Below, we explain the proposals of Recommendation and how the Fair Trade Commission is addressing them, with a view to contributing the subject of “The Objectives of Competition Law and the Optimal Design of a Competition Agency within the Overall Government.”

2. Proposals regarding “The Method concerning Competition Policy and the Fair Trade Commission in the 21st Century”

2.1 *Status of the Fair Trade Commission*

- By definition, competition policy, which sets the rules for fair and free competition in the market, should be placed as the most basic of all government measures including economic structural reform. Accordingly, it is normal that the Fair Trade Commission, which plays a core role in competition policy, should not be placed under a ministry in charge of specific business fields but be placed under the Cabinet Office in charge of important Cabinet policies. It is thus considered that the future transfer of the Fair Trade Commission to an external organ of the Cabinet Office should be therefore examined.
- What the FTC does: In this respect, a draft of an amended law, which is necessary to change the Fair Trade Commission from an external organ of the Ministry of Public Management, Home Affairs, Posts and Telecommunications to an external organ of the Cabinet Office, was submitted to the current ordinary session of the Diet.

2.2 *Priority principles and enhancement of law enforcement functions*

- To effectively expose acts in violation under the limited resources, it is necessary to investigate such acts by emphasising designated areas of importance (such as information technology and public services) while immediately responding to changes in the environment surrounding the economy and society.
- To provide a stronger deterrence against acts in violation of the Antimonopoly Act, with respect to the systems of measures in response to such acts, it is necessary to revise the current surcharge system and criminal sanctions, and to consider introducing an authority to coercive investigation.
- With respect to criminal penalties, fines provided under other economic laws such as the Securities and Exchange Law are now significantly higher than before. Therefore, the upper limit of \100 million for fines to be imposed on corporations, etc. guilty of bid-riggings or of violations such as price cartels should also be raised to a level that equates to fines imposed under the economic laws.
- To make it possible for businesses to act quickly and flexibly in response to changes in the economic environment, it is necessary to enhance the transparency of investigations into corporate mergers and to investigate such mergers quickly and appropriately. In terms of both quality and quantity, the system of investigation should be improved.
- With the globalisation of the economy, anti-competitive acts that transcend national boundaries, including international cartels, have the potential to impact the Japanese market. To deal effectively with these acts based on the Antimonopoly Act, procedures for serving

documents to foreign businesses should be established. In addition, the number of bilateral co-operative agreements should be increased and further developed with respect to the enforcement of the Antimonopoly Act. Japan also needs to play a leading role in concluding multilateral agreements.

- What the FTC does: With respect to (3) and the establishment of procedures for document service, etc. as mentioned in (5), a draft amendment of the Antimonopoly Act was put before the ordinary session of the Diet held last year to raise the upper limit of fines to be imposed on corporations, etc. (from ¥100 million to ¥500 million), and to establish procedures to serve documents to non-residents. This amendment to the Antimonopoly Act was approved and enacted on May 22, and became law on May 29 last year.

2.3 *Enhancement of functions to propose policies for regulatory reform*

- Regulatory reform and the enforcement of the Antimonopoly Act are the two wheels of competition policy, and should be addressed in unison. From this perspective, the Fair Trade Commission has to date been undertaking investigations and making proposals on regulatory reform. The Fair Trade Commission should take the initiative in regulatory reform in the future as well, to enable the formation of a comprehensive competition policy that transcends the compartmentalised administration of related ministries and agencies, and it should propose policies more actively. In particular, the areas of social regulations covering medical care, welfare, education, and labour, etc., areas that have not necessarily been competitive in the past, need to be reviewed in an ongoing process from the viewpoint of competition policy.
- For the Fair Trade Commission to play an effective role in regulatory reform, it should be clearly stipulated in law that investigations and proposals for regulatory reform are part of the duties of the Fair Trade Commission. The Fair Trade Commission should also liaise with other administrative bodies such as the Council for Regulatory Reform and the Executive Office for the Promotion of Administrative Reform.

2.4 *Enhancement of functions to support consumers*

- It is necessary to fully materialise the creation and assurance of an environment in which consumers are able to make a proper choice, to enable rules for fair and free competition to function effectively. For that purpose, with respect to the Act against Unjustifiable Premiums and Misleading Representations (Premiums and Representations Act) which the Fair Trade Commission operates, the revision of the current misleading representation regulations should be examined with the aim of expanding the scope of control over actions that distort consumer choice and of imposing an obligation to actively provide certain information that is important for consumers in making an appropriate choice.
- The Fair Trade Commission should actively address those areas of consumer policy for which responsibilities are divided into more administrative organisations than they are in other nations. Laws should clearly stipulate that investigations and proposals for consumer policy from the perspective of competition policy be a part of the duties of the Fair Trade Commission. It is likely to be extremely beneficial if the Fair Trade Commission closely liaises with the Social Policy Bureau of the Cabinet Office and the Japan Consumer Information Center in addressing consumer policy.

- What the FTC does: With respect to (1) above, a draft amendment of the Premiums and Representations Act is scheduled to be proposed to the current ordinary session of the Diet, to prohibit representations which claim marked superiority about effects and quality etc. of a commodity without reasonable grounds.

2.5 *Expansion of staff and organisation of the Fair Trade Commission, and promotion of public understanding*

- For the Fair Trade Commission to play a core role in competition policy and actively address consumer policy, the number of personnel in divisions responsible for investigating anti-competitive cases, investigating mergers, proposing policies for regulatory reform and misleading representations control, etc., including local offices, needs to be rapidly increased. In addition to an increase in the number of personnel, the organisation also needs to be expanded. Above all, the existing system of two bureaus needs to be changed to one with three bureaus that provide all functions, including an investigative function needed to enforce the Antimonopoly Act, a function to propose policies for regulatory reform, and a consumer support function related to consumer policy. In addition, if the authority of the Fair Trade Commission is greatly strengthened and if its organisation is rapidly expanded, the governance of the Commission should also be examined.
- Efforts should be made to expand the base of support for competition policy and consumer policy through effective publicity activities, to enable the policies to be implemented with solid systems by obtaining public understanding and support for consumer policy.
- What the FTC does: With respect to (1) above, the draft budget for 2003 includes a plan to increase by 40 in the number of staff, especially in the Investigation Bureau. The number of regular staff of the General Secretariat will become 643 after the increase. The draft budget will be debated in the current ordinary session of the Diet.

3. Conclusion

As noted above, major changes are taking place in the environment surrounding the economy and society, including the globalisation of the economy and remarkable technological innovation, and it is therefore vital to create a competitive economy and society by promoting structural economic reform and encouraging the free activities, creativity and ingenuity of private entrepreneurs, and by changing government from one emphasising advance control to one emphasising ex post facto checks through regulatory reform throughout all areas of the economy and society. Given these conditions, we believe that competition policy that aims to set rules for fair and free competition in the market and the role played by the competition authority in charge of that competition policy are extremely important.

It is therefore important for the competition authority to endeavour to ensure independence, prioritisation and enhancement of functions for law enforcement, enhancement of functions to suggest policies for regulatory reform, and the enhancement of functions to support consumers.

The role that is demanded of the competition authority will shift with changes in the economic conditions. But the basic objective of competition law, namely to promote the democratic and wholesome development of the national economy as well as to assure the interests of consumers in general by promoting fair and free competition, will remain firm and solid.