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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN JAPAN

-- 2009 --

This report is submitted by Japan to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 October 2010.

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1. Changes regarding competition laws and policies – Outline of new regulations in competition laws and related legislation

1.1 Efforts toward the amendment of the Antimonopoly Act

1.1.1 The amended Antimonopoly Act (2009)

1.1.1.1 Background to the approval of the bill to amend the Antimonopoly Act (“AMA”)

1. The bill to amend the Antimonopoly Act was submitted to the 171th ordinary session of the Diet on February 27, 2009. The bill passed the House of Representatives on April 27, 2009, and the House of Councilors on June 3, 2009, and was approved on the same day. The amendatory act was promulgated on June 10, 2009, and put into force on January 1, 2010.

1.1.1.2 Major points of the amendment to the Antimonopoly Act

2. The major points of the amendment are as follows:

- Review of the surcharge system

A surcharge system will be introduced against the exclusionary type of private monopolization. The amount of surcharge shall be the amount obtained by multiplying the sales of the goods or services concerned by six hundredths (two hundredths for retailers and one hundredth for wholesalers).

An entrepreneur that repeatedly commits violations in the form of concerted refusal to trade, discriminatory pricing, unjust low price sales, or resale price restriction shall be subject to the surcharge system. The amount of surcharge shall be the amount obtained by multiplying the sales of the goods or services resulting from the pertinent violation by three hundredths (two hundredths for retailers and one hundredth for wholesalers).

An entrepreneur that continues to abuse its superior bargaining position shall be subject to the surcharge system. The amount of surcharge shall be the amount obtained by multiplying the amount of the pertinent violating transaction with its counterparty by one hundredth.

- Review of the surcharge rate for unreasonable restraint of trade

A system will be introduced whereby an entrepreneur that plays a leading role in a violation shall be subject to an increased surcharge rate of fifteen hundredths of the pertinent sales (4.5 hundredths for retailers and three hundredths for wholesalers).

- Review of the Leniency Program

To encourage violators to provide further information for the JFTC’s fact-finding investigations on violations, the number of leniency applicants will be expanded to a maximum of five for each violation. In addition, two or more violators within the same company group will be permitted to jointly file an application for surcharge reduction or immunity.

- Extension of the Statute of Limitations for Administrative Orders

The statute of limitations applicable to cease and desist orders and surcharge payment orders will be extended from the current 3 years to 5 years.

- Revision of the Notification and Reporting System stipulated in Chapter 4 of the AMA

A prior notification system for share acquisitions will be introduced and the notification thresholds for share acquisitions will be reviewed.

The scope of notification thresholds for mergers, demergers, or acquisitions of businesses will be revised and the scope of the exemption will be expanded.

Substantive provisions and notification provisions will be introduced for joint share transfers.

- Special provisions concerning Document Production Orders

Special provisions concerning document production orders will be introduced to facilitate remedies in litigation relating to the suspension or prevention of infringement by means of unfair trade practices.

- Review of the Penal Provision

The maximum jail term for unreasonable restraint of trade, etc., will be increased from the current 3 years to 5 years.

1.1.2 The Antimonopoly Act Amendment Bill (2010)

- Submission of the Antimonopoly Act Amendment Bill to the Diet

The bill to amend the Antimonopoly Act, which contains the abolition of the JFTC's hearing procedure and necessary revisions to develop procedures for hearings prior to the issue of the JFTC's administrative orders, such as cease and desist orders, etc., was submitted to the 174th ordinary session of the Diet on March 12, 2010.

- Major points of the Antimonopoly Act Amendment Bill

The JFTC's hearing procedure for administrative appeal will be abolished and the provision which stipulates that the jurisdiction of the first instance over any appeal suits pertaining to decisions of the JFTC shall lie in the Tokyo High Court will also be abolished.

With a view to ensuring the expertise of the court, any appeal suits pertaining to cease and desist orders, etc., shall be subject to the exclusive jurisdiction of the Tokyo District Court, and any trials and judgments at the Tokyo District Court will be made by a panel of three or five judges.

With a view to ensuring due process, provisions for providing the recipients with an explanation of the content of anticipated cease and desist orders, etc., and inspection and copy of evidence in the procedures for hearing prior to issuing cease and desist orders, etc., will be prepared.

1.2 Publication of the Guidelines for Exclusionary Private Monopolization under the Antimonopoly Act

3. Because surcharges against exclusionary private monopolization were introduced by the amended AMA of 2009, the JFTC formulated and published the Guidelines for Exclusionary Private Monopolization under the Antimonopoly Act on October 28, 2009, in order to ensure the transparency of the JFTC's enforcement and enhance the predictability for businesses by clarifying the JFTC's interpretation of the requirements that constitute exclusionary private monopolization.

4. The Guidelines clarify the following:

- The general matters that the JFTC is to consider when determining whether to give priority to investigating a particular case as exclusionary private monopolization
- The types of major conduct that tend to be deemed problematic as “exclusionary conduct” and the framework for deliberations and factors applied for assessing whether or not it falls under exclusionary conduct for each type
- The factors to be considered for defining a particular field of trade and determining the presence or absence of a substantial restraint of competition in a particular field of trade when assessment is made over whether exclusionary conduct has substantially restrained competition in the particular field of trade

1.3 Publication of the Guidelines Concerning Unjust Low Price Sales under the Antimonopoly Act

5. In accordance with the enforcement of the amended AMA of 2009, which includes the introduction of surcharges against unjust low price sales, the JFTC amended and published the Guidelines Concerning Unjust Low Price Sales under the Antimonopoly Act on December 18, 2009, to ensure the transparency of the JFTC’s enforcement and enhance the predictability for businesses by clarifying the JFTC’s interpretation of the requirements that constitute unjust low price sales.

6. The main features of the amendments are the following:

- Clarified and generalized the JFTC’s views on unjust low price sales under the Antimonopoly Act, by particularly focusing on “a consideration which is excessively below the costs required for the supply” among the statutory requirements of unjust low price sales which apply to businesses not limited to retail trade as before.
- Clarified a price which is lower than the cost that would not be generated unless the price-cut goods were supplied (hereinafter referred to as “variable-featured costs”) is presumed to be “a consideration which is excessively below the costs required for the supply”.
- Showed the measure for “the variable-featured cost” and introduced the examples of “the variable-featured cost” or the cost which is presumed to be “the variable-featured cost”.
- Clarified the basic viewpoints for “Discriminatory Consideration, Discriminatory Treatment on Trade Terms, etc.,” which are the regulations under the Antimonopoly Act that deal with the price cutting issue regulations (other than unjust low sales).

1.4 Bilateral cooperation agreements

1.4.1 Signing of “Agreement on Free Trade and Economic Partnership between Japan and the Swiss Confederation”

7. The Government of Japan and the Swiss Confederation signed the Agreement on Free Trade and Economic Partnership between Japan and the Swiss Confederation in February 2009. The Agreement came into effect in September 2009. It has a chapter dedicated to competition, which stipulates that each country must take measures it considers appropriate against anti-competitive activities and shall cooperate in the field of notification to the other party, cooperation, information exchange and coordination regarding enforcement activities, requests of enforcement activities, and consideration of the other party’s important interests in enforcement activity.

1.4.2 *Other moves toward agreements*

8. The Japanese government is continuing discussions on competition policies with Australia, Peru, etc., in negotiations for economic partnership agreements (EPAs).

2. Enforcement of competition laws and policies

2.1 Measures against violations

2.1.1 Measures taken in 2009

9. Under the AMA, the JFTC conducts necessary investigations based on Article 47. If it finds any violation, the JFTC notifies the person who is to be the addressee of the cease and desist order of such matters as the expected content of the order (Paragraph 5 of Article 49) and gives the person an opportunity to express an opinion and to submit evidence (Paragraph 3 of Article 49) before issuing the cease and desist order in consideration of the opinion and evidence. Even if the JFTC does not have enough evidence to take legal measures, when it identifies any suspicions of violations of the AMA, it issues warnings and instructs the parties concerned to take measures. In addition, the JFTC issues cautions as a means of preventing such violations when it does not have enough evidence to specifically identify a violation of the AMA, but is only able to recognize certain conduct that could lead to violations.

10. Out of 104 examinations concluded by the JFTC in 2009, it took legal measures in 24 cases (cease and desist orders in 24 cases and a surcharge payment order without a cease and desist order in 0 case). The JFTC also issued warnings in 10 cases in which it identified suspicions of violations of the AMA, issued cautions in 66 cases, and terminated examinations in 4 cases in which it was unable to uncover evidence of illegal conduct.

- Legal measures

The JFTC has been especially engaged in continuous efforts to eliminate bid rigging. In 2009, 9 of the JFTC's legal measures were carried out against bid rigging.

– Bid rigging	9
– Price cartels, etc. (excluding bid rigging)	9
– Unfair trade practices	5
– Private monopolization	1

- Surcharge payment orders

Surcharges are applied to those entrepreneurs carrying out unreasonable restraint of trade (cartels, bid rigging, etc.), private monopolization (exclusion type and control type) and certain types of unfair trade practices (refusal to deal, discriminatory pricing, unjust low price sales, resale price restriction, and abuse of superior bargaining position).

The sum of surcharges is calculated on the basis of the sales amounts or purchase amounts of the products or services in question during the period of violations (3 years at a maximum) by multiplying such amounts by calculation rates as determined according to operation scales and business categories.

In 2009, the JFTC issued surcharge payment orders to 89 enterprises totaling 54,321.81 million yen (all surcharge payment orders were based on the system before 2009).

- Criminal accusations

The JFTC has adopted a policy of filing criminal accusations to actively seek criminal penalties on violations that a) substantially restrain competition in a particular field of trade, including price cartels, supply restraint cartels, market allocation agreements, bid rigging, boycotts and private monopolization, which constitute serious cases that are likely to have a widespread influence on the national economy; or b) involve firms or industries that are repeat offenders or which do not take appropriate measures to eliminate a violation, and for which the administrative measures of the JFTC are not considered sufficient to meet the aims of the AMA.

In 2009, no criminal accusation was filed by the JFTC.

- Hearing procedures

The JFTC initiated hearing procedures on 32 cases in 2009. As of the end of December 2009, the JFTC was conducting ongoing hearing procedures for 61 cases, of which 16 concerned allegations of violations of the AMA, 35 concerned surcharge payment orders and 10 concerned allegations of violations of the Premiums and Representations Act.

The JFTC issued decisions on 26 cases in 2009 following hearing procedures and issued decisions on 3 cases in 2009 that did not follow hearing procedures.

2.1.2 *Summary of main cases*¹

- Case against the Society for the Rights of Authors, Composers and Publishers

In calculating royalties for broadcasting, etc., collected from the broadcasters by the comprehensive collection method (the method to grant licenses of managed music works as a whole associated with broadcasting, etc., to the broadcasters and calculate and collect the royalties for broadcasting, etc., in a comprehensive manner), the Society for the Rights of Authors, Composers and Publishers adopted a method where the percentage of use for broadcasting, etc., is not reflected in the royalties and is therefore excluded in the business activities of other management business operators.

Given the above findings of fact, the Japan Fair Trade Commission issued a cease and desist order on February 27, 2009, because such an act is in violation of Article 3 of the Antimonopoly Act (“Prohibition of Private Monopolization”).

- Case against Air Freight Forwarders

On air freight charges and fees of the international air freight forwarding business, companies engaged in such business concluded agreements to newly charge consignors and/or consignees (hereinafter referred to as “shippers”) fuel surcharges for shippers, certain amounts of AMS charges, security charges, and explosive inspection charges.

Given the above findings of fact, the Japan Fair Trade Commission issued cease and desist orders and surcharge payment orders on March 18, 2009, because such an act is in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”).

¹ All cases were based on the system before 2009.

- Case against a franchisor

Under a scheme where the amount equivalent to the costs of the disposed goods at the franchisees' stores is entirely borne by the franchisees, the franchisor forces some franchisees, which practice or intend to practice discount sales of daily goods among recommended goods, to stop such discount sales.

Given the above findings of fact, the Japan Fair Trade Commission issued a cease and desist order on June 22, 2009, because such an act is in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 14 "Abuse of Superior Bargaining Position" of the Designation of Unfair Trade Practice).

- Case against Participants in the Bidding for Vehicle Management Jobs Ordered by the Ministry of Land, Infrastructure, Transport and Tourism

For vehicle management jobs ordered by the Ministry of Land, Infrastructure, Transport and Tourism through the methods of generalized competitive bidding or designated competitive bidding, the participants in the bidding made agreements with each other to select a planned successful bidder and treat such bidders as the planned contractor, and those other than the planned contractor managed to have such a planned contractor successfully receive the order.

Given the above findings of fact, the Japan Fair Trade Commission issued cease and desist orders and surcharge payment orders on June 23, 2009, because such an act is in violation of Article 3 of the Antimonopoly Act ("Prohibition of unreasonable restraint of trade").

In addition, as involvement in the bid rigging by employees of the Ministry of Land, Infrastructure, Transport and Tourism was discovered in relation to the above violations, the JFTC issued a demand for improvement measures in accordance with the provisions of the Act on Elimination and Prevention of Involvement in Bid Rigging, etc.

- Case against a Manufacturer and Seller of Semiconductor Integrated Circuits

In concluding agreements of granting licenses, etc., for intellectual property rights relating to CDMA wireless telecommunications belonging to or being owned by a manufacturer and seller of semiconductor integrated circuits with Japanese manufacturers of subscriber units or base stations, the corporation coerced the Japanese manufacturers to conclude an agreement which includes granting a royalty-free license for their intellectual property rights and agreeing not to assert their intellectual property rights.

Given the above findings of fact, the Japan Fair Trade Commission issued a cease and desist order on September 28, 2009, because such an act is in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 13 [Trading on Restrictive Terms] of the Designation of Unfair Trade Practices).

- Case against Manufacturers of Cathode Ray Tubes for Televisions

Regarding cathode ray tubes for televisions, which Japanese manufacturing and sales companies of CRT televisions have their overseas manufacturing subsidiaries, etc., purchase, the manufacturers of cathode ray tubes for televisions formed an agreement to set, on an approximately quarterly bases, minimum target prices and the like that each of them should abide by and that should be applied to the selling prices for such overseas manufacturing subsidiaries, etc., for the following quarter.

Given the above findings of fact, the Japan Fair Trade Commission issued cease and desist orders and surcharge payment orders on October 7, 2009, because such an act is in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”).

- Case against an Agricultural Cooperative

By requesting registered shippers to both A, a direct sales store of agricultural products operated by another undertaking, and B, another direct sales store run by the cooperative itself to ship no agricultural products for direct sales to B if they ship such products to A, the agricultural cooperative deterred B’s registered shippers from shipping agricultural products to A.

Given the above findings of fact, the Japan Fair Trade Commission issued a cease and desist order on December 10, 2009, because such an act is in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 13 [Trading on Restrictive Terms] of the Designation of Unfair Trade Practices).

2.1.3 *Litigation*

- Lawsuits seeking to overturn a JFTC decision

Regarding lawsuits seeking to overturn JFTC decisions, 10 court decisions were made in 2009 (including the decisions that were given for sections of the same case). Meanwhile, 7 new lawsuits were filed. As of the end of December 2009 there were 16 pending lawsuits.

- Lawsuits seeking injunction based on Article 24 of the Antimonopoly Act

Throughout 2009, 1 new lawsuit was filed based on Article 24 of the AMA. As of the end of December 2009, there were 7 pending lawsuits.

- Lawsuits seeking compensation for damages based on Article 25 of the Antimonopoly Act

Throughout 2009, 2 new lawsuits were filed based on Article 25 of the AMA. As of the end of December 2009, there were 19 pending lawsuits.

2.2 *Mergers and acquisitions*

2.2.1 *Efforts to make progress on the transparency and predictability of mergers and acquisitions regulations*

11. The JFTC is taking action to further enhance the transparency and predictability of the review, such as publishing details of the review on some cases among those in which notification has been accepted or prior consultation has been made and which are thought to be helpful as a reference to businesses planning business combinations.

2.2.2 *Statistics relating to mergers and acquisitions*

12. Based on the provisions of Article 15, Article 15-2 and Article 16 of the AMA, mergers, demergers, and business acquisitions of a certain size in Japan must be notified to the JFTC prior to the transactions and based on Article 10 of the AMA, stockholdings of a certain size must be reported after the transactions². The JFTC conducts reviews of notified or reported cases, and when it determines that a transaction may be to substantially restrain competition in a particular field of trade, the JFTC has the

² As described above, the prior notification system for share acquisitions was introduced by the amended Antimonopoly Act of 2009 on January 1, 2010.

power to take measures, including the prohibition of the said transaction. Throughout 2009, 63 mergers were notified based on the provisions of Article 15, 19 demergers were notified based on the provisions of Article 15-2, 105 cases of business acquisitions were notified based on the provisions of Article 16 and 795 stockholdings were reported to the JFTC based on the provisions of Article 10 of the AMA. None of the stockholding, merger, demerger, or business acquisition cases notified and reported in 2009 were cases in which the JFTC took any legal measures.

Number of reports concerning stockholdings, company mergers, demergers, and business acquisitions

	2007	2008	2009
Stockholdings	1,055	927	795
Mergers	70	65	63
Demergers	31	22	19
Business acquisitions	105	104	105
Total	1,261	1,118	982

2.2.3 Main mergers and acquisitions cases

13. Merger of NEC Electronics Corporation and Renesas Technology Corporation

- Outline of the Case

This case relates to a merger between two undertakings engaging in the manufacture and sale of semiconductors, NEC Electronics Corporation (hereinafter referred to as “NECEL”) and Renesas Technology Corporation (hereinafter referred to as “Renesas”). The relevant provision is Article 15 of the Antimonopoly Act.

- A particular field of trade

- Product Range

Memories, microcomputers, application specific integrated circuits (ASICs), application specific standard products (ASSPs), logic integrated circuits (ICs), and discrete semiconductors are each used in different applications due to differences in performance and price. Given that substitutability is not observed among them, ten fields of trade in terms of product range are defined for the products in which the companies concerned with this case compete.

- Geographic Range

Major semiconductor manufacturers dealing with static random access memories (SRAMs), micro-processing units (MCUs), liquid crystal display (LCD) drivers, transistors, and thyristors have production facilities, as well as facilities for sales and technical support services around the world, to enable the supply of their semiconductors to different regions. For all semiconductors, there are no price differences among the areas around the world where they are marketed. The cost of transporting semiconductors is very low. Manufacturers see no gap in transport costs and face no tariff barriers.

In these circumstances, users can easily procure semiconductors from semiconductor manufacturers across the globe. Irrespective of where they are based, most major users purchase semiconductors in large quantities from manufacturers in different parts of the world. In fact, most of the major users of SRAMs, MCUs, LCD drivers, and discrete semiconductors manufactured by the parties in this case purchase the products from several manufacturers around the world.

For these reasons, the geographical range for the five items, specifically SRAMs, MCUs, LCD drivers, transistors, and thyristors is defined as worldwide.

With respect to the five items other than these five items among those specified in a) above (namely, MPUs, ASICs/ASSPs, ASICs/ASSPs and MCUs, ASICs/ASSPs, MPUs and MCUs, and diodes), the geographical range can similarly be defined as worldwide given that Japanese manufacturers, including the companies concerned, deal not only with domestic users but with users worldwide. However, regardless of whether the geographical range is defined as Japan or the world, the level of the Herfindahl-Hirschman Index (HHI) after the transaction in this case and the increment of HHI by the transaction meet the safe harbor criteria for horizontal business combinations. Hence, without the need to define the geographic range for the five items, i.e. MPUs, ASICs/ASSPs, ASICs/ASSPs and MCUs, ASICs/ASSPs, MPUs and MCUs, and diodes, the effect of the business combination may not be to substantially restrain competition in any particular field of trade for these five items.

- Impact of the business combination on competition

The impact of the business combination on competition of the five items, i.e. SRAMs, MCUs, LCD drivers, transistors, and thyristors, defined as forming particular fields of trade in B) a) above, will now be assessed as below.

- MCUs, LCD drivers, transistors, and thyristors

With respect to the four items of MCUs, LCD drivers, transistors, and thyristors, the HHI level after the transaction in this case and the increment of HHI by the transaction meet the safe harbor criteria for horizontal business combination. Therefore it is deemed that the effect of the business combination may not be to substantially restrain competition in any particular field of trade for these items.

- SRAMs

Market share: As of 2008, the worldwide SRAM market was worth approximately 130 billion yen. The combined market share of the companies concerned after the business combination in this case will be around 30% and ranked at the top. The HHI level after the business combination will be about 2,000 and the increment of HHI will be around 400. They fail to meet the safe harbor criteria for horizontal business combination. In 2008, the companies concerned had a combined market share of approximately 50% in the SRAM market in Japan and was ranked at the top.

Situation of competitors: There exist several powerful competitors that each holds a market share exceeding 10%.

Market entry: Fabless manufacturers, which are engaged exclusively in product development and sales without owning their production facilities, are characterized as bearing limited fixed cost burdens because it is unnecessary for them to make excessive capital investment in production machinery to sell new types of semiconductors. This means that it is easy for fabless manufacturers to enter the markets for SRAMs and other items. Although semiconductors have semi-permanent product life spans, their marketing period is short because of the limited lifecycle of final products. Semiconductor manufacturers are actively engaged in technical development for miniaturization, higher speed, lower power consumption, higher-density implementation, and shorter production lead times. It is therefore recognized that a certain degree of entry pressure exists.

Competitive pressure from related markets: As the processing speed of dynamic random access memories (DRAMs) is now increasing, the gap with SRAMs in processing speed is becoming smaller. Especially in the case of memories for mobile phones, SRAMs with low power consumption were used as a means of temporary data storage for using programs such as communication control, gaming, etc., for the purpose of ensuring a long standby duration. However, functionally and technically advanced DRAMs are now being increasingly used in place of SRAMs, given that the memory is required to provide a larger storage capacity as mobile phones deal with increasing volumes of data, that a greater focus is placed on low prices (and the price of a DRAM is about one-third or a quarter of that of a SRAM) and that the standby duration is extended after an improvement of battery performance. It is therefore recognized that there exists some competitive pressure from related markets.

Competitive pressure from users: Principal users of SRAMs, such as leading computer manufacturers and electronics manufacturers, make purchases from a number of manufacturers to ensure stable procurement and their bargaining power in price negotiations. As there is little quality difference in semiconductors among manufacturers, users can easily change their suppliers. They reconsider their suppliers on the occasion of remodeling their products. It is therefore recognized that there exists some competitive pressure from users.

Assessment under the Antimonopoly Act: In view of the circumstances stated in ii) to v) above, the effect of the business combination may not be to substantially restrain competition in any particular field of trade by unilateral conduct of the companies concerned or by coordinated conduct by the companies concerned and any other competitors.

- Conclusion

In view of the circumstances reviewed above, it is judged that the effect of the concerned business combination may not be to substantially restrain competition in any particular field of trade.

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

3.1 Coordination between the Antimonopoly Act and other economic laws and ordinances

14. When administrative bodies propose to enact or amend an economic law or ordinance from the standpoint of a specific policy requirement, the JFTC acts in consultation with these bodies to ensure coordination among the proposed provisions, the AMA, and competition policy. In 2009, as in previous years, the JFTC acted in consultation with other administrative agencies and submitted the JFTC's opinions.

3.2 The Actual State of Competition over Import and Export of International Air Cargo: Centered on Bonded Sheds and the Customs Brokerage Business (published in April 2009)

15. Amid the massive changes in circumstances surrounding international air cargo transport, the JFTC, focusing on the import and export of international air cargo at international hub airports and the equivalents, carried out interviews and a questionnaire with relevant business operators, chiefly with businesses of bonded sheds and customs brokers in airports, on the subject of public regulations that apply to them and private business practices in these sectors, and analyzed the results from the viewpoint of competition policy. As part of this process, study group meetings on governmental regulations and competition policies were held beginning in December 2008. At the meetings, the survey findings were presented and members' views were heard on key points of competition policy concerning the import and export of international air cargo at international hub airports and equivalent facilities. Taking into account the deliberations at workshops, the JFTC compiled the survey findings into a report titled "The Actual State of Competition over Import and Export of International Air Cargo: Centered on Bonded Sheds and the Customs Brokerage Business" and published it on April 17, 2009.

16. The report made recommendations on the following matters for encouraging fair and free competition in the area of international air cargo transport.

- Provision of equal footing for the use of air cargo sheds
- Provision of equal footing for the allocation of sheds
 - Ensuring transparency and fairness
 - Revision of allocation of sheds and relocation of sheds
- Provision of equal footing when the airport administrator is linked with the shed business
 - When the airport administrator engages in the shed business
 - When shed operators hold a stake in the airport administrator
- Regulations on the customs brokerage business
 - Provisions on demand-supply coordination relating to authorization of customs brokers and installation of business offices
 - Restrictions on service coverage areas of customs brokers
 - Regulations on charging

4. Japan Fair Trade Commission resources (FY 2009)

4.1 Budget (unit: \ billion and %)

17. The budget of the Fair Trade Commission is as follows (unit: billion yen, %):

Fiscal Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Budget amount (\ billion)	6.04	6.16	7.85	7.82	8.13	8.34	8.42	8.68	8.45
Change over previous year (%)	2.3	2.0	2.2	△0.4	4.0	2.5	0.9	3.2	△2.7
General Expenditures Budget: change over previous year (%)	1.2	△2.3	0.1	0.1	△0.7	△1.9	1.3	0.7	9.4

(Notes)

¹ The General Expenditures Budget refers to the total budget of the Japanese government and is the amount of General Account Budget Expenditures less National Debt Service and Local Allocation Tax Grants.

² The rate of increase for the JFTC budget of FY 2003 is compared to the post-reclassification budget (7.69 billion yen) in order to avoid the effects of an increase in personnel expenses, which required an independent calculation, in line with the JFTC's transfer to the Cabinet Office.

4.2 Number of officials

18. The number of officials in the General Secretariat of the JFTC is as follows (unit: persons).

19. Out of 779 officials in 2009, there were 35 economists, 64 lawyers, 619 other professionals, and 61 support staff.

Fiscal Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of officials	571	607	643	672	706	737	765	795	779
Enforcement against anti-competitive practices	269	294	318	331	360	383	409	438	442
Merger review enforcement	22	28	30	32	32	35	36	36	36
Advocacy efforts	22	25	30	30	37	36	34	35	35

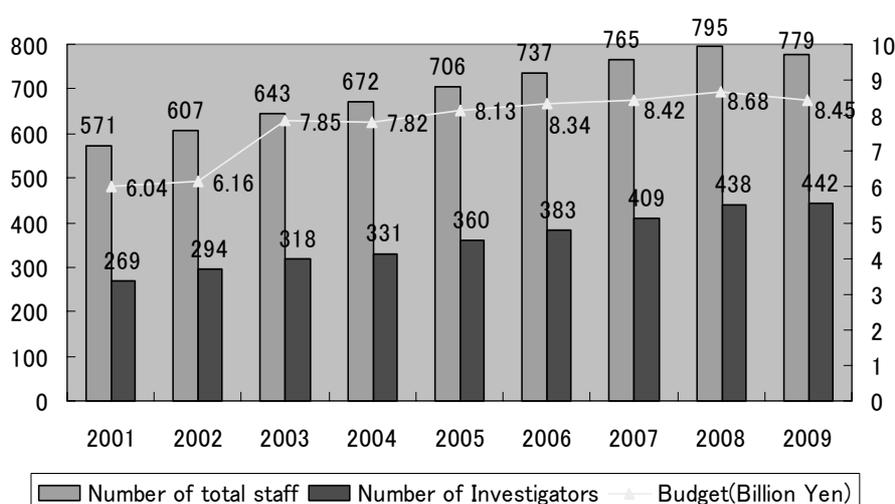
(Notes)

¹ The number of officials engaged in enforcement against anticompetitive practices refers to the Investigation Bureau and Investigation Divisions of local offices.

² The number of officials engaged in merger review enforcement refers to the Mergers and Acquisitions Division.

³ The number of officials devoted to advocacy efforts refers to the General Affairs Division of the Economic Affairs Bureau and the Coordination Division.

Staff and budget (FY 2001-2009)



4.3 Activities of the Competition Policy Research Center

20. The Competition Policy Research Center (hereinafter referred to as the “CPRC”) enhances research activities as a result of collaboration between the JFTC staff and visiting researchers (18 persons at the end of December 2009) who are specialists in the area of economics or law in order to strengthen the theoretical and empirical basis for the implementation of the AMA and the planning of competition policies.

21. In 2009, the CPRC published 2 joint research reports and 10 discussion papers. It organized 15 workshops, 6 open seminars and one international symposium and offered specialized training in economics, with the aim of improving the staff’s economic analysis skills.

4.3.1 Joint research reports

- Innovation Competition and Antitrust Policy; Focusing on Merger Regulation (2009/3)
- Platform Competition and Vertical Restraints
 - Based on an Analysis of the Sony Computer Entertainment Case- (2009/3)

4.3.2 Discussion papers

- "Ratifiable Collusion and Bidding Systems in Procurement" (2009/2)
- "A Note on the Necessity of Rules for Misleading Representation: Experimental Evidence" (2009/3)

- "Interview with Pr. KOMIYA Ryutaro -The review and evaluation of the Japanese old major merger case of Yawata Iron Steel Co. and Fuji Iron Steel Co.-" (2009/5)
- "Measurement of the Consumer Benefit of Competition in Retail Outlets" (2009/6)
- "A Theoretical Evolution of Exclusive Dealing Contracts" (2009/8)
- "Research and Analysis on Bid-Rigging Mechanisms" (2009/8)
- "An Empirical Investigation of the Toho Subaru Antitrust Case: A Merger Case in the Japanese Movie Theater Market" (2009/8)
- "Evaluation of the National Railway Reform in Japan" (2009/9)
- "The state of transportation mode competition - An analysis of business traveler's choice behavior-" (2009/9)
- "Law and Economics on Barriers to Entry" (2009/10)

4.3.3 *Hosting Open Seminars*

22. The CPRC hosts open seminars to introduce the results of its joint research reports, etc. These open seminars are also used as a venue for speeches by senior officers of the competition authorities and by academics based abroad when visiting Japan.

Date	Theme	Speaker	Commentators
Feb. 6	"Financial Crisis in the US - Its Causes and Effects-"	Kazuto Ikee (Professor, Faculty of Economics, Keio University)	Masakazu Iwakura (Lawyer of Nishimura & Asahi)
Feb. 13	"Overview and Enforcement Situation of the Chinese Competition Law"	Leaders (bureau chief, assistant bureau chief, et al.) of Chinese competition authorities, etc. (Ministry of Commerce, National Development and Reform Commission, State Administration for Industry and Commerce, etc.)	
Mar. 17	"Financial Crisis, Regulation and the Future of Competition Law Enforcement"	Frederic Jenny (Chairman of the OECD Competition Committee; Judge of the French Supreme Court; Professor, Essex University Business School)	Hiroshi Ohashi (CPRC Visiting Researcher; Associate Professor of the Graduate School of Economics, University of Tokyo)
Jun. 5	"Competition Laws in East Asia and Their Implications for the Japanese Competition Policy"	Toshifumi Hienuki (Professor, Graduate School of Law, Hokkaido University)	Jiro Tamura (Professor, Faculty of Law, Keio University)
Jul. 31	"Law and Economics of Decisions on Violations of the Antimonopoly Act"	Hiroyuki Odagiri (Director of CPRC; Professor, Graduate School of Economics, Hitotsubashi University) Yosuke Okada (CPRC Senior Researcher; Professor, Graduate School of Economics, Hitotsubashi University) Shuya Hayashi (CPRC Senior Researcher; Associate Professor, Graduate School of Law, Nagoya University)	Katsutoshi Ishioka (Associate Professor, Keio Economic Observatory)
Dec. 18	"Intersection of Companies Act and Antimonopoly Act"	Michiyo HAMADA (Commissioner of the JFTC)	

4.3.4 Hosting an international symposium

23. To act as a center of international exchange on competition policies, the CPRC hosts international symposiums that bring together officials of overseas competition authorities and academic specialists.

24. In March 2009, an international symposium called "The Role of Competition Policy in Promoting Entry and Industry Dynamics" was held in close collaboration with the 21st Century COE/RES Program of Hitotsubashi University and Nihon Keizai Shimbun, Inc., etc. Invited participants included Dennis W. Carlton (Professor, Graduate School of Business, University of Chicago), Jose Mata (Professor, Faculty of Economics, New University of Lisbon), Takehiko Yasuda (Professor, Faculty of Economics, Toyo University), Kazuhiko Toyama (Representative Director and CEO, Industrial Growth Platform, Inc.) and Sawako Nohara (President, IPSe Marketing, Inc.).

4.3.5 Implementation of Specialized Training in Economics

25. The CPRC gives training in economics to enhance the economic analysis skills of the JFTC's staff. In May, June, and November 2009, academic experts and CPRC visiting researchers were invited as lecturers to provide training in industrial organization, econometrics, etc.

4.4 Advocacy Activities

26. The JFTC engages in public relations activities with the goal of broadly providing the general public with information on legislation, including the Antimonopoly Act, and on its own activities through press releases, its website, and by other means for the purpose of enhancing public understanding of competition policies. It also hears opinions and requests from the public at informal gatherings with people from all walks of life. These activities of offering and gathering information are expected to help prevent businesses and their associations from committing violations of the Antimonopoly Act, etc., and to ensure that competition policies properly reflect the views and wishes of people at different levels.

27. The main activities during 2009 were as follows:

Types of Activities	Press Releases	Exchanging opinions with local experts*	Lecturers in schools**
Number	285	80	44

* JFTC Commissioners, etc., meet with representatives of the business community, academic experts, mass media, and consumer groups, etc., in local districts.

** Requested by junior high schools, senior high schools or universities, the JFTC dispatches its staff as lecturers to those schools to speak on the role of competition in economic activities and the activities of the JFTC in an easy-to-understand format.

5. Main surveys related to competition policy

5.1 Survey on the situation of the corporate compliance system

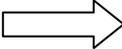
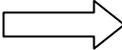
28. With the leniency program being in practical use for nearly three years after the enforcement of the 2006 amendment of the Antimonopoly Act, the JFTC carried out a follow-up survey with the same objective as that of the 2006 survey, investigated changes in compliance efforts, and released the findings in March 2009.

29. The following outlines the main points of the report:

5.1.1 Issues identified by the 2006 survey and the assessment of them in the 2009 follow-up survey

Issues identified by the 2006 survey

Assessment of issues in the 2009 follow-up survey

<p>A. Even if compliance programs are established, they are not fully utilized in many of the companies because of the lack of actual use of compliance committees and help lines.</p>		<p>A. The establishment of compliance programs is seen to have made further progress. As help lines are underused, it is hoped that they will be made easier to use.</p>
<p>B. The top management should make efforts of their own in both reforming their own awareness and actions, and raising employees' awareness and thus improving the internal control.</p>		<p>B. A slight increase is observed in the percentage of management executives' involvement in compliance efforts. A further increase is desired.</p>
<p>C. Despite that about half of the companies are aware of the risk they might themselves violate the Antimonopoly Act, sufficient training programs and internal audits are not being conducted.</p>		<p>C. Despite that about half of the companies are aware of the risk they might themselves violate the Antimonopoly Act, sufficient training programs and internal audits are not being conducted.</p>
<p>D. Although only a quarter of companies are currently considering the application, the program will attract more attention when leniencies actually start to be granted.</p>		<p>D. Although only a quarter of companies are currently considering the application, the program will attract more attention when leniencies actually start to be granted.</p>

5.1.2 New issues identified by the 2009 survey

30. It is acknowledged that very considerable progress has been made from the situation at the time of the 2006 survey in terms of the construction of compliance programs among the companies listed on the first section of the Tokyo Stock Exchange. It will be imperative in the future to effectively implement these programs and to improve the programs to better suit the circumstances. It is advisable to take the following actions:

- The involvement of top management is considered important to strengthen compliance. Top management themselves should stress the importance of compliance to employees and take comprehensive actions, including notification of any act in violation of the Antimonopoly Act found internally to the top management team and to governmental authorities.
- Specific guidelines on participation in meetings of industry associations should be stipulated and made known to employees for the purpose of preventing any violation of the Antimonopoly Act.

- A system that encourages voluntary confessions should be established such as by specifying cases where a reduction in the internal penalty is considered after voluntary confession and making them known to employees.
- If any act of violation is presumed to have taken place, a highly effective internal audit should be undertaken as needed.

5.2 *Fact-finding survey on the animation industry (published in January 2009)*

31. The animation industry has multiple tiers where planning and production of animation work placed by the TV stations or the production committees is outsourced from one production to another and where many of the productions that subcontract the outsourced work in the end are small-scale enterprises. Because of such industry characteristics, even if there are problems in trade practices, it seems difficult to reveal them. Therefore, the JFTC studied the industry structure, the actual situation of the trades, and the trade practices of the animation industry, presented the viewpoints of the Antimonopoly Act (abuse of superior bargaining position) and the Subcontract Act, and published the results in January 2009.

32. The points of the report are as follows:

- The ordering company should make further efforts to undertake sufficient consultation in placing orders to improve trade conditions.
- The majority of productions desire delivery of written orders. In addition, it is important to ensure delivery and receipt of written orders to prevent actions that unfairly disadvantage productions that receive outsourcing orders.
- At present, it is not always clear in specific cases who owns the copyright under the Copyright Act. It is indispensable for the ordering company to sufficiently discuss with the entrusted productions (1) who owns copyright and (2) what the counter-payments are in case of any transfer of copyright.

Note that the system of intellectual properties including the copyright is expected to promote the creation of intellectual properties and competition of use. In undertaking consultation regarding the establishment and the ownership of copyright, it is important to see whether the animation creator's creativity for animation work is stimulated, whether the incentive to new high-quality animation work is provided, and whether the secondary use of the work will be active.

- The JFTC will, based on the results of this survey, request the industries concerned to check for any problem under the Antimonopoly Act or the Subcontract Act and to ensure sufficient discussion on trade conditions and delivery of written documents when placing an order. The JFTC will continuously pay attention to the actual trade situation and, if the JFTC finds any specific fact suspected to be in violation of the Antimonopoly Act or the Subcontract Act, it will investigate and take strict action against any act in violation of laws or regulations.

5.3 *Utilization of biomass-derived fuels for gasoline (published in July 2009)*

33. With a view to establishing an environment where the direct blending method (E3 gasoline) and the ETBE method (method of blending gasoline and ETBE made from bio-ethanol) should be evaluated and selected through competition in the market, the JFTC clarified its viewpoint under the Antimonopoly Act and at the same time, reviewed the measures required to ensure an equal footing between these two blending methods. The JFTC published its views under the Antimonopoly Act as follows in July 2009.

- If the Petroleum Association of Japan forces each petroleum wholesaler not to cooperate in manufacturing and selling products made by the direct blending method or if petroleum wholesalers jointly decide not to cooperate in manufacturing or selling products made by the direct blending method, it would constitute a violation of the Antimonopoly Act. Moreover, if the Petroleum Association of Japan continues to state a negative opinion against only one of the two blending methods, the member petroleum wholesalers may develop a common understanding that the negatively stated blending method should not be adopted. The Petroleum Association of Japan should fully understand and acknowledge these concerns.
- If petroleum wholesalers uniformly prohibit their exclusive distributors from dealing with products made by the direct blending method at service stations (hereinafter referred to as “SSs”) affiliated with petroleum wholesalers, this action may be a violation of the Antimonopoly Act (“Trading on Exclusive Terms”).
- If SSs affiliated with petroleum wholesalers sell the product made by the direct blending method by expressly indicating that the product supplied from the pump is not a product of the petroleum wholesaler whose name is clearly displayed on the gas station signs, any act prohibiting the sales on the ground of trademark rights cannot be exempted from the application of the Antimonopoly Act.

34. The JFTC also recommended necessary measures to the Ministry of Environment (MOE) and the Ministry of Economy, Trade and Industry (METI) such that both ministries should cooperatively provide necessary information to promote the use of biomass-derived fuels, the MOE should consider the necessity of reviewing the standards of vapor pressures, and the METI should notify the Petroleum Association of Japan and the petroleum wholesalers of the freedom of choice by the businesses between the two methods of blending.

35. In addition, the JFTC also published the views for the related agencies.

- The Ministry of the Environment and the Ministry of Economy, Trade and Industry should cooperate with each other to support the provision of any required information.
- The Ministry of Environment should consider whether to review the vapor pressure standards, fully weighing the environmental effects.
- The Ministry of Economy, Trade and Industry should inform the Petroleum Association of Japan and each petroleum wholesaler that because the system for the both the ETBE Method and the Direct Blending Method have been established, Businesses can make a free choice.