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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN JAPAN

-- 2010 --

This report is submitted by Japan to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2011.

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

1.1 Efforts towards the amendment of the Antimonopoly Act

1.1.1 Submission of the Antimonopoly Act Amendment Bill (2010) to the Diet

1. The bill to amend the Antimonopoly Act which contains the abolition of the Japan Fair Trade Commission's (hereinafter referred to as "the JFTC") 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 12 March 2010. The above bill was determined in the 177th ordinary session on 31 August 2011 to remain under deliberation while the Diet is closed.

1.1.2 Major points of the Antimonopoly Act Amendment Bill (2010)

- 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.
- To ensure 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. Also, any trials and judgments at the Tokyo District Court will be made by a panel of three or five judges.
- To ensure due process, provisions will be prepared and provided to recipients with the intent of explaining the content of anticipated cease and desist orders, including references and copies of evidence in the procedures for hearings prior to issuing cease and desist orders.

1.2 Public announcement of "Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act"

2. The Antimonopoly Act revised in 2009 was put into effect in January 2010. The revised Antimonopoly Act newly allowed the JFTC to issue surcharge payment orders for abuse of superior bargaining position. In response to the revision, the JFTC formulated a set of "Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act" and published it on 30 November 2010 for the purpose of further ensuring transparency of law enforcement and improving predictability for enterprises by clarifying its views on regulation of the "abuse of superior bargaining position", etc.

3. The following are the key points of the guidelines.

- They explain cross-cutting and general concepts related to "abuse of superior bargaining position."
- Concepts concerning "abuse of superior bargaining position" are clarified by explaining the constituting requirements such as "superior bargaining position" and "abuse". In addition, "abuse" is classified in as much detail as possible with respect to specific types of conducts to clearly define the difference between "conduct falling under the violation" and "conduct not falling under the violation."
- "Specific examples" are provided by citing cases of different conducts regarded as problematic in past decisions or cease and desist orders. In addition, when it comes to each type of "abuse", a large number of hypothetical examples (examples of conduct considered to be in violation of the Antimonopoly Act) are provided.

2. Enforcement of competition laws and policies

2.1 Measures against violations

2.1.1 Measures taken in 2010

4. Under the Antimonopoly Act, 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 view of the opinion and evidence. In the event that the JFTC does not have enough evidence to take legal measures, but identifies any suspicions of violations to the Antimonopoly Act, the JFTC will issue a "warning" and instructs the enterprises on what measures to take. In addition, when the JFTC does not have enough evidence to specifically identify a violation of the Antimonopoly Act, but is only able to recognize certain conducts that could lead to a violation, the JFTC issues "cautions" as a means of preventing violations to the Antimonopoly Act.

5. Out of 158 investigations conducted by the JFTC in 2010, legal measures were taken in 20 cases (cease and desist orders in 20 cases and surcharge payment orders without a cease and desist order in zero cases). The JFTC also issued "warnings" in two cases in which it identified suspicions of violations of the Antimonopoly Act, issued "cautions" in 99 cases and terminated examinations in 37 cases in which it was unable to uncover evidence of illegal conduct.

- <u>Legal measures</u>

  The JFTC has been especially engaged in continuous efforts to eliminate bid rigging. In 2010, 12 of the JFTC's legal measures were carried out against bid rigging.

  - Bid rigging 12
  - Price cartels, etc. (excluding bid rigging) 6
  - Unfair trade practices 2
  - Private monopolization 0

- <u>Surcharge payment orders</u>

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

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

  In 2010, the JFTC issued surcharge payment orders to 171 enterprises totaling 695,765 million yen.

- Criminal accusations

  The JFTC has adopted a policy of filing criminal accusations to actively seek criminal penalties on violations that:

  – substantially restrain competition in a particular field of trade, including price cartels, supply restraint cartels, market allocation agreements, bid rigging, group boycotts and private monopolization, these examples constitute serious cases that are likely to have a widespread influence on the national economy, or
  – involve firms or industries that are repeat offenders or do not take the 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 Antimonopoly Act.

  In 2010, no criminal accusations were filed by the JFTC.

- Hearing procedures

  The JFTC initiated hearing procedures on 28 cases in 2010. As of the end of December 2010, the JFTC was conducting ongoing hearing procedures in 51 cases, 20 of which concerned allegations of violations to the Antimonopoly Act and 31 of which concerned surcharge payment orders.

  The JFTC issued decisions on 38 cases in 2010 following hearing procedures and issued decisions on three cases in 2010 that, by respondent's offers, did not follow hearing procedures.

2.1.2 Summary of main cases

2.1.2.1 Bid rigging

- Case against Manufacturers of office furniture ordered by the Air Self-Defense Force (ASDF) of the Ministry of Defense (MOD)

  Relating to a case involving an order for office furniture placed by the ASDF, companies jointly appointed a designated supplier based on recommendations from the ordering party and managed to have the designated supplier successfully deliver the products by either receiving the order themselves or handing it on to distributers that handled their products.

  Given the above findings of fact, the JFTC issued cease and desist orders and surcharge payment orders on 30 March 2010 because such an act is in violation of Article 3 of the Antimonopoly Act ("Prohibition of unreasonable restraint of trade").

  In addition, in relation to the above violations, the JFTC found the involvement of the officials from the 1st Air Depot of the ASDF (hereinafter referred to as"1st Air Depot") in bid rigging, etc. Hence, the JFTC demanded that the MOD implement improvement measures in accordance with the Act on Elimination and Prevention of Involvement in Bid Rigging, etc.

  As a result, the JFTC requested that the MOD thoroughly disseminate the purposes and contents of the Antimonopoly Act and the Act on Elimination and Prevention of Involvement in Bid Rigging, etc. to its officials engaged in the procurement service.

  The JFTC also requested that the MOD, verify again the actual status of the bidding process and take required measures including making improvements as necessary, to prevent the violation from recurring.

- Case against Participants in Bidding for Engineering Works ordered by the City of Aomori

  Relating to a case involving engineering works commissioned by the City of Aomori, the companies jointly appointed the designated successful bidder and contracted the bidder for the work.

  Given the above findings of fact, the JFTC issued cease and desist orders and surcharge payment orders on 22 April 2010 because such an act is in violation of Article 3 of the Antimonopoly Act ("Prohibition of unreasonable restraint of trade").

  In addition, in relation to the above violations, the JFTC found the involvement in the bidding by an employee of the City of Aomori. Hence, the JFTC demanded that the Mayor of Aomori implement improvement measures in accordance with the Act on Elimination and Prevention of Involvement in Bid Rigging, etc.

- Case against Participants in Bidding for Offshore Works ordered by Kagoshima Prefecture

  Relating to a case involving offshore works commissioned by Kagoshima prefecture through the means of general competitive bidding, the companies jointly appointed the designated successful bidder and managed to have the designated successful bidder receive the order.

  Given the above findings of fact, the JFTC issued cease and desist orders and surcharge payment orders on 9 November 2010 because such an act is in violation of Article 3 of the Antimonopoly Act ("Prohibition of unreasonable restraint of trade").

2.1.2.2 Price cartels, etc. (excluding bid rigging)

- Case against Manufacturers of Optical Fiber Cable Products

  Relating to a case involving a manufacturer of optical fiber cable products ordered by Nippon Telegraph and Telephone East Corporation, the companies jointly determined the preparation value and the order of quotation by quotation collections, and determined estimated price, which each participant in the quotation collection must propose, according to the determined preparation value and ranking of quotation.

  Given the above findings of fact, the JFTC issued cease and desist orders and surcharge payment orders on 21 May 2010 because such an act is in violation of Article 3 of the Antimonopoly Act ("Prohibition of unreasonable restraint of trade").

- Case against Manufacturers and Distributors of Electric Wires for Construction and Distribution

  Relating to a case involving a manufacturer of electric wires for construction and distribution in Japan, the companies formed an agreement to determine the selling prices in order to increase or maintain the sale price by using the following measures:

  – using common basic price lists
  – using common copper price fluctuations
  – using common discount rates Given the above findings of fact, the JFTC issued cease and desist orders and surcharge payment orders on 18 November 2010, because such an act is in violation of Article 3 of the Antimonopoly Act ("Prohibition of unreasonable restraint of trade").

2.1.2.3 Unfair trade practices

- Case against a home improvement retailer

  Relating to a case involving a home improvement store (i.e. retailer of household products, pet-accessories, garden supplies, industrial tools, etc.), the improvement store returned goods which it decided not to sell at its stores when closing or fully remodeling one of its stores, and which fell outside lineup of popular products when changing display or reshuffling, to the suppliers of such goods.

  In addition, on the occasion of opening or closing, fully remodeling or rearranging the displays, the home improvement store coerced the suppliers of those goods sold in the stores into dispatching employees with the aim of making them convey goods, including goods delivered by other suppliers to the selling floor, and display and remove them from the selling floor.

  Given the above findings of fact, the JFTC issued a cease and desist order on 30 July 2010 because such an act is in violation of Article 19 of the Antimonopoly Act (Paragraph 1 [Unjust return of goods] and Paragraph 7 [Unjust assignment of work to employees of suppliers, etc.] of "Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers").

- Case against a vision corrective contact lens manufacturer

  Relating to a case involving a vision corrective contact lens manufacturer, the manufacturer forced its partner retailers not to display the sale price for the vision corrective contact lens as advertised. In addition, the manufacturer, when trading with its own selected partner retailers, forced the retailers not to display the sale price for the vision corrective contact lens in the advertisements except for direct mail advertisements.

  Given the above findings of fact, the JFTC issued a cease and desist order on 1 December 1 2010 because such an act is in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 12 [Trading on Restrictive Terms] of the Designation of Unfair Trade Practices).

2.1.3 Litigation

- Lawsuits seeking to overturn the JFTC's decisions

  Regarding lawsuits seeking to overturn the JFTC's decisions, 14 court decisions were made in 2010 (including the decisions given to sections of the same case). Meanwhile, 11 new lawsuits were filed. As of the end of December 2010 there were 21 pending lawsuits.

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

  Throughout 2010, four new lawsuits were filed based on Article 24 of the Antimonopoly Act. At the end of December 2010, there were eight pending lawsuits.

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

  As of today, the JFTC is aware of 12 new lawsuits that were filed based on Article 25 of the Antimonopoly Act in 2010. There were 28 pending lawsuits at the end of December 2010.

2.2 Mergers and acquisitions

2.2.1 Reviews of the business combination regulations (investigation procedure and criteria)

6. The JFTC reviewed the business combination regulations in accordance with the "New Growth Strategy," which was approved at a Cabinet meeting on 18 June 2010. Based on the result of these reviews and to further improve the swiftness, transparency, and predictability of business combination investigations while enhancing international conformity, the JFTC published a draft for the partial amendment of the Fair Trade Commission Rules, etc. and sought comments for the public on 4 March 2011. The JFTC carefully reviewed all public comments received and partially amended the draft based on this review. On 14 June 2011, the JFTC published the partial amendment of the Fair Trade Commission Rules, etc. and the amendment was put into effect on 1 July 2011.

2.2.2 Statistics relating to mergers and acquisitions

7. Based on the provisions of Article 10, Article 15, Article 15-2, Article 15-3 and Article 16 of the Antimonopoly Act, acquisitions of shares, mergers, demergers, joint share transfers and business acquisitions of a certain size in Japan, must be notified to the JFTC prior to the transactions. The JFTC conducts reviews of notified cases and when it concludes that a transaction may be substantially to restrain competition in a particular field of trade, the JFTC has the power to order elimination measures of the above mentioned (acquisition of shares, etc.). Throughout 2010, 303 acquisitions of shares were notified based on the provisions of Article 10, twenty mergers were notified based on the provisions of Article 15, ten demergers were notified based on the provisions of Article 15-2, seven joint share transfers were notified based on the provisions of Article 15-3 and 50 cases of business acquisitions were notified based on the provisions of Article 16 of the Antimonopoly Act. The JFTC took legal measures against none of the acquisition of shares, mergers, demergers, joint share transfers or business acquisition cases notified in 2010.

	2008	**2009**	**2010**
Acquisitions of shares	927	795	303
Mergers	65	63	20
Demergers	22	19	10
Joint share transfers	-	-	7
Business acquisitions	104	105	50
Total	**1,118**	**982**	**390**

Note. The number of "Acquisition of shares" in 2008 and 2009 are the figures relating to the number of reports concerning stockholdings based on the provisions stipulated in the Antimonopoly Act before the revision of the Antimonopoly Act in 2009. However, the figure in 2010 (303 cases) includes the number of notifications of share acquisitions (201 cases) after the revision of the Antimonopoly Act.

2.2.3 Main mergers and acquisitions cases -The Proposed Acquisition of Shares of Varian, Inc. by Agilent Technologies, Inc.

2.2.3.1 Outline of the case

8. The case relates the transaction in which Agilent Technologies, Inc. (headquartered in the U.S.; hereinafter referred to as "Agilent"), which manufactures and distributes analytical instruments, etc., plans to acquire all of the shares of Varian, Inc. (headquartered in the U.S.; hereinafter referred to as "Varian") which also manufactures and distributes analytical instruments, etc. The relevant provision is Article 10 of the Antimonopoly Act.

9. Just as other types of business combinations such as mergers, the prior-notification system for acquisition of shares was introduced by the amendment of the Antimonopoly Act in 2009. This is the first case in which the JFTC requested that an enterprise submit necessary reports, etc., pursuant to the provisions of the Antimonopoly Act on receiving prior notification for an acquisition of shares and has investigated in detail.

2.2.3.2 A particular field of trade (Relevant market)

- Product range

  Among a variety of competing analytical instruments between the parties concerned, the products that are considered to have a significant impact on competition are the following three products: "Micro/portable GC", "Triple quadrupole GC-MS" and "ICP-MS."

  – Micro/portable GC

    Gas Chromatograph (GC) is an instrument by which a volatile sample is separated into discrete components to analyze whether or not a specific substance is included therein. The product range is defined as "Micro/portable GC" which is portable-type GC.

  – Triple quadrupole GC-MS

    Gas Chromatography-Mass Spectrometry (GC-MS) is an instrument by which a volatile sample is separated into discrete components by using GC to analyze substances included in discrete components and its amount contained therein. "Triple quadrupole GC-MS" is the GC-MS equipped with four poles (quadrupole), arranged in a series of three rows and capable of achieving high precision analysis. The product range is defined as "Triple quadrupole GC-MS."

  – ICP-MS

    Inductive Coupled Plasma–Mass Spectrometry (ICP-MS) is an analyzer capable of achieving high sensitivity analysis by ionizing elements with use of inductively-coupled plasma (ICP) in analyzing elements in a certain sample and their amounts contained therein. The product range is defined as "ICP-MS."

- Geographic range

  The parties distribute analytical instruments all over the world, and they also distribute their products in Japan through their Japanese affiliates, etc. When selecting products, the users in Japan, put emphasis on the quality of the product and the level of after-sales service. It is also noted that they usually purchase products which are produced by the manufacturers whose headquarters, agents or dealers are located in Japan. In light of the situations above, the JFTC defines the following three product markets in Japan as relevant markets, respectively.

2.2.3.3 Impact of the business combination on competition

- Market share

  – Micro/ portable GC

    As of 2008, the Japanese Micro/ portable GC market was presumed to be worth approximately 0.2 billion yen.

    The combined market share of the companies concerned after the business combination in this case will be around 80% and ranked at the top. The HHI level after the business combination will be about 6,800 and the increment of HHI will be around 3,000. They fail to meet the safe harbor criteria for horizontal business combinations.

Rank	Company	Share
1	Varian	About 50%
2	Agilent	About 30%
(1)	The total of company groups concerned	About 80%

– Triple Quadrupole GC-MS

As of 2008, the Japanese Triple Quadrupole GC-MS market was presumed to be worth approximately 1 billion yen.

The combined market share of the companies concerned after the business combination in this case will be around 60% and ranked at the top. The HHI level after the business combination will be about 4,000 and the increment of HHI will be around 700. They fail to meet the safe harbor criteria for horizontal business combinations.

Rank	Company	Share
1	Varian	About 50%
4	Agilent	About 10%
(1)	The total of company groups concerned	About 60%

– ICP-MS

As of 2008, the Japanese ICP-MS market was presumed to be worth approximately 4 billion yen.

The combined market share of the companies concerned after the business combination in this case will be around 60% and ranked at the top. The HHI level after the business combination will be about 4,300 and the increment of HHI will be around 700. They fail to meet the safe harbor criteria for horizontal business combinations.

Rank	Company	Share
1	Varian	About 55%
5	Agilent	About 5%
(1)	The total of company groups concerned	About 60%

- Proposal of remedial measures by the parties

In addition to the JFTC, this case has also been examined by the U.S. Federal Trade Commission (hereinafter referred to as "USFTC") and the European Commission (hereinafter referred to as "EC").During the investigation process, the USFTC and the EC pointed out to the concerning parties that the proposed transaction might bring serious adverse effects on competition in some relevant markets including those of the three products mentioned above. The parties proposed to sell the Micro/ portable GC business owned by Agilent to INFICON Holding AG (headquartered in Switzerland, hereinafter referred to as "INFICON") as well as to sell Triple quadrupole GC-MS business and ICP-MS business owned by Varian to Bruker Corporation (headquartered in the United States, hereinafter referred to as "Bruker"). The USFTC and the EC cleared the proposed transaction subject to the proposed remedial measures (NOTE).

Agilent offered to take the same remedial measures as mentioned above to the JFTC.. The business transfers in regard to the said remedial measures have already been completed during the investigation process. Therefore, in regard to the three products mentioned above, there would be no increment of market shares caused by the transaction.

Both INFICON and Bruker distribute analytical instruments, etc. all over the world. Since both companies have been distributing their products in Japan through their Japanese affiliates over a certain period; they have acquired management know-how and have developed distribution channels in Japan. Consequently, it is considered highly likely that INFICON and Bruker, through their Japanese affiliates, continue and develop each business transferred from the parties to become strong competitors in Japanese markets.

(Note. At the time when the EC approved the acquisition of shares in question, it was not yet determined to whom the business in question was to be transferred following a purchase(s). The EC imposed the following conditions concerning the purchaser(s) to whom the business in question was to be transferred.)

- The purchaser(s) must be capable of maintaining and developing the business to be transferred,
- The purchaser(s) must already be involved in the business in question and have a proven track record in the field of business in question,
- The purchaser(s) must be provided with an organization capable of providing sales/services, and
- The purchaser(s) must be equipped with sales channels, etc.

- Assessment under the Antimonopoly Act

  The JFTC has considered that the effect of the business combination may not be substantially to restrain competition in any particular field of trade through unilateral conducts of the companies concerned or through coordinated conducts of the companies concerned and any other competitor based upon the fact that the remedial measures proposed by the companies concerned have already been completed.

- Conclusion

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

  (Note. Liaison and coordination with foreign competition authorities As described above, in addition to the JFTC, this case has also been examined by foreign competition authorities such as the USFTC and the EC, and the JFTC has been conducting the investigation exchanging information with the USFTC.)

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

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

10. 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 accordance with these bodies to ensure coordination among the proposed provisions, the Antimonopoly Act and the competition policy. In 2010, as in previous years, the JFTC acted after consultation with other administrative agencies and submitted the JFTC's opinions.

3.2 Issues on Competition Policies regarding Countermeasures Using Market-Based Instruments in the Measures against Global Warming: Discussion Points in the Japanese Emissions Trading Scheme (Interim Report)

11. Japan is undertaking measures to achieve its Kyoto target and stated mid-term target for the reduction of greenhouse gases. Furthermore, under the circumstances where promotion of countermeasures against global warming are more and more important, as a part of a countermeasure against global warming, progress is expected in Japan, in regard to a discussion on full scale introduction of domestic (regional) emissions trading scheme, which has been introduced in various countries. Because the JFTC considered that the scheme would influence competition among business entities, it reviewed, from the viewpoint of competition policy, the issues regarding the substance of the scheme that is expected to be introduced and related private commercial transactions.

12. In that review process, the JFTC held a Study group on Governmental Regulation and Competition Policy and reported the results to the group. Moreover, the JFTC held hearings to have opinions on issues related to competition policies, etc. from the members, and based on the results of the discussion on 13 March 2010, an interim report was compiled and titled "Issues on Competition Policies regarding Countermeasures Using Market-Based Instruments in the Measures against Global Warming: Discussion Points in the Japanese Emissions Trading Scheme".

13. The report compiled the facts concerning countermeasures against global warming and the influence on competition in respect to each issue on competition policies regarding emission control, which is expected to be introduced in Japan. And in order to prevent violations against the Antimonopoly Act committed by enterprises and contribute to appropriate development of business activities, the report clarifies enterprises' conducts in emission regulations that would possibly pose a problem under the Antimonopoly Act among the activities accompanying emission control. The items picked up in the report are as follows.

- Issues on competition policies regarding emission control
  - Impacts that emission allowance allocation method has on competition
  - Impacts that cost containment measures has on competition
  - Impacts that trading of emission allowances and external credits has on competition
  - Impacts that regulation on small and medium scale business entities has on competition
- Enterprises' conduct in emission regulations that would possibly pose a problem under the Antimonopoly Act
  - Concerted action in the implementation of emission reduction
  - Concerted action to response to the increase in cost burdens associated with emission reduction
  - Joint research and development regarding emission reduction
  - Development of rules, etc. regarding emission calculation
  - Action regarding implementation of the external credit scheme
  - Action regarding loan projects, etc.

3.3 Support on the implementation of competition assessment

14. In response to the revision of the "Order for Enforcement of the Government Policy Evaluation Act", each of the relevant ministries and agencies, newly intending to enact, revise and abolish statutory regulations, was obliged to implement ex-ante Evaluation of Regulations, in principle, after October 2007. The "Implementation Guidelines for ex-ante Evaluation of Regulations (approved on 24 August 2007 at the Interministerial Liaison Meeting on policy evaluation) stipulate that impacts of the Regulation on competition should be considered as one of "other social costs". It was stipulated that, in the "Programs for Administrative Evaluation , etc.", compiled by the Ministry of Internal Affairs and Communications (published in April 2010), analysis of impacts of regulations on competition status (hereinafter referred to as "competition assessment") was tentatively initiated with the help of the JFTC. The implementation of the competition assessment has started since April 2010. The JFTC prepared competition assessment check-lists and informed the relevant ministries and agencies of the implementation of competition assessment for the purpose of promoting dissemination and adoption of the competition assessment.

4. The Japan Fair Trade Commission's resources (FY 2010)

4.1 Budget (unit: \ billion and %)

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

Fiscal Year	2002	2003	2004	2005	2006	2007	2008	2009	2010
Budget amount (\ billion)	6.16	7.85	7.82	8.13	8.34	8.42	8.68	8.45	8.96
Change over previous year (%)	2.0	2.2	△0.4	4.0	2.5	0.9	3.2	△2.7	6.1
General Expenditures Budget: change over previous year (%)	△2.3	0.1	0.1	△0.7	△1.9	1.3	0.7	9.4	3.3

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's 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

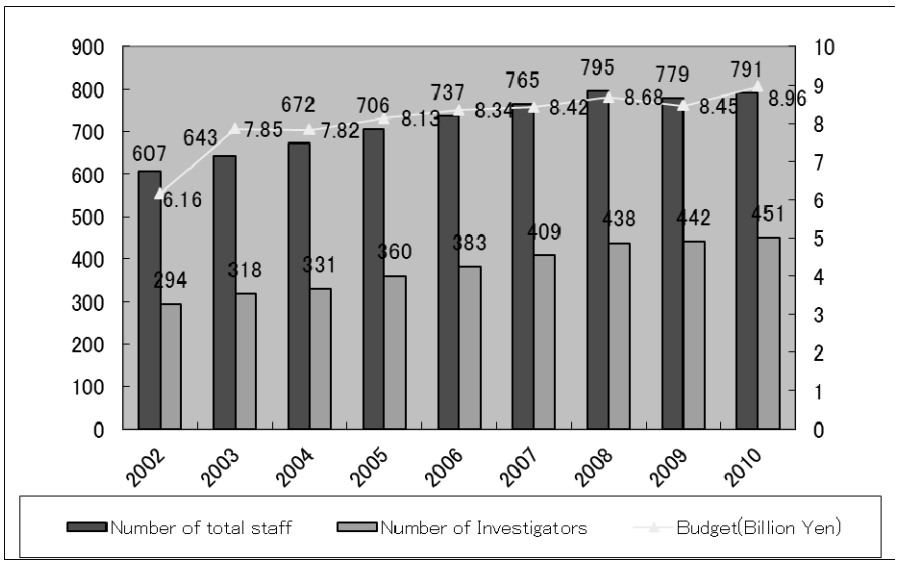
16. The number of officials in the General Secretariat of the JFTC is as follows (unit: persons).

Fiscal Year	2002	2003	2004	2005	2006	2007	2008	2009	2010
Number of officials	607	643	672	706	737	765	795	779	791
Enforcement against anti-competitive practices	294	318	331	360	383	409	429	442	451
Merger review enforcement	28	30	32	32	35	36	36	36	35
Advocacy efforts	25	30	30	37	36	34	35	35	36

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 2002-2010)



4.3 Advocacy activities

17. 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 is also open to opinions and responds to requests from the public at informal gatherings with the people from all walks of life. Encouraging 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 the people from all walks of life.

18. The main activities during 2010 were as follows:

Types of Activities	Press Releases	Exchanging opinions with local experts*	Lecturers in schools**
Number	270	80	80

* The JFTC Commissioners, etc., met with representatives of the business community, academic experts, mass media, 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. International efforts on competition law and competition policy

19. In recent years, the need for the internationalization of enforcement activities and the strengthening of cooperation and coordination among competition authorities is increasing. In response to this situation, the JFTC is making efforts to strengthen its cooperative relationship with the competition authorities of other countries through bilateral antitrust cooperation agreements and other initiatives. And the JFTC is participating in negotiations related to competition policy as an important element in economic partnership agreements, working with various government ministries and agencies.

20. Also, the JFTC proactively participated in the activities such as the International Competition Network(ICN), the Organization for Economic Co-operation and Development(OECD), Asia-Pacific Economic Cooperation(APEC) and the United Nations Conference on Trade and Development(UNCTAD). In addition to these activities, the JFTC is playing a leadership role in organizing the East Asia Conference on Competition Law and Policy and the East Asia Top Level Official's Meeting on Competition Policy. Especially, in 2010, ICN Cartel Workshop was held in Yokohama from 5-7 October, which was organized by the JFTC. Officials from the JFTC participated in this workshop as moderators and speakers.

21. Furthermore, because developing economies are actively strengthening their existing competition law systems or introducing new ones, the JFTC provides technical assistance to such countries by sending its staff to the seminars organized by the OECD-Korea Policy Center Competition Program, organizing training programs, etc. The major international activities of the JFTC during 2010 were as follows.

Main international activities during 2010

- The Ninth ICN Annual Conference (Istanbul, April 2010), ICN Cartel Workshop (Yokohama, October 2010)
- East Asia Top Level Officials' Meeting on Competition Policy (September 2010)
- Bilateral consultations with foreign competition authorities (USA, Australia and Korea)
- Participation in economic partnership agreement negotiations (Peru and Australia)
- Providing training on competition policy (Vietnam, Indonesia, the Philippines, etc.)

6. Main surveys related to competition policy

6.1 Survey report on actual status regarding transactions between large-scale retailers and their suppliers

22. The JFTC grasped the actual status of transactions made between large-scale retailers and their suppliers through actively conducting surveys on their actual status for years. As a result, when the JFTC found problematic transactions in view of "Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers" (hereinafter referred to as the "Large-Scale Retailers Notification"), the JFTC not only pointed out the problems against the enterprise(s) concerned and business associations to which the enterprise(s) in question belonged but also took necessary corrective measures. In view of the circumstances where a certain period of time had elapsed since the last survey (the report was published in December 2006), the JFTC conducted a new survey and published its result (published on May 2010). The purpose of the survey was to firmly understand the actual status of transactions between large-scale retailers and their suppliers by mainly focusing on the types of conducts listed on the Large-Scale Retailers Notification and their compliance with the notification.

23. The report provides the following key features.

6.1.1 Features of the result of survey

24. A percentage of suppliers who answered that they had experienced unjust conducts or requests falling within respective types of conduct greatly decreased in comparison with the last two survey results (published in February 2005 and December 2006.) It is assumed that these positive results are a consequence of active public relation campaigns mainly targeting enterprises in specific industries to which the Large-Scale Retailers Notification was newly applied in line with the enforcement of the Large-Scale Retailers Notification in November 2005 and in law enforcement against violations and publication of their details.

25. As to the recognition of the Large-Scale Retailers Notification, a high percentage above 80% was obtained in almost all business categories. In addition, when it comes to the correspondence in written form between large-scale retailers and their suppliers concerning their transactions, such a correspondence in written form was found in approximately 80% or more of all transactions. This shows that voluntary clarification of conditions in supplying goods has been promoted though there are no legal obligations.

26. Although a number of conducts that might be problematic have still been found in specific business categories, i.e., home improvement stores, drug stores, discount stores, etc., understanding on the Large-Scale Retailers Notification has been promoted as a whole, and therefore, it can be assessed that the

Large-Scale Retailers Notification has a certain degree of effects on making transactions between large-scale retailers and their suppliers proper.

6.1.2 Measures taken by the JFTC

27. The JFTC holds lectures for specific business categories by targeting business associations of the specific business categories in which the JFTC found a large number of potentially problematic conducts so that fair transactions between large-scale retailers and their suppliers can be further promoted, whereby violation can be prevented before it occurs.

28. When the JFTC recognizes problematic conducts by large-scale retailers, the JFTC points out the problem against the parties concerned and takes necessary corrective measures. In addition, in order to effectively prevent large-scale retailers from exerting abuse of superior bargaining position, the JFTC requests that industries make voluntary efforts, to inform members of specific business associations of the details of the Large-Scale Retailers Notification.

29. Hereafter, the JFTC strives not only to further improve and streamline its systems which facilitate suppliers to provide information to the JFTC but also to firmly understand actual status of trades between large-scale retailers and their suppliers and conduct/transactions that may be problematic in view of the Large-Scale Retailers Notification. If the JFTC finds conducts in violation of the Antimonopoly Act such as the abuse of superior bargaining position, the JFTC, of course, enforces strictly against such conducts based on the purpose of the revised Antimonopoly Act in 2009 in which the abuse of superior bargaining position became subject to the surcharge payment order.

6.2 Survey on the situation of the corporate compliance system with the Antimonopoly Act - measures for enhancing the effectiveness of compliance

30. The JFTC has been compiling and publishing reports on the status of corporate compliance with the Antimonopoly Act. In the report titled "Survey on current status of establishment and maintenance of corporate compliance systems – focusing on the status after enforcement of the revised Antimonopoly Act (January 2006)" (published in March 2009), the JFTC pointed out that corporate compliance systems with the Antimonopoly Act have already been established and well-maintained among the companies listed on the first section of the Tokyo Stock Exchange while such corporate compliance systems should not only be managed more effectively but also be more specific and consistent with actual corporate status.

31. In view of the above efforts, the JFTC gathered opinions on actual status, etc. of corporate efforts for improving effectiveness of corporate compliance with the Antimonopoly Act, from key figures, i.e., attorneys specialized in corporate legal affairs, etc. in addition to the companies subject to legal sanctions in relation to the Antimonopoly Act in the past (including the enterprises to which the leniency program has been applied to by the JFTC) and companies publicizing their efforts in their corporate compliance on their web sites, etc. With reference to the cases and opinions gathered from them, the JFTC implemented questionnaires on actual status, etc. of corporate efforts concerning compliance with the Antimonopoly Act and compiled a report which includes measures capable of achieving more workable compliance with the Antimonopoly Act (published in June 2010).

32. In view of the result of this survey, the JFTC made a recommendation to respective companies to actively address the following issues to achieve more effective corporate compliance with the Antimonopoly Act. Furthermore, this survey allowed the JFTC to confirm the importance of will and involvement of top-management in each of the issues. The JFTC made it clear that it is of great significance for top management to proactively address such issues by themselves.

- Enhancing efforts by the department of legal affairs/compliance

  - The department of legal affairs/compliance should appoint staff for the Antimonopoly Act and engage them in compliance with the Antimonopoly Act expertly and intensively.

  - Staff for legal affairs/compliance should actively and constantly engage in compliance activities which include not only passive ones, such as the provision of consultations, but also periodic information exchanges with sales departments and involvement in negotiation processes regarding trading terms, etc.

- Enhancing efforts for delivering messages from top management on emphasizing the importance of compliance

  - Top management itself should directly, repeatedly, and explicitly deliver messages stressing the importance of compliance to employees by taking advantage of a variety of opportunities such as training courses.

- Improving training courses for management executives

  - Improvement of training courses for management executives who play considerable roles in corporate compliance, internal control, application for leniency, etc., to become more knowledgeable about the Antimonopoly Act.

- Enhancing active involvement of parent company in group companies compliance with the Antimonopoly Act

  - Enhance engagement in foreign affiliated companies in which the parent company is less involved compared with domestic ones.

  - Regardless of whether affiliated companies are domestic or foreign, sharing information and collaboration between the parent company and affiliated companies is necessary on the assumption that the leniency programs is jointly applied within the company groups

- Development of a rule regarding contacts with peer companies in the same sector and compliance with the rule

  - Because contacts with peer companies in the same sector, especially those among sales staff, will include high risks of violation of the Antimonopoly Act, it is necessary to develop a specific rule and inform the employees about the rule. In addition, the department of legal affairs/compliance should substantively engage in checking the status of compliance with the developed rule in an objective and integrated manner.

- Conduct an in-house investigation in response to information regarding violation of the Antimonopoly Act

  - In response to information concerning a violation to the Antimonopoly Act, not only should such information be promptly reported to top management, but an in-house investigation should also be conducted with the help of employees, through reduction of internal sanctions, etc., based on the decision of top management so that in-house investigations can be effectively conducted.

6.3 Follow-up reports on trades in the advertisement industry

33. The JFTC conducted a follow-up survey on trading practices in the TV advertising industry mainly focusing on items described as "Evaluation under Competition Policies", derived from the "Report on the Advertisement Industry" which was published by the JFTC in November 2005, while investigating whether anti-competitive trading practices which had been seen in TV commercials (CMs) exist in the rapidly expanding Internet advertisements (published in September 2010).

- For trading program CMs, it is necessary for TV stations to disclose information for promoting a new entry for advertising (ad) agencies. TV stations are expected to positively disclose the target quota for sale to ad agencies by showing the actual price list if the ad agency in trading inquires about it. Especially for some popular quotas, it is recommended to introduce bidding on such quotas to ad agencies.

- For trading spot CMs, it is difficult to say that sufficient efforts have been made to secure rationality and fairness regarding how to decide commission paid to ad agencies. TV stations must establish rationality and fairness on how to decide the amount of commission by preparing a common commission standard for each ad agency in trading.

- The ratio of cases has generally increased in which basic contracts and individual orders are placed in writing, and this indicates that trading contents are clearer. However, it is pointed out that there has been some trouble due to contracts with no documents or documents of insufficient contents. To clarify trading contents and to prevent troubles, basic contracts and individual orders should be placed in writing which clearly describe trading contents, amounts, terms & conditions, etc.

- Advertiser's consciousness towards advertising effects and costs has improved due to an established contract with ad agencies for representation and placing splitting orders. Advertisers must further enhance their awareness of advertising effects and costs for encouraging a new ad agency's entry.

- In the trading of banner-ad and paid listings among internet ads, so far there have been no problematic trading practices as seen in the TV ad market.

7. Activities of the Competition Policy Research Center

34. The Competition Policy Research Center (hereinafter referred to as the "CPRC") develops research activities as a result of collaboration between the JFTC staff and the director, chief researchers, and visiting researchers (a total of 18 persons at the end of December 2010) who are specialists in the area of economics or law in order to strengthen the theoretical and empirical basis for the implementation of the Antimonopoly Act and the planning of competition policies.

35. In 2010, the CPRC published seven joint research reports and one discussion paper. It organized two open seminars and one international symposium and offered a specialized training in economics, with the aim of improving the staff's economic analysis skills.

7.1 Joint research reports

- Research and analysis on a mechanism of bid-rigging (January 2010)

- Productivity of passenger rail services and inter-modal competition of trunk passenger transport services (January 2010)

- How should we regulate parallel exclusive conducts? (January 2010)
- Effect on Non-Assertion of Patents Provisions - A Study on Research and Development Incentives in Vertical Relationship (September 2010)
- Economic Analysis of Two-sided Markets (November 2010)
- Alliances between Firms and Partial Equity Ownership: Theory and Evidence (November 2010)
- Impacts of Buyer Power on Competition in Distribution Market－On Large-Scale Retailer－ (December 2010)

7.2 Discussion papers

- "Empirical Analysis of Non Hard Core Cartel -X association Case-" (April 2010)

7.3 Hosting Open Seminars

36. 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. In 2010, the following two open seminars were held.

Date	Theme	Speaker	Commentators
Jun. 11	"Essays on Behavioral Economics and its Implications for Competition Policy"	Takanori Ida (Professor, Graduate School of Economics, Kyoto University)	Hiroyuki Odagiri (Director of CPRC; Professor, Faculty of Social Innovation, Seijo University)
Oct. 29	"The Effect of Reverse Auction on Public Purchases"	Michihiro Kandori (Professor, Graduate School of Economics, University of Tokyo)	Hideaki Tanaka (Director, Office for Public Service Reform, Cabinet Office)

7.4 Hosting an international symposium

37. 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.

38. In February 2010, an international symposium called "The Role of Competition Policy in the Development of East Asian Economies" was held in close collaboration with Nihon Keizai Shimbun, Inc., etc. Invited participants included Sang-Seung Yi (Professor, Department of Economics, Seoul National University), Deunden Nikomborirak (Research Director, (Sectoral Economics Program, Thailand Development Research Institute), Burton Ong (Associate Professor, Faculty of Law, National University of Singapore), Xinzhu Zhang (Professor, Chinese Academy of Social Sciences) and Shujiro Urata (Professor, Graduate School of Asia-Pacific Studies, Waseda University).

7.5 Implementation of Specialized Training in Economics

39. The CPRC gives training in economics to enhance the economic analysis skills of the JFTC's staff. In May, June, October and November 2010, academic experts and CPRC chief researchers were invited as lecturers to provide training in industrial organization, econometric analysis, etc.

40. 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 s tandards, 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.