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(January - December 1999)

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Executive Summary

The main features of the 1999 activities of the Japan Fair Trade Commission (referred to hereafter as the JFTC) are as follows,

1. A law aimed at abolishing the depression cartel system and the rationalisation cartel system and abolishing a law on the exemption systems of the Antimonopoly Act (referred to hereinafter as the AMA) were enacted on July 23, 1999. A law aimed at abolishing Article 21 of the AMA was enacted on June 19, 2000, in response to the liberalisation of the electric power supply and gas businesses.
2. The JFTC held meetings of the Study Group on the Civil Remedy System to AMA Violations to improve the system. The JFTC received a final report from the study group in October 1999 and then publicised it. Taking account of the above reports and options from various parties, the Government of Japan submitted a bill to the Diet on March 21, 2000 that permits private parties to seek and obtain injunction orders from the courts against parties engaged in activities that violate unfair trade practice of the AMA and that improves the damage compensation system against the AMA violations, and the bill was enacted on May 12, 2000 (it was promulgated on May 19, 2000).
3. The governments of Japan and the United States signed an agreement of co-operation with regard to anti-competition activities on Oct. 7, 1999. This is the first antimonopoly co-operation agreement that the Japanese government has ever concluded.
4. The JFTC fully revised the guidelines for enforcing the AMA with regard to unfair trade methods in patent and know-how licensing agreements on July 30, 1999, and newly publicised the "Guidelines for Patent and Know-how Licensing Agreements under the Antimonopoly Act" in order to clarify its interpretation of the AMA regarding patent and know-how licensing agreements.
5. Following the amendments to the Electricity Utilities Industry Law in 1999, the JFTC, in co-operation with the Ministry of International Trade and Industry, worked out and published guidelines for fair trading practices in the electricity market in December 1999.
6. The JFTC, which has cracked down on AMA violations, filed a criminal accusation with the Prosecutor General against ductile cast pipe manufacturers on Feb. 4, 1999, on charge of forming an illegal cartel on the amount of contracts they should receive. In 1999, the JFTC took legal measures (recommendations and orders to pay administrative surcharges without recommendations) against 32 cases of AMA violations, and issued warnings in 20 cases. Furthermore, the JFTC ordered those involved in 23 price cartels and bid-rigging cases to pay a total of 18,433.32 million yen. (The orders to pay 11,060.51 million yen of the amount were nullified because the JFTC had begun to hear procedures for these cases.)
7. The JFTC received 325 prior notifications of mergers and acquisitions (139 merger cases and 186 acquisitions) in 1999 under Article 15 and Article 16 of the AMA. The figures represent a sharp decline from the year before. This is mainly because the scope of mergers and acquisitions that must be filed to the JFTC was drastically reduced with the 1998 revisions to the AMA (that was enacted in January 1999).

I. Changes to competition laws and policies -- the outline of new regulations under competition laws and related legislation

1. *Reductions in the exemption systems of the Antimonopoly Act (AMA)*

8. A bill aimed at abolishing depression cartel systems and rationalisation cartel systems and abolishing the exemption systems to the AMA was submitted to the Diet on Feb. 16, 1999, passed the Diet on June 15, 1999, and was enacted on July 23, 1999.

9. Following the liberalisation of the electricity and gas businesses, a bill to revise the AMA, which included the abolition of Article 21 that provided for the exemption system for acts done in the proper course of business constituting a monopoly by their inherent nature was submitted to the Diet on March 21, 2000, passed on May 12. Of the revisions to the law, the abolition of Article 21 came into force on June 19.

2. *Improvements to the civil remedy system of AMA violations*

10. Concerning the improvement to the civil remedy system of AMA violations, the JFTC held meetings of the Study Group on the Civil Remedy System to AMA Violations in order 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 since March 1998. The JFTC received a final report from the study group in October 1999 and subsequently published it.

11. The above report said that it would be appropriate to introduce an injunctive relief through civil litigation against the AMA violations (relating to unfair trade practices) and to improve the damage compensation system against the AMA violations from the viewpoint of improving remedies for victims of AMA violations and deterring such illegal practices.

12. Taking account of the above reports and options from various parties, the Government of Japan submitted a bill to the Diet on March 21, 2000 that permits private parties to seek and obtain injunction orders from the courts against parties engaged in activities that violate unfair trade practice of the AMA and that improves the damage compensation system against the AMA violations, and the bill was enacted on May 12, 2000 (it was promulgated on May 19, 2000).

3. *Conclusion of Japan-U.S. antimonopoly co-operation agreement*

13. The governments of Japan and the United States signed "Agreement between the government of Japan and the government of the United States of America concerning co-operation on anticompetitive activities" on Oct. 7, 1999.

(1) Notification (Article 2)

The competition authorities of each government shall notify the competition authority of the other government with respect to the enforcement activities and others of the notifying government that the notifying competition authority considers may affect the important interest of the other government .

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(2) Co-operation (Article 3)

The competition authorities of each government shall render assistance to the competition authority of the other government in its enforcement activities to the extent consistent with the laws and regulation of the country of the assisting government and the important interests of the assisting government.

(3) Co-ordination (Article 4)

Where the competition authorities of both governments are pursuing enforcement activities with regard to related matters, they shall consider co-ordination of their enforcement activities.

(4) Request for enforcement activities (Article 5)

If the competition authority of a government believes that anticompetitive activities carried out in the territory of the other country adversely affect the important interests of the former government, such competition authority may request that the competition authority of the other government initiate appropriate enforcement activities.

(5) Consideration of the important interest of the other government (Article 6)

Each government shall give careful consideration to the important interests of the other government throughout all phases of its enforcement activities.

14. This was the first agreement antimonopoly co-operation agreement the Japanese government had ever concluded.

4. *Compilation of "the Guidelines for Patent and Know-how Licensing Agreements under the Antimonopoly Act"*

15. With regard to patent and know-how licensing agreements, which are regarded as typical technological transactions. The JFTC publicised "Guidelines for the Enforcement of the AMA with regard to Unfair Trading Practices in Patent and Know-how Licensing Agreements", in February 1989. The guidelines have been used to see if trading practices under patent and licensing agreements constitute violation of the AMA and to examine international agreements reported to the JFTC.

However, requirements that international contracts be reported to the JFTC were abolished in June 1997. Recent violations related to intellectual property rights other than unfair trading practices have increased in recent years and the United States and the European Union have recently revised their guidelines or rules to clarify their views of the relationship between patent laws and competition laws. Therefore, the JFTC was under mounting pressure to clarify its interpretation of the AMA with regard to patent and know-how licensing agreements.

16. Under these circumstances, in order to clarify its comprehensive view on the interpretation of the AMA with regard to patent and know-how licensing agreements, the JFTC fully revised the above guidelines and drafted and publicised "Guidelines for Patent and Know-how License Agreements" (referred to hereafter as "patent and know-how guidelines") on July 30, 1999.

17. The outline of the guidelines

(1) The interpretation of Section 23 of the AMA regarding patent license agreements, etc.

- Section 23 of the AMA provides that the law does not apply to "such acts recognisable as the exercise of patent rights" under the Patent Acts etc. However, acts recognisable as the "exercise of patent rights" but which deviate from or run counter to the purposes of the technology protection system and the AMA apply to them.
- Even if an act appears, onto face, to be an exercise of rights under the Patent Acts etc. in the case where the said acts are considered to be part of unreasonable restraint of trade or private monopolisation, or are used as a method of such illegal transactions, it cannot be recognised as "an exercise of patent rights".
- Regarding the sale of their patented products that were once legally marketed at patentee's own will, restrictive practices are treated in the same way as the restraint of the sale of ordinary products under the AMA.

18. (2) Views on patent and know-how licensing agreements from the perspective of Section 3 of the AMA (unreasonable restraint of trade and private monopolisation).

License of patents etc. generally consist of a license under a patent and on agreed licenses are loyalty as compensation for such a license. These licenses may be accompanied by specific restrictions and obligations that are imposed on a party, such as restriction on territory where the patent rights can be exercised or grant-back requirements for any improvement which is not necessarily regarded as unreasonable restraint of trade or private monopolisation. However, if the market prices of patented products or the fields of research and development are restricted under patent or other licensing agreements and competition in a product or technology market is substantially restrained as a result, it is regarded as violation of the AMA constituting unreasonable restraint of trade. In addition when an act relevant to the patent or other license agreements substantially restrains competition in a product or technology market by eliminating or controlling business activities of other entrepreneurs, it is regarded as a violation of the AMA constituting private monopolisation.

19. (3) Views on patent and know-how licensing agreements from the perspective of unfair trading practices .

The given views from the perspective of unfair trading practices were with the former AMA guidelines as their basis, drafted after the necessary revisions to the guidelines, such as adding clauses that describe practices that run counter to the AMA and practices that coincide with those of the AMA, and changing the interpretation of hindrance of fair competition.

5. *The guidelines for appropriate electricity transactions*

20. In December 1999, following the revisions to the Electricity Utilities Industry Law in 1999, the JFTC, in co-operation with the Ministry of International Trade and Industry, drafted and publicised guidelines for fair trading practices in the electricity market consistent with the AMA and the Electricity Utilities Industry law.

21. The guidelines are divided into "Part 1: The necessity and constitution of guidelines for fair trading practices in the electricity market," and "Part 2: The guidelines for trading practices in the electricity market."

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The guidelines describe "The desirable electricity trading practices in the liberalised retail field", "The desirable electricity trading practices in the electricity transmission," "The desirable electricity trading practices in the field of electricity procurement by electricity companies" and "The desirable electricity trading practices in the retail field where some regulations are still in force". The guidelines then show examples of desirable practices from the viewpoint of fair and effective competition and practices that could violate the Electricity Utilities Industry Law or the AMA.

II. The enforcement of competition laws and policy

1. Measures against violations

1) Investigation

22. The number of cases investigated by the JFTC in 1999 is as follows:

a) Carried over from the previous year	47
b) Newly taken up in 1999	106
Total (a+b)	153
c) Investigation completed	111
d) Carried over to the next year	42
Total (c+d)	153

2) Situation regarding Measures

23. Of the 111 cases for which the JFTC completed investigations in 1999, formal legal measures were taken in 32; in 31 of those, recommendations were issued. In the remaining one case, one surcharge payment order without a recommendation was issued. In addition, warnings were issued in 20 cases and cautions were issued in 41, where the AMA violations were suspected but not substantiated. There were 18 cases in which investigations were discontinued.

A) Legal Measures

24. The breakdown of the 32 cases in which legal measures were taken is as follows:

• Private Monopolisation	0
• Bid-Rigging	22
• Price Cartels etc.	3
• Unfair Trade Practices	5
• Others	2

Trade associations were involved in 2 of the above 32 cases
The JFTC has made continuous efforts to eliminate bid-rigging
In 1999, 22 of the JFTC's formal measures involved bid-rigging.

B) Orders to Pay Surcharges

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

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

26. The amount of the surcharge is calculated by multiplying the amount of sales during the period of the cartel by a certain percentage. In the case of trade associations, the surcharges are levied on the firms constituting the trade association. In 1999, the JFTC issued surcharge payment orders to 713 firms involved in 23 cases of price cartels and bid-rigging. The total amount of surcharges was ¥18,433,320,000 (approximately \$167 million).

27. Of the 713 firms that were ordered to pay surcharges, 6 firms requested hearings in 1999. As the JFTC initiated hearings, surcharge payment orders amounting to ¥11,060,510,000 (approximately \$101 million) in total were nullified.

C) Criminal Accusations

28. 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.

29. In February 4, 1999, the JFTC filed a criminal accusation with Public Prosecutor General against 3 ductile iron pipe makers based on the provision in Section 73 (1) of the AMA.

D) Hearing Procedures

30. The JFTC initiated hearing procedures for seven cases in 1999, and as of December of the same year, there were ongoing hearing procedures for 37 cases. (The hearing procedures for 24 cases thereof were consolidated because they had common substance.)

31. The JFTC issued decisions on four cases in 1999 after hearing procedures: 1) restrictions imposed by a medical association on establishing medical institutions and adding types of medical services provided by its members; 2) surcharge orders against undertakings that fixed the minimum price of household gas meters; 3) surcharge orders against retailers of LPG for automobiles that collectively raised the price thereof and 4) a misleading representation of the effects of electronic rat-trap.

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3) *The summary of main cases*

A) Case against ductile cast pipe manufacturers

32. The JFTC found that three ductile iron pipe manufacturers had colluded to fix the share of contracts they should receive in the fiscal year 1997 to total domestic demand for straight ductile iron pipes. They then adjusted the amounts of contracts they would win in accordance with the fixed share by the end of that fiscal year.

Accordingly, the JFTC issued a recommendation to the ductile iron pipe manufacturers on March 26, 1999, for violation of Section 3 of the AMA (Prohibition on unreasonable restraint of trade). (The decision was issued on April 22, 1999.)

B) Case against dioxin measurement and analysis firms

33. The JFTC found that 11 dioxin measurement and analysis firms colluded to designate who would win in a competitive tender on measuring and analysing dioxin levels at Chiba City garbage incineration facilities ordered by the City.

Accordingly, the JFTC issued a recommendation to the dioxin measurement and analysis firms on April 28, 1999, for violation of Section 3 of the AMA (Prohibition on unreasonable restraint of trade). (The decision was issued on May 25, 1999.)

C) Case against travel agencies that arrange school excursion

34. The JFTC found that 9 travel agencies that arrange school excursions fixed the percentage -- by which they multiply the tour cost to calculate commissions for planning and arranging such tours.

Accordingly, the JFTC issued a recommendation on June 16, 1999, for violation of Section 3 of the AMA (Prohibition on unreasonable restraint of trade). (The decision was issued on July 7, 1999)

D) Case against garbage incineration facility production and installation firms

35. The JFTC found that 5 firms, which produce and install garbage incineration facilities equipped with a stoker, had colluded to designate who would win in an open competitive tender a designated competition tender or designated estimates consultation on the construction of garbage incineration facilities ordered by municipalities.

Accordingly, the JFTC issued a recommendation on Aug. 13, 1999, for violation of Section 3 of the AMA (Prohibition on unreasonable restraint of trade). (After the five companies rejected the recommendation, the JFTC decided on Sept. 8, 1999, to initiate hearing procedures.)

E) Case against the Textbook Publishers Association

36. The JFTC found that the Textbook Publishers Association, an incorporated association comprising publishers of the Education Ministry-certified school textbooks, determined the standards of elementary, junior high and senior high school textbooks of each subject - such as the number of pages, the

ratio of colour pages and the number of foldout pages. The association examined textbooks to be published by its member companies to see if they meet the standards. When it found that textbooks did not meet the standards, it requested their publishers to revise the textbooks concerned to meet the standards, and thereby restrained its member companies' free editorial and production of textbooks.

Accordingly, the JFTC issued a recommendation on Oct. 8, 1999, for violation of Section 8-1-4 of the AMA. (The decision was issued on Nov. 2, 1999)

F) Case against petroleum product firms wholesaling and firms manufacturing and supplying petroleum products

37. The JFTC found that 12 firms wholesaling or manufacturing and supplying petroleum products had colluded to designate who would win each of the competitive tenders by the Self Defense Agency's Central Procurement Office for automobile gasoline, kerosene, light oil, Type-A heavy oil and fuels for aircraft turbines.

Accordingly, the JFTC issued a recommendation to them on Nov. 17, 1999, for violation of Section 3 of the AMA (Prohibition on unreasonable restraint of trade). (The decision was issued on Dec. 20, 1999, to eight of the firms. After three firms rejected the recommendation, the JFTC decided on Dec. 20, 1999, to initiate hearing procedures.)

G) Case against IDO

38. The JFTC found that Nippon Ido Tsushin Corp. (IDO) determined the retail prices of mobile phones with a trademark, "cdmaOne," in the Kanto district and forced sales agents to:

- 1) sell such phones at the designated prices;
- 2) and instruct their affiliates to sell such phones at the designated prices.

1. As a result, cdmaOne phones were sold mostly at these prices in the Kanto district.

Accordingly, the JFTC issued a recommendation to IDO on Dec. 9, 1999, for violation of Section 19 (12-1, -2) (The decision was issued on Dec. 22)

H) Case against Tokyo Automobile Glass Association and Autoglass East Japan

39. The JFTC found that the Tokyo Automobile Glass Association, an industry organisation of retailers of glass for repair works on domestically manufactured cars, restrained its member companies functions or activities unreasonably by deciding that its member companies must not sell imported products in principle, and that if member companies actively sold imported products and adversely affected the business activities of other members, it would request the companies to stop the sales activities.

Accordingly, the JFTC issued a recommendation to the association on Dec. 21, 1999, for violation of Section 8-1-4 of the AMA. (The decision was issued on Feb. 2, 1999)

40. The JFTC found that Autoglass East Japan, a wholesaler of glass for repair works on domestically manufactured cars, raised wholesale prices of domestic products and decreased the frequency

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of delivery of domestic products for retailers that actively dealt with imported products using advertisements.

Accordingly, the JFTC issued a recommendation to Autoglass East Japan on Dec. 21, 1999, for violation of Section 19 of the AMA. (The decision was issued on Feb. 2, 1999)

4) Litigation

41. One lawsuit applying for annulment of a JFTC decision was rejected and one such lawsuit was filed in 1999. As of December 1999, there were 3 ongoing lawsuits.

A) The lawsuit applying for annulment of a JFTC decision, which was withdrawn by the Hiroshima City Federation of Hiroshima Prefectural Association of Oil Dealers.

42. The JFTC issued a recommendation to the Hiroshima City Federation of Hiroshima Prefectural Association of Oil Dealers for collusion of raising of its member's retail prices of ordinary volatile oils. However, the Federation requested the initiation of hearing procedures. The JFTC issued a decision on June 24, 1997, after a series of hearing procedures.

In response, the Federation filed a lawsuit on June 26, applying for annulment of the decision. However, it withdrew the suit on April 9, 1999, which the JFTC accepted. As a result, the JFTC decision was finalised.

B) The lawsuit filed by the Kanonji City and Mitoyo County Medical Association

43. The JFTC, after a series of hearing procedures, issued a decision on the Kanonji City Mitoyo County Medical Association for violation of Section 8-1-3 and -4. In response, the association filed a lawsuit with the Tokyo High Court on Nov. 24, 1999, applying for annulment of the decision.

2. Mergers and Acquisitions

1) Statistics relating to Mergers and Acquisitions

44. Section 15 and 16 provide 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, the JFTC has the power to prohibit it.

In 1999, the JFTC was notified of 139 planned mergers in accordance with Section 15 of the AMA, and 186 planned acquisitions of businesses in accordance with Section 16 of the AMA.

The figures represent a sharp decline from the year before. This is mainly because the scope of mergers and acquisitions that had to be notified to the JFTC sharply reduced owing to the 1998 amendments of the AMA, which came into force in January 1999.

The Number of merger and acquisitions

	1997	1998	1999
Mergers	2,162	2,160	139
Acquisitions, etc.	1,434	1,653	186
Total	3,596	3,813	325

45. The JFTC did not take any legal measures with regard to mergers or acquisitions in 1999.

46. In Japan, prior consultations with the JFTC are common before formally submitting merger or acquisition notifications when there is a consensus of difficulties with mergers or acquisitions, due to the AMA. In these consultations the JFTC carries out thorough examinations of the mergers or acquisitions potential problems with regard to the AMA. On consultation, if the JFTC detects a problem, 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) Major merger cases -- Acquisitions of the Tobacco Operation outside the United States by Japan Tobacco Inc. from RJR Nabisco Holdings Corp.

47. Under the plan, Japan Tobacco Inc.(hereinafter referred to as JT) attempted to acquire from RJR Nabisco Holdings Corp. (hereinafter referred to as RJR Nabisco), which is the third largest tobacco company in the world and has world-famous brands such as "Salem", "Winston" and "Camel", its tobacco operation in the countries and regions (including Japan) outside the United States, which includes the stock of RJR's subsidiaries, its trademark rights, its plants etc..

48. JT has a market share of almost 80 percent in the sales market of domestic tobacco products. Furthermore, major foreign cigarette manufacturers have already entered the domestic market, and new entry by influential other influential foreign manufacturers is unlikely. Therefore, it is considered that foreign influential cigarette manufacturers that have already entered the domestic market play important roles in promoting competition in the domestic tobacco product market.

49. RJR Nabisco's share of tobacco sale in the domestic tobacco product market is a little less than 3 percent. However, because it has been gradually increasing its market share in recent years and it has several world-famous and potentially competitive brand-named products, the existence of RJR Nabisco brands in the domestic market is evaluated to promote competition in the domestic tobacco product market. Therefore, the reduction of the number of the strong competitors against JT might have substantial impact on competition in the domestic tobacco product market.

Therefore, the JFTC pointed out to the JT that the effect of the proposed acquisition might be substantial enough to restrain competition in the domestic tobacco product market.

50. In response, JT proposed to take some measures, such as not to involve itself in exportation of RJR Nabisco-brand tobacco products to Japan and not to import or sell them in Japan.

51. The JFTC deemed that if the JT implemented the measures it proposed, the RJR Nabisco-brand products would compete against JT in the domestic market and concluded that the effect of the proposed acquisition might not be substantially to restrain competition in the field of tobacco products sales.

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

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

52. When administrative bodies propose the enactment to amend economic laws and ordinances from a specific policy viewpoint, the JFTC consults with these bodies at the planning and drafting stage, if there

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is a concern that the law and the ordinances will include exemption clauses from the AMA or provisions which may restrict competition.

2. *Administrative co-ordination*

53. The JFTC co-ordinates with administrative bodies concerned as necessary when they take administrative measures and gives administrative guidance based on specific policy requirements in order to prevent guidance from causing problems concerning the AMA and competition policy.

In June 1994 the JFTC publicised the AMA guidelines concerning administrative guidance in order that guidance by administrative bodies concerned would not hinder free and fair competition or induce violation of the AMA.

Furthermore, the revised "Three-Year Programme for Promoting Deregulation" (the Cabinet decision in March 1999) says that ministries and agencies concerned are required to hold prior consultations with the JFTC to ensure that any anticompetitive administrative guidance would not substitute similar restrictive regulations. The JFTC is correctly taking the necessary action in conjunction with the ministries and agencies concerned.

3. *Reform of government regulations*

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

55. The JFTC has reviewed the government regulatory systems with regard to competition policy from mid- and long-term perspectives. Based on the recommendations of the OECD Council of 1979, the JFTC conducted an economic survey in 1982 and published its views. Furthermore, the JFTC has urged the relevant ministries and agencies to carry out reform through the adjustment of laws, ordinances and administrative actions.

The JFTC has also organised meetings of the Study Group on Government Regulations and Competition Policy made up of academics and others, and commissioned its attendees to deal with problems of government regulation and competition policy in the government regulated field.

56. Since June 1999, the study group studied how to encourage market entries and ensure fair competition between companies that have newly entered the market and companies that have long been active in the public service market on a sector-by-sector basis.

In 1999, the group studied the situation of the electricity sector and the gas sector and publicised its reports on these two sectors in November and December, 1999, respectively.

4. *The position of the JFTC after the reorganisation of central government*

57. As a part of the reorganisation of central government the Basic Law on the Reform of the Central Government Ministries and Agencies (1998 laws No. 103) was enacted based upon the final report of the Administrative Reform Council on Dec. 3, 1997.

58. The law stipulates that 1) the JFTC will be an external organ of the Ministry of the Public Management, Home Affairs, Posts and Telecommunications, 2) the JFTC will continue to be responsible for competition policy centering on antimonopoly policy, and 3) the JFTC's capacity of investigating violations should be strengthened, considering the importance of ensuring the strict implementation of the AMA.

IV. Resources of the JFTC

1) Budget amount

Trends in the budget of the Fair Trade Commission (unit: 100 million Yen/%)

Fiscal Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Budget of the JFTC	37.6	40.8	44.1	46.2	52.4	52.4	53.8	55.6	56.2	57.8
Budget amount (\100 million)										
-change over previous years (%)	6.7	8.6	7.9	4.9	13.4	•0.1	2.7	3.3	1.1	2.8
General Expenditures Budget –change over previous years (%)	3.8	4.7	4.5	3.1	2.3	3.1	2.4	1.5	•1.3	5.3

(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 minus National Debt Service and Local Allocation Tax Grants.

2) The number of officials

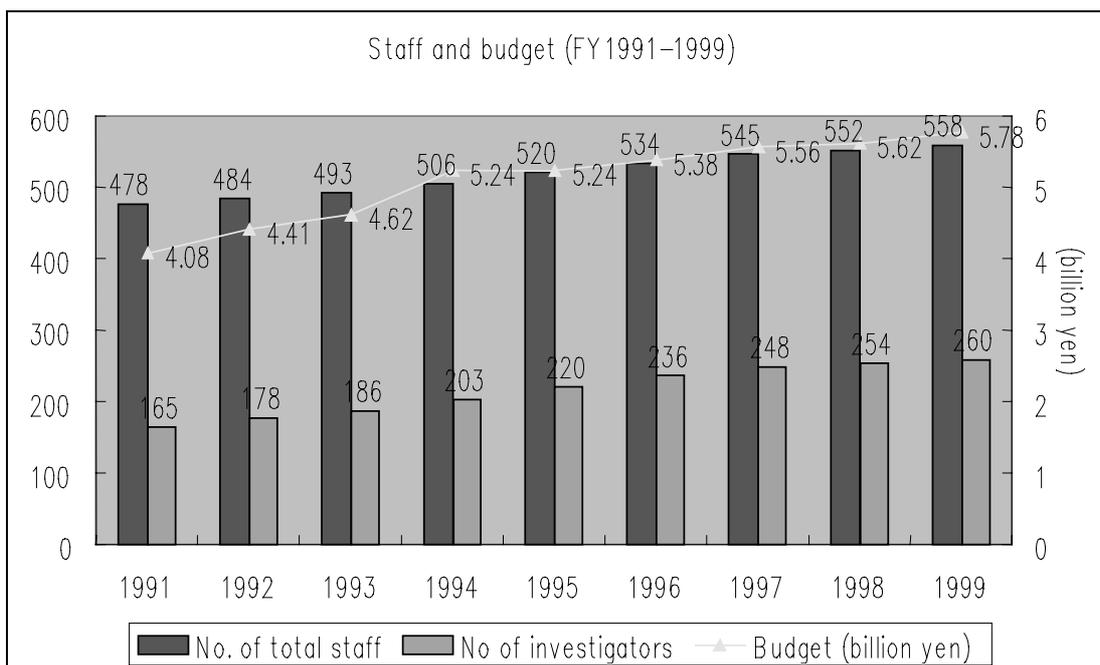
Trends in the number of officials in the General Secretariat of the Fair Trade Commission (unit: persons) are shown below

Fiscal Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Number of officials	474	478	484	493	506	520	534	545	552	558
Enforcement against anticompetitive practices	154	165	178	186	203	220	236	248	254	260
Merger review enforcement	18	19	18	19	18	18	18	18	19	19
Advocacy efforts	16	15	15	15	15	14	23	23	23	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.

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V. Surveys related to competition policy

1) A report on the survey of the distribution of flat glass

59. After publicising a report on the survey of the situation of business to business transactions in the flat glass distribution in June 1993 (hereinafter referred to as "1993 survey"), the JFTC conducted two follow-up surveys to what extent the problems pointed out in the report have been addressed. The JFTC subsequently conducted another survey on the situation of changes in transactions among companies in flat glass brought about by addressing the problems and the situation of the competition between domestic and foreign companies in the flat glass market, and issued a report on the survey on May 20, 1999.

60. The situation of transactions among flat glass companies has greatly changed because domestic makers have addressed the problems that were pointed out in the report on the 1993 survey. Domestic manufactures have no exclusive contracts with their agents and there are no systematic problems that adversely affect the interest of agents that deal with other companies' products. Therefore, the flat glass market has been increasingly open.

61. The JFTC explained to three domestic manufacturers its interpretation of the AMA with regard to 1) restraint of trade with competitors by lowering prices to counter discounts by the competitors, 2) exclusive activities by means of or in reason of holding the stock of trading partners 3) discriminatory treatment in deposits. The JFTC requested that care be exercised to prevent violations, and attention be given to the evaluation from the perspective competition policy regarding (1) the cutting center in working out programs aimed at abiding by (2) the AMA.

2) *A report on the survey of the international telecommunication business*

62. In the international telecommunication market there has been a number of new entries, the competition has been intensified and the environment for competition is dramatically changing because of a sharp increase in demand for telecommunications services, deregulation and technological innovation. Under such circumstances, the JFTC conducted a survey on the situation of the international telecommunications business to grasp the current situation of the market and contribute to the promotion of competition. The findings were released to public in November 1999.

63. The international telecommunication market is relatively competitive as newcomers have entered the market one after another, and consumers are benefiting from lower charges and improvements in the quality of services. Deregulation is going on in the sector as regulations, particularly those peculiar to the telecommunication sector - such as International Simple Resale(Ko-Sen-Ko)• and the 100-Destination Rule - have been abolished.

64. In light of competition policy, it is important to take necessary measures to improve the basis for competition, such as rules on interconnection, and to ensure transparency by clarifying and simplifying the regulatory systems and their enforcement that need to be maintained. Besides these, it is important to promote further deregulation and promote competition among telecommunication service providers.

65. Based on the above-mentioned philosophy, the JFTC will continue to pay close attention to the progress in deregulation and the situation of competition in the international telecommunications sector, and strictly enforce against violations of the AMA.

3) The situation of the competition between three major airlines and two newcomers in the domestic airline market

66. Deregulation is going on in the domestic scheduled service air transportation of passengers (hereinafter referred to as domestic airline sector) with regard to market entry and fare systems as the needs of air travellers have diversified and the airline industry has grown. Amid these trends, Skymark Airlines and Hokkaido International Airlines (hereinafter referred to as two new airlines) entered the domestic airline sector market in September and December, 1998, respectively, causing air fares -- mainly those on the routes where these two new airlines started flights -- to decline. In other words, the two new airlines' entry into the domestic airline sector has contributed to the promotion of competition in the market.

67. The JFTC conducted a survey on the impacts that the entry by the two new airlines has had on the domestic airline market, and examined problems in light of the AMA and competition policy, and published its results on Dec. 14, 1999. The summary of the survey results is as follows:

1) *Entry into the domestic airline sector by the two new airlines and their impacts on competition.*

68. The entry into the domestic airline sector by the two new airlines has caused the air fares to further decline and the flight schedules to become increasingly convenient. Their market entry has had positive effects on competition in the domestic airline market.

2) *Slots at airports*

69. The two new airlines are not competing with the three major airlines on the level playing field in terms of the frequency of flights. This point should be taken into consideration in distributing slots at airports in order to ensure fair and free competition in the market.

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3) *Three major airlines' discount their airline fares to counter lower fares of the two new airlines*

70. The three major airlines' discount of their airline fares to counter lower fare offers by the two new airlines does not immediately constitute violation of the AMA. However, the three major airlines set the air fares to the same level as those of the two new airlines only in the time zones when they face competition from the new airlines. Such a discount could force the two new airlines out of the market. It is hoped that the three major airlines will exercise prudence in setting air fares in routes where they face competition from the two new airlines, until the new airlines are able to compete equally with them, in order to ensure fair and free competition.

4) *Servicing*

71. Even if the major airlines refuse to be commissioned to service aircraft of the two new airlines, it does not immediately constitute violation of the AMA since private companies are assured freedom to select business partners. In order to ensure fair and free competition, however, it is desirable that the three major airlines do not refuse to be commissioned to service aircraft that the two new airlines cannot service on their own over a certain period -- where possible under certain terms.

5) *Use of airport terminal buildings*

72. It is assumed that airport terminal building management companies and the three major airlines have not violated the AMA in allocating space to the two new airlines for the installation of their check-in counters.

However, as terminal building facilities had not been used on the assumption that new airlines would enter the market, it is desirable that airport terminal building management companies create transparent rules on the use of facilities at airport terminal building and enforce the rules in a fair manner.

4. Regulations and tender systems of municipalities from the viewpoint of competition policy

73. Considering these circumstances,

Regulations and tender systems of municipalities are now being agreed more seriously than ever as they are playing an increasingly important role because of progress in deregulation and decentralisation. In addition the "New Three-Year Program for the Promoting Deregulation" (the Cabinet's decision in March 1999) calls for the JFTC to conduct surveys on the situation of regulations on market entry enforced by municipalities from the viewpoint of competition policy, issue necessary recommendations and co-ordinate policies with the relevant administrative agencies. The JFTC conducted a survey on regulations, tender systems and contract procedures and examined problems involving them from the viewpoint of competition policy of municipalities.

74. As a result of the survey, the JFTC found the following cases that were highly questionable from the viewpoint of competition policy,

- 1) as a result of added conditions for authorisation of undertaking that are not required under relevant laws, market entry in the sectors concerned could be prevented,
- 2) as a result of placing all the orders in a certain sector exclusively with a certain trade association, it has been difficult for outsiders to win contracts from them,
- 3) the designated participants in the competitive tenders are limited to the companies affiliated with a particular trade association only,

- 4) enforcing a procurement policy which gives priority to local businesses that may prevent a contract winner from free choice of its procurement sources.

75. It goes without saying that the independence of municipalities in their administrative activities must be respected to the maximum. However, it is more necessary than ever for them to be consistent with their administrative activities and competition policy. The JFTC hopes that they will sufficiently utilise its AMA guidelines with regard to administrative guidance to prevent their administrative guidance from running counter to competition policy.

Annex I.

THE OUTLINE OF THE LAW REVISIONS

1. The introduction of an injunctive relief system against AMA violations

1) *The right of demanding an injunction (Section 24 of the revised act)*

Any consumers and businesses, who has suffered or is likely to suffer serious damages by the AMA violations (relating to unfair trading practices) can file a lawsuit with a court demanding an injunction of the violations.

(2) *The system to seek opinions (Section 83-3 of the revised act)*

When an injunction suit is filed with a court, the court must inform the JFTC of the suit and can seek opinions from the JFTC with respect to the application of the AMA and so on. The JFTC will state its opinions on the application for the AMA for the case and other necessity with the permission of the court.

(3) *Jurisdiction of courts and transfer of suits to another court (Section 84-2 and Section 87-2 of the revised act)*

In accordance with the principles of the Code of Civil Procedure, such a suit can be filed with a district court that has jurisdiction over the area where the plaintiffs suffer damages from AMA violations (relating to unfair trade practices). Such a suit can also be filed with and any of the district courts located where high courts are located the Tokyo District Court. A court trying such a suit can transfer the case to one of the above-mentioned courts if the court deems it necessary.

(4) *Order to offer deposits (Section 83-2 of the revised act)*

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

2. The improvement in the civil remedy system to AMA violations

Adding some types of violations (Section 25)

Under Section 25 of the current AMA, an entrepreneur that enters into private monopolisation or unreasonably restrains trade, or employs unfair trade practices is liable for damage compensation without fault. A trade association that commits an act that constitutes violation of Section 8-1 of the AMA and an entrepreneur that enter into particular international agreements or contracts, which constitutes violation of Section 6 of the AMA will be subject to liabilities without fault under the revised act..

3. Others

The revised provisions will come into force on the date that a government ordinance designates within six months from Jan. 6, 2001.

Appendix

Surveys and reports relating to competition policy published in 1999

March

A report on the survey of price lists compiled by constructors' associations
 A report on consultations concerning business activities of entrepreneurs

May

- The JFTC's activities against unfair trade practices in deregulated markets
- A report on the survey of the distribution of flat glass
- A report on consultations by entrepreneurs and trade associations over Y2K problems

June

- A report on the survey of the situation of trade practices in the liquefied petroleum gas sales business
- Regulations and tender systems of municipalities in light of competition policy
- Survey on the sales' situations of cosmetics sold with counselling
- A report on consultation concerning the activities of trade associations in 1998(FY)

July

- A report on the survey of transactions between large-scale retailers and suppliers
- (A report on) the survey of the use for multiple purposes of public utility facilities that are expected to contribute to forming a network.

August

- A report on the survey of the situations of representation in advertisements of securities trust funds.

November

- A report on the survey premiums offered by newspaper salesmen at the time of subscription solicitation based on finding survey of consumer monitors
- A report on the survey of the situation of international telecommunication businesses
- JFTC's activities against unfair trade practices in deregulated markets.

December

- The situation of the competition between three major airlines and two newcomers in the domestic regular air passenger transportation sector
- A report regarding efforts to improve distribution and trade practices in related industries under the resale price maintenance exemption system for copyright works.