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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN JAPAN**

-- 2011 --

*This report is submitted by Japan to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 24-25 October 2012.*

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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 Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred as “the Antimonopoly Act”), including primarily the abolition of the Japan Fair Trade Commission’s (hereinafter referred to as “the JFTC”) hearing procedure, was submitted to the 174th ordinary session of the Diet on March 12, 2010. The above bill was determined to remain under deliberation in the House of Representatives while the Diet was closed. The same situation continued from the 174th ordinary Diet session to the 179th extraordinary Diet session. Also during the 180th ordinary Diet session, on September 7, 2012, it was determined that the above bill would remain under deliberation in the House of Representatives 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 suit pertaining to decisions by 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 ruled by a panel of three or five judges.
- To ensure due process, provisions will be prepared and provided to recipients to explain the content of anticipated cease and desist orders, including references and copies of evidence in hearing procedures prior to issuing cease and desist orders.

### ***1.2 Reviews of the business combination regulations (investigation procedure and criteria)***

#### ***1.2.1 Background of the reviews***

2. The JFTC reviewed the business combination regulations in accordance with the “New Growth Strategy,” which was approved at a Cabinet meeting on June 18, 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 requested comments from the public on March 4, 2011. The JFTC carefully reviewed all the public comments received, and partially amended the draft based on this review. On June 14, 2011, the JFTC published the partial amendment of the Fair Trade Commission Rules, etc. and the amendment was put into effect on July 1, 2011.

#### ***1.2.2 Major points of the reviews***

3. The JFTC reviewed procedures of business combination such as the improvement of communication with a notifying company; the abolishment of prior consultation systems and streamlining the procedure in closing the business combination review. Furthermore, in order to make the criteria for

review more comprehensible, the JFTC reviewed the Guidelines concerning Review of Business Combination, including the addition of the new examples<sup>1</sup>.

## 2. Enforcement of competition laws and policies

### 2.1 Measures against violations

#### 2.1.1 Measures taken in 2011

4. Under the Antimonopoly Act, the JFTC conducts necessary investigations based on Article 47. If the JFTC finds a violation, it notifies the person who is to be the addressee of the cease and desist order of matters such as the expected content of the order (Paragraph 5 of Article 49). The JFTC then gives the person an opportunity to express their opinion and submit evidence (Paragraph 3 of Article 49), before the cease and desist order is issued. In the event that the JFTC does not have enough evidence to take legal measures, but identifies suspicions of violations to the Antimonopoly Act, the JFTC will issue a “warning” and instruct the enterprises on what measures are to be taken. In addition, when the JFTC does not have enough evidence to specifically identify a violation of the Antimonopoly Act, and is only able to recognize certain conducts that could lead to a violation, the JFTC issues a “caution” as a means of preventing future violations of the Antimonopoly Act.

5. Out of the 155 cases in which the JFTC closed investigations in 2011, legal measures were taken for 15 cases (cease and desist orders in 15 cases, and surcharge payment orders without cease and desist orders in 0 case). The JFTC also issued “warnings” in 2 cases where suspicions of violations of the Antimonopoly Act were identified, “cautions” in 117 cases, and terminated examinations in 21 cases where evidence of illegal conduct could not be uncovered.

- Legal measures

The JFTC has been especially engaged in continuous efforts to eliminate bid rigging. In 2011, 7 of the JFTC’s legal measures were carried out against bid rigging.

– Bid rigging	7
– Price cartels, etc. (excluding bid rigging)	5
– Unfair trade practices	3
– Private monopolization	0

- Surcharge payment orders

Surcharges are applied to enterprises that carry out an 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 2011, the JFTC issued surcharge payment orders to 290 enterprises totaling 33,498million Japanese yen (hereinafter referred as “JPY”).

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<sup>1</sup> <http://www.jftc.go.jp/en/pressreleases/uploads/110620.pdf>

In addition, enterprises carrying out abuse of superior bargaining position have become subject to surcharge payment orders since January 2010. In accordance with this amendment, the supermarket case described below is the first case in which the JFTC issued a surcharge payment order against the abuse of superior bargaining position. Consequently, the JFTC issued surcharge payment orders against enterprises carrying out abuse of superior bargaining position in the following 2 cases.

- 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, group boycotts and private monopolization. These examples constitute serious cases that are likely to have a widespread influence on the national economy.
- b) 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 2011, no criminal accusations were filed by the JFTC. However, on June 14, 2012, regarding a price-fixing cartel case concerning industrial machinery bearings and automotive bearings, the JFTC filed a criminal accusation with the Public Prosecutor-General against manufacturers and distributors of those products etc., which formed and implemented agreements to raise the selling prices of those products.

- Hearing procedures

The JFTC initiated hearing procedures on 87 cases in 2011. As of the end of December 2011, the JFTC has been conducting ongoing hearing procedures in 121 cases, 53 of which concerned allegations of violations to the Antimonopoly Act, and 68 of which concerned surcharge payment orders.

The JFTC issued decisions on 16 cases in 2011 following hearing procedures, and issued decisions on 0 cases in 2011 that, which according to the respondent's offers, did not follow hearing procedures.

In addition, the JFTC issued a decision on June 12, 2012 to overturn a cease and desist order which had been issued on February 27, 2009 related to a private monopolization case regarding the copyrights of musical works by a copyright administration enterprise.

## 2.1.2 *Summary of main cases*

### 2.1.2.1 *Bid rigging*

- Case against Participants in Bidding for Engineering Works in Kyotou area ordered by Yamanashi Prefecture

In relation to a case involving engineering works in the Enzan area and the Isawa area (Kyotou area) ordered by the Yamanashi Prefecture, the companies jointly appointed the designated successful bidder and managed to have the designated bidder receive the orders.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on April 15, 2011. (Total amount of surcharge: 757 million JPY)

- Case against Participants in Bidding for Engineering Works and Road Pavement Works ordered by Ibaraki Prefecture

In relation to a case involving engineering works and road pavement works ordered by the Ibaraki Prefecture, the companies jointly appointed the designated successful bidder and managed to have the designated bidder receive the orders.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on August 4, 2011. (Total amount of surcharge: 292 million JPY)

Furthermore, in relation to the above violations, the JFTC discovered the involvement of officials from the Ibaraki prefectural government in bid rigging, etc. Therefore, the JFTC demanded the Ibaraki prefectural governor to implement improvement measures in accordance with the Act on Elimination and Prevention of Involvement in Bid Rigging, etc. (hereinafter “Involvement Prevention Act”)

- Case against participants in bidding for engineering works ordered by Ishikawa prefecture and the city of Wajima

In relation to a case involving engineering works ordered by the Ishikawa prefecture and the city of Wajima, the companies jointly appointed the designated successful bidder and managed to have the designated bidder receive the orders.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on October 6, 2011. (Total amount of surcharge: 670 million JPY)

- Case against participants in bid-rigging conspiracies for automotive wire harness and related products ordered by automobile manufactures

In relation to a case involving orders for automotive wire harness and related products ordered by automobile manufactures, the companies jointly appointed the designated successful bidder and managed to have the designated bidder receive the orders.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on January 19, 2012. (Total amount of surcharge: 12,892 million JPY)

In this case, the JFTC started an investigation almost the same time as the US Department of Justice and European Commission in December 2010.

#### 2.1.2.2 *Price cartels, etc. (excluding bid rigging)*

- Case against manufacturers and distributors of Air Separation Gases

Manufacturers and distributors of air separation gases made an agreement to raise the selling price by approximately 10% over the current selling price.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on May 26, 2011. (Total amount of surcharge: 14,105 million JPY)

- Case against manufacturers of LP gas containers

Manufacturers of LP gas containers formed an agreement to jointly revise the selling price for customers in response to the variation of the purchase price of steel stock.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on June 24, 2011. (Total amount of surcharge: 1,490 million JPY)

- Case against manufacturers and distributors of VVF cables

Manufacturers and distributors of VVF cables formed an agreement to determine the selling price.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on July 22, 2011. (Total amount of surcharge: 6,223 million JPY)

- Case against manufacturers of LP gas instruments

Manufacturers of LP gas instrument formed an agreement to raise the selling price by approximately 10% over the current selling price.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on December 20, 2011. (Total amount of surcharge: 875 million JPY)

- Case against taxi business operators, located in Niigata city and its suburbs.

Taxi business operators located in the Niigata city and its suburbs formed an agreement to fix the taxi fares within the Niigata traffic area to the level of certain fare classifications specified in the new Automatic Authorizations Fare.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on December 21, 2011. (Total amount of surcharge: 232 million JPY)

### 2.1.2.3 *Unfair trade practices*

- Case against business operator of mobile social networking service

The business operator of mobile social networking service forced social game developers not to provide the games through the social networking service operated by one of its competitors.

Given that the above findings are in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 14[Interference with Competitor’s Transactions] of the Designation of Unfair Trade Practices), the JFTC issued a cease and desist order on June 9, 2011.

- Case against a supermarket

A supermarket conducted the following acts against some of the suppliers in an inferior bargaining position (hereinafter referred to as “specific suppliers”)

Given that the following findings are in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 9 Item 5 [Abuse of Superior Bargaining Position]), the JFTC issued a cease and desist order and a surcharge payment order on June 22, 2011. (Total amount of surcharge: 222 million JPY)

- On the occasion of opening stores etc., the supermarket forced the specific suppliers who supplied the merchandise to these stores to dispatch employees to move the merchandises including what had not been supplied by the specific suppliers.
- On the occasion of opening stores etc., the supermarket forced the specific suppliers to offer money, even though there was no merit for the specific suppliers such as sales promotion effects for the merchandise they had supplied.
- Regarding the merchandise dealt with by the food division of the supermarket (hereinafter referred to as “food division merchandise”), the supermarket returned the food division merchandise that was past the expiration date (originally ruled by the supermarket) to the specific suppliers of said merchandise, even though there was no attributable reason.
- Regarding the food division merchandise or merchandise dealt with by the supermarket’s daily food division which was to be sold at a discount price due to stock clearance associated with renovation of the stores, the supermarket reduced the amount to the equivalent of the discounted amount at the said discounted sales from what should be paid to the specific suppliers of the merchandise, even though there was no attributable reason.
- On the occasion of selling the Christmas related merchandise, the supermarket forced the specific suppliers to buy the merchandise. For example, during social gatherings, the supermarket’s buyers distributed application forms to the specific suppliers, indicating the minimum amount of purchase, and forced them to purchase the merchandise at that time.

- Case against a large-scale retailer specifically dealing with goods for children or babies

A large-scale retailer specifically dealing with goods for children or babies conducted the following acts against some of the suppliers in an inferior bargaining position (hereinafter referred to as “specific suppliers”).

Given that the following findings are in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 9 Item 5 [Abuse of Superior Bargaining Position]), the JFTC issued a cease and desist order and a surcharge payment order on December 13, 2011. (Total amount of surcharge: 370 million JPY)

- Even though there was no reason attributable to the specific suppliers, the retailer returned the unsold goods (goods that were slow to sell or seasonal goods that had remained unsold after the sales period, the same shall apply hereinafter.) to the specific suppliers.
- Even though there was no attributable reason to the specific suppliers, the retailer reduced all of or part of the amount equivalent to the amount of the discount from what should be paid to the specific suppliers of the unsold goods subject to discount.

- Case against a large-scale retailer of home electric appliances

A large-scale retailer of home electric appliances forced some of the suppliers in an inferior bargaining position (hereinafter referred to as “specific suppliers”) to dispatch their employees to implement conveying, taking out its goods and fabricate stores that did not require the dispatched employees’ techniques or sales skills. The retailer did not conclude agreements regarding the dispatch conditions, and did not pay general employee dispatch costs.

Given that the above findings are in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 9 Item 5 [Abuse of Superior Bargaining Position]), the JFTC issued a cease and desist order and a surcharge payment order on February 16, 2012. (Total amount of surcharge: 4048 million JPY)

### 2.1.3 *Litigation*

- *Lawsuits seeking to overturn the JFTC's decisions.* Regarding lawsuits seeking to overturn the JFTC's decisions, 7 court decisions were made in 2011. Meanwhile, 5 new lawsuits were filed. As of the end of December 2011, there were 19 pending lawsuits.
- *Lawsuits seeking injunction based on Article 24 of the Antimonopoly Act.* Throughout 2011, 8 new lawsuits were filed based on Article 24 of the Antimonopoly Act. At the end of December 2011, there were 15 pending lawsuits. On March 30, 2011, an injunction claim based on Article 24 of the Antimonopoly Act was accepted for the first time in the case where the plaintiff filed an application for a provisional injunction based on the same Article because of an interference with a plaintiff's transaction with companies engaged in manufacturing and selling dry ice.
- *Lawsuits seeking compensation for damages based on Article 25 of the Antimonopoly Act.* As of today, the JFTC is aware of 9 new lawsuits filed based on Article 25 of the Antimonopoly Act in 2011. There were 33 pending lawsuits at the end of December 2011.

## 2.2 *Mergers and acquisitions*

### 2.2.1 *Statistics relating to mergers and acquisitions*

6. 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 transaction. The JFTC conducts reviews of notified cases, and when it concludes that a transaction may substantially restrain competition in a particular field of trade. The JFTC has the power to order elimination measures for the aforementioned (acquisition of shares, etc.). Throughout 2011, 199 acquisitions of shares were notified based on the provisions of Article 10; 15 mergers were notified based on the provisions of Article 15; 13 demergers were notified based on the provisions of Article 15-2; 5 joint share transfers were notified based on the provisions of Article 15-3, and 24 cases of business acquisitions were notified based on the provisions of Article 16 of the Antimonopoly Act. The JFTC took no legal measures against any of the acquisition of shares, mergers, demergers, joint share transfers or business acquisition cases notified in 2011.

	2009	2010	2011
Acquisitions of shares	795	303	199
Mergers	63	20	15
Demergers	19	10	13
Joint share transfers	-	7	5
Business acquisitions	105	50	24
Total	982	390	256

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

2.2.2 *Main mergers and acquisitions cases*

- A Proposed merger between Nippon Steel Corporation and Sumitomo Metal Industries, Ltd.

**Outline of the case.** This case is the merger planned for October 1, 2012 by Nippon Steel Corporation and Sumitomo Metal Industries, Ltd., both of which are engaged in the manufacture and sale of steel products (here in after referred to as “the Merger”). The provision of applicable laws is Article 15 of the Antimonopoly Act.

**Process of the investigation.** From March 2011, the parties voluntarily submitted a written opinion to the JFTC stating that, with respect to the steel products, titanium products and engineering businesses in which the parties (including companies combined with the parties) compete, the parties consider that the Merger may not substantially restrain competition. The JFTC held several meetings with the parties at their request. Thereafter, on May 31, 2011, notification of a plan regarding the Merger was submitted. Accordingly, the JFTC received the notification and commenced the primary review and began to collect information from June 1, 2011, indicating the main goods/services in which the parties (including companies combined with the parties) compete. The JFTC conducted the primary review considering materials including the above notification and written opinions that had been submitted by the parties, interviews with users and competitors, and information collected from the general public, etc. As a result, it was determined that a more detailed review was necessary. Accordingly, on June 30, 2011, the JFTC requested that the parties submit reports, etc., and initiated the secondary review.

In the secondary review, the JFTC received reports, etc. submitted by the parties one after the other. Furthermore, the JFTC held several meetings with the parties at their request. The parties made assertions and submitted material to clarify and resolve the questions that had been raised by the JFTC in the meetings. The JFTC conducted a further investigation into the effects of the Merger on competition, taking into consideration the assertions and material submitted by the parties, the results of interviews with users and competitors, the results of questionnaires, and the information collected from the general public, etc. In August 2011, the majority of the reports etc. requested by the JFTC had been submitted, and the parties requested an explanation of the issues concerned. Accordingly, the JFTC gave an explanation of the current issues. The parties then made additional assertions and submitted additional materials, and the JFTC held several meetings with the parties to investigate their assertions. The JFTC also pointed out the possibility that, with respect to non-oriented electrical steel sheets, which constitute one of the steel products, and the high-pressure gas pipeline engineering business, which is one of the engineering businesses, the Merger may substantially restrain competition. As a result, the parties offered to take measures to solve the problems regarding competition. The JFTC then held several meetings with the parties who offered to take specific remedies thereafter.

**Outline of the results of the investigation.** Upon examining the goods/services in which the parties (including companies combined with the parties) compete, the JFTC determined approximately 30 fields of trade. With regards to the non-oriented electrical steel sheets and the high-pressure gas pipeline engineering business, the JFTC has decided that the Merger may not substantially restrain competition, given the remedies presented to the JFTC by the parties. The JFTC has also decided that the Merger may not substantially restrain competition with respect to the other fields of trade.

- Two Proposed M&A's in the Hard Disc Drive (HDD) Sector

**Outline of the case.** These cases are two proposed M&A's by companies engaged in the business of manufacturing and selling the Hard Disc Drive (hereinafter referred to as “HDD”)

Firstly, Western Digital Ireland, Ltd.(headquartered in the Cayman Islands of the British Overseas Territory; hereinafter referred to as “WDI”) planned to acquire all the shares of Viviti Technologies Ltd.(hereinafter referred to as “the Acquisition of Shares”). The provision applicable to the Acquisition of Shares is Article 10 of the Antimonopoly Act.

Secondly, Seagate Technology International (headquartered in the Cayman Islands of the British Overseas Territory; hereinafter referred to as “STI”) planned to acquire the HDD business of Samsung Electron Co. ,Ltd. (hereinafter referred to as “the Acquisition of Business”). The provision applicable to the Acquisition of Business is Article 16 of the Antimonopoly Act.

### **Process of the investigation**

#### – The Acquisition of Shares

After April 2011, WDI voluntarily submitted a written opinion to the JFTC stating their consideration that the Acquisition of Shares would not substantially restrain competition, together with materials concerning the Acquisition of Shares. On June 10, 2011, a notification of a proposed plan regarding the Acquisition of Shares was submitted by WDI pursuant to the provisions of Article 10, Paragraph 2 of the Antimonopoly Act. Accordingly, the JFTC received the notification and commenced its primary review. The JFTC proceeded with the primary review taking into consideration the materials submitted by WDI, including the above written opinion and notification. As a result, the JFTC determined that it would require a further detailed review. On July 4, 2011, the JFTC requested that WDI submit reports, etc., and then commenced its secondary review. On July 5, 2011, the JFTC publicly announced that it had commenced the secondary review of the Acquisition of Shares together with the Acquisition of Business, and that it would accept written opinions from third parties.

In the secondary review, the JFTC proceeded with its review of the effects of the Acquisition of Shares on competition, taking into consideration the reports and other materials submitted by WDI. In addition, the JFTC considered the results of hearings and questionnaires, etc. conducted with users of HDDs, competitors and others. On August 26, 2011, the JFTC received all the reports and related materials from WDI.

On October 13, 2011, during the secondary review, the JFTC explained the following points at issue to WDI: with respect to the market for HDDs, PCs and consumer electronics devices with a form factor of 3.5 inches (hereinafter referred to as “3.5-inch PC/CE HDDs”), the Acquisition of Shares was likely to substantially restrain competition, and the Acquisition of Shares was unlikely to substantially restrain competition in other fields of trade. Thereafter, WDI proposed remedies to solve these concerns, and the JFTC held several meetings with WDI concerning the proposed remedies. On November 21, 2011, WDI submitted a change report to the JFTC regarding said remedies.

#### – The Acquisition of Business

On May 19, 2011, a notification of a proposed plan regarding the Acquisition of Business was submitted by STI pursuant to the provisions of Article 16, Paragraph 2 of the Antimonopoly Act. Accordingly, the JFTC received the notification and commenced its primary review. The JFTC proceeded with the primary review considering materials submitted by STI, including the notification. As a result, the JFTC determined that a further detailed review would be required. On June 17, 2011, the JFTC requested that STI submit reports, etc., and then commenced the secondary review. On July 5, 2011, the JFTC publically announced that it had commenced the secondary review of the Acquisition of

Business together with the review of the Acquisition of Shares, and that it would accept written opinions from third parties.

In the secondary review, the JFTC proceeded with its review of the effects of the Acquisition of Business on competition in consideration of the reports and other materials submitted by STI. In addition, the JFTC also considered the results of hearings and questionnaires, etc. conducted with users of HDDs, competitors and others. On October 27, 2011, the JFTC received all the reports and related documents from STI.

On October 28, 2011, during the secondary review, the JFTC explained the following points at issue to STI: with respect to the market for 3.5-inch PC/CE HDDs, the Acquisition of Business was likely to substantially restrain competition, and the Acquisition of Business was unlikely to restrain competition in other fields of trade.

#### **Outline of the results of the reviews.**

##### **– The Acquisition of Shares**

In light of the remedies proposed to the JFTC by WDI, including the transfer of the HDD business, etc., the JFTC judged that the Acquisition of Shares may not substantially restrain competition in any particular field of trade.

##### **– The Acquisition of Business**

Given the remedies, etc. stated in “a” above, the JFTC judged that the Acquisition of Business may not substantially restrain competition in any particular field of trade.

##### **(Reference) Liaison and coordination with the foreign competition authorities**

As to the Acquisition of Shares and the Acquisition of Business, with consent of the parties, the JFTC implemented the reviews along with the exchange of information with the European Commission, the US Federal Trade Commission and the Korea Fair Trade Commission.

### **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***

7. 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 2011, as in previous years, the JFTC acted after consultation with other administrative agencies and submitted its opinions.

#### **3.2 *Support on the implementation of competition assessment***

8. Since October 2007, as a general rule, each ministry is obliged to implement the ex-ante evaluation of regulations when it implements the institution, revision or abolition of the regulation. On this occasion, each ministry also implements the analysis of impacts of regulation on competition (hereinafter referred to as “Competition Assessment”) and describes the results in the report on ex-ante evaluation of regulation (hereinafter referred to as “the Report”). Competition Assessment is started experimentally in April, 2010. Each ministry is expected to fulfill the checklist regarding the impacts on competition and its analysis (hereinafter referred to as “Competition Assessment Checklist”), then submit this to the Ministry of Internal Affairs and Communications (hereinafter referred to as “MIC”) with the Report. Thereafter, MIC submits the Competition Assessment Checklist fulfilled by each ministry to the JFTC.

9. In order to disseminate and establish the Competition Assessment in each ministry, the JFTC compiled the Competition Assessment Checklist etc. in reference to the OECD Competition Assessment Tool Kit, distributed it to each ministry, and publicized the implementation of Competition Assessment etc. In a meeting held by MIC in June 2011, the JFTC explained to officials in charge of policy evaluation, the main points to keep in mind when answering the Competition Assessment Checklist, so as to provide the necessary information for implementing Competition Assessment in each ministry.

#### 4. Resources (FY 2011)

##### 4.1 Budget (unit: JPY billion and %)

10. The budget of the JFTC is as follows (unit: billion JPY, %).

Fiscal Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Budget amount (JPY billion)	6.16	7.85	7.82	8.13	8.34	8.42	8.68	8.45	8.96	8.91
Change over previous year (%)	2.0	2.2	Δ 0.4	4.0	2.5	0.9	3.2	Δ 2.7	6.1	Δ 0.5
General Expenditures Budget: change over previous year (%)	Δ2.3	0.1	0.1	Δ 0.7	Δ 1.9	1.3	0.7	9.4	3.3	1.2

(Note). 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.

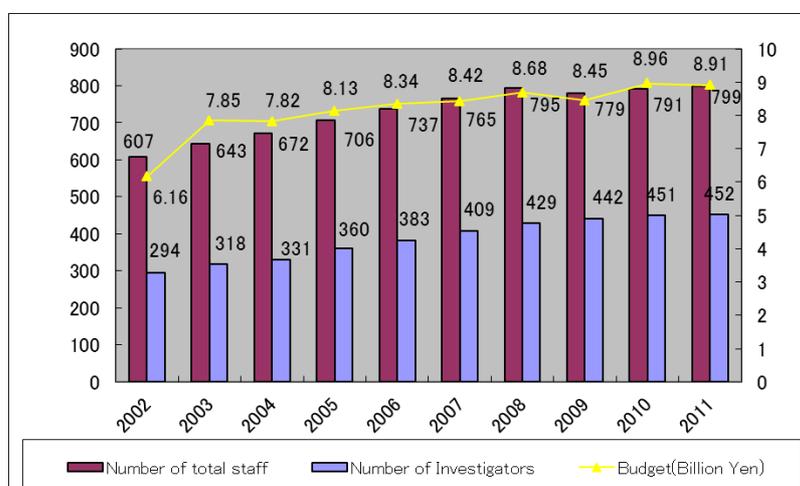
##### 4.2 Number of officials

11. 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	2011
Number of officials	607	643	672	706	737	765	795	779	791	799
Enforcement against anti-competitive practices	294	318	331	360	383	409	429	442	451	452
Merger review enforcement	28	30	32	32	35	36	36	36	35	37
Advocacy efforts	25	30	30	37	36	34	35	35	36	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 engaged in advocacy efforts refers to the General Affairs Division of the Economic Affairs Bureau and the Coordination Division.

**Budget and Number of Officials (FY 2002-2011)**



## 5. Public relations and public hearing etc.

### 5.1 *Public relations and public hearing*

12. For the purpose of enhancing public understanding of competition policies, 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 its own activities through press releases, the JFTC website and other means. The JFTC established each website to provide information aimed at the general consumer and children. Some sections of the websites content give comprehensive explanations and examples of the Antimonopoly Act and the activities of the JFTC.

13. Other than the above activities, the JFTC hosted the "One Day JFTC" and held "Consumers Seminar," the former of which is to further enhance the public's understanding and consultation services regarding the Antimonopoly Act and the Subcontract Act, and the latter being to introduce consumers to the Antimonopoly Act and the JFTC's work. These events were held in cities, except where the JFTC's offices are located. Also, at the request of junior high schools, high schools and universities, the JFTC has made efforts to spread knowledge of competition policy through school education by dispatching staff to speak on the role of competition in economic activity.

14. Moreover, the JFTC is also open to opinions and responds to requests made by the public at informal gatherings. The process of encouraging, offering and gathering information is 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 from all walks of life.

15. The main activities during 2011 were as follows:

Types of Activities	Press Releases	Exchange of opinions with local experts*	Lecturers in schools	Consumers Seminar	One Day JFTC
Number	254	77	96	39	6

(Notes). The JFTC Commissioners, etc., met with representatives of the business community, academic experts, mass media, consumer groups, etc., in local districts.

### 5.2 *Policy evaluation*

16. Since FY 2002, the JFTC has implemented the policy evaluation based on "the Government Policy Evaluation Act". In FY 2011, the JFTC implemented 7 ex-post evaluations including the "Prompt and appropriate merger control" and "Strict coping with the violations of the Antimonopoly Act," by means of performance evaluation, and published the report on policy evaluation.

17. Since FY 2011, as one of the efforts made by whole Japanese government, a new unified format of report was introduced into policy evaluations by the method of objectives management including performance evaluation. The above 7 evaluations were therefore created using the unified format.

18. Out of policies evaluated described below, consumer benefits protected by each policy were estimated with regards to the "Prompt and appropriate merger control" and "Strict coping with the violations of the Antimonopoly Act". For the "Prompt and appropriate merger control" policy, an estimated 106,3 billion JPY was protected by the reviews of 2 cases in which remedies were taken. As for the "Strict coping with the violations of the Antimonopoly Act" policy, an estimated 279,3 billion JPY was protected by legal measures taken in 17 cases.

19. In addition, the “Promotion of coordination with foreign competition authorities” policy was evaluated in light of the following the JFTC’s activities:

- (To hold) Meetings such as bilateral meetings with foreign competition authorities based on the bilateral Anti-monopoly Cooperation Agreement.
- (To participate in) Multilateral discussions.
- (To hold) Technical assistance training for developing countries and countries with economy in transition.
- (To publicize) Competition policy in Japan to other countries.

20. As a result, the necessity, effectiveness and efficiency of the policy were well appreciated. By contrast, methods for implementing technical assistance training and publicizing information overseas were highlighted as the problems to be solved.

#### **Report on policy evaluation published in FY 2011**

<b>Evaluated Policies</b>	<b>Evaluating Method</b>	
Measures etc. against violation of the Antimonopoly Act	Prompt and appropriate merger control	Performance Evaluation
	Strict coping with the violations of the Antimonopoly Act	Performance Evaluation
Measures etc. against violation of the Subcontract Act	Promoting appropriate trade practice	Performance Evaluation
	Proper application of the Subcontract Act	Performance Evaluation
Public relations and public hearing etc. on competition policy	Public relations and public hearing on competition policy	Performance Evaluation
	Promotion of coordination with foreign competition authorities	Performance Evaluation
	Creation of competitive market environment	Performance Evaluation

## **6. International efforts to strengthen the cooperation and coordination of competition law and competition policy**

### **6.1 Bilateral efforts**

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

#### *6.1.1 Bilateral meetings with foreign competition authorities*

22. In 2011, the JFTC held bilateral meetings on competition policy with the competition authorities of Canada, EU, China and Korea.

### 6.1.2 *Economic partnership agreements*

23. The following agreements signed by the Japanese government in 2011 include chapters on competition.

<b>Agreements</b>	<b>Status</b>
Comprehensive Economic Partnership Agreement between Japan and the Republic of India	Signed in February 2011 Effective in August 2011
Comprehensive Economic Partnership Agreement between Japan and the Republic of Peru	Signed in May 2011 Effective in March 2012

### 6.2 *Multilateral efforts*

24. The JFTC proactively participates in the activities of organizations 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 plays a leadership role in the East Asia Conference on Competition Law and Policy and the East Asia Top Level Official's Meeting on Competition Policy.

25. Furthermore, based on the increased number of multijurisdictional merger cases, the JFTC considers that substantial cooperation among relevant agencies including information exchange in the individual merger case is needed to be conducted more systematically. Under this consideration, the JFTC proposed the establishment of a framework to promote effective and efficient multijurisdictional merger reviews at the ICN's 10<sup>th</sup> Annual Conference held in Hague, Netherlands in May 2011. Thereafter, the JFTC embodied this idea as the "International Competition Network's Framework for Merger Review Cooperation". The framework was approved at the ICN's 11<sup>th</sup> Annual Conference held in Rio de Janeiro, Brazil in April 2012.

### 6.3 *Technical Assistance*

26. Given that developing economies are either actively strengthening their existing competition law systems or introducing new ones, the JFTC provides technical assistance for such countries by dispatching its staff, organizing training programs, etc. In 2011, the JFTC implemented training courses on competition policy for Indonesia, the Philippines and Vietnam, etc.

#### 6.3.1 *Main International Activities during 2011:*

- The 10<sup>th</sup> ICN Annual Conference (Hague, May 2011)
- International Competition Network's Framework for Merger Review Cooperation
- East Asia Top Level Officials' Meeting on Competition Policy (Singapore, September 2011)
- Bilateral consultations with foreign competition authorities (Canada, EU, China and Korea)
- Signing of economic partnership agreement (India and Peru) and participation in negotiations (Australia)
- Providing training on competition policy (Indonesia, the Philippines, Vietnam, etc.)

## 7. Main surveys related to competition policy

### 7.1 *Report on a survey on business practices between financial institutions and corporations – report on the 2011 follow-up survey –*

27. The JFTC has previously conducted two fact-finding surveys (Note: 2001 and 2006) on business between financial institutions and borrower corporations. Together with the announcement of the survey results, the JFTC has continued to monitor the business, and has made it clear that stringent measures based on the Antimonopoly Act would be taken if cases of abuse of superior bargaining position are discovered. More than four years have passed since the previous survey was conducted (report on the survey published in June 2006). Since then, amid changing economic conditions, such as the collapse of Lehman Brothers and the further appreciation of the yen, the JFTC has conducted a follow-up survey and unveiled the results (published in June 2011) to review the actual situation for transactions between financial institutions and borrower corporations. The main points of the report are as follows:

#### 7.1.1 *Survey results*

- Compared with the last survey, there has been a considerable decline in both the ratio of responses from borrower corporations that received various requests from financial institutions and the ratio of responses from borrower corporations that agreed to requests from financial institutions against their will. This is thought to be the result of progress made in compliance-related initiatives by financial institutions.
- Meanwhile, compared with the last survey, there were no large declines in both the ratio of responses from borrower corporations that felt it difficult to refuse requests from financial institutions and the ratio of responses that attributed the reason for agreeing to requests against their will to the belief that it would be difficult to secure borrowing the next time around.
- Conditions are not easy for borrower corporations to change their counterparty, so it is still likely that there will be attention paid to prevent problems arising under the Antimonopoly Act.

#### 7.1.2 *Key considerations for financial institutions*

28. Financial institutions should fully consider the fact that borrower corporations are in a difficult position to refuse requests. Furthermore, when making requests, financial institutions need to approach borrower corporations carefully so as to ensure that the corporations do not feel they would be in a disadvantageous position regarding subsequent financing, etc. Specifically, despite knowing that the borrower corporation does not intend to agree to these requests, repeated requests could fall under an unfair trade practice. Thus, it is necessary to ensure that such acts are not committed

#### 7.1.3 *Further action by the JFTC going forward*

29. Business practices between financial institutions and borrower corporations are generally on the mend, but the JFTC continues to closely monitor business between financial institutions and borrower corporations. If the JFTC discovers a case that hinders fair and free competition, it will take stringent measures based on the Antimonopoly Act.

## 7.2 *Survey on business with franchise chain head office*

30. Regarding the franchise system, the JFTC compiled Guidelines concerning the Franchise System under the Antimonopoly Act in 1983 (amended in 2002; hereinafter referred to as “the franchise

guideline”). This report clarified the type of action by franchisers (hereinafter referred to as “head offices”) that would constitute a problem under the Antimonopoly Act. The JFTC has implemented initiatives, such as by disseminating related information and raising public awareness from the perspective of preventing such illegal conduct.

31. The JFTC conducted a survey on convenience stores, mainly in accordance with the franchise guideline, to understand the actual business conditions between the head office and its franchisees (hereinafter referred to as “members”) and published a report after compiling the survey results (published in July 2011). The survey was conducted because not only the business environment surrounding the head office and members could have changed after a certain amount of time had passed, but also some head offices may have committed violations to the Antimonopoly Act against their members since the previous fact-finding survey on convenience stores (survey report had published in October 2001). Main points of the report are as follows.

#### *7.2.1 Main point of the survey results*

32. After an agreement is reached between a head office and its members, there are several cases in which the head office imposes various types of restrictions on its members over the volume of product procurement, the disposal of merchandise and the sale prices of products, or the head office introduces a new business to its members. With regards to imposing restrictions or introducing a new business, the survey responses included instances where the action was at risk of being problematic under the Antimonopoly Act or it was worth being examined from the standpoint of appropriate trade practices.

33. Furthermore, the following restrictions imposed by the head office in a superior bargaining position into its members are likely to be problematic under the Antimonopoly Act: if a head office imposes a unfair disadvantage on its members in light of normal business practices that require going beyond the norm in order to accurately carry out sales within the franchise system when the head office imposes restrictions on the volume of product procurement or the disposal or merchandise, or if the head office introduces a new business to its member; if the head office member imposes a restraint on its members’ sale prices (resale prices); if the head office imposes a unfair restriction on its members with the price of merchandise supplied by the members.

#### *7.2.2 Further action by the JFTC going forward*

34. The JFTC reports the results of the survey to related business organizations and call on the industry to implement self-imposed initiatives to realize appropriate business practices, such as widely disseminating the details of the franchise guideline to affiliated members.

35. Also, the JFTC promotes fair business practices between the head office and their members, and work on preventing illegal conduct, through the activities such as holding industry-classified seminars for the head office and management instructors at the head office. Furthermore, in terms of business between the head office and its members, the JFTC works on further understanding the actual conditions surrounding these businesses and any problematic action by the head office against its members. The JFTC will takes stringent measures if an action is considered to have been in violation of the Antimonopoly Act.

#### ***7.3 Report on a fact-finding survey on initiatives by procuring agencies toward preventing collusive bidding initiated by government agencies – compliance-related activity at procuring agencies***

36. Given the current situation in which Involvement Prevention Act have been continuously observed, the JFTC conducted a survey through questionnaires and interviews with procuring agencies (central and local governments, and government-owned institutions) that are subject to the Involvement

Prevention Act, to identify the state and challenges in deterring such involvement. The objective of the survey is to help procuring agencies improve the effectiveness of their preventive measures. The results were compiled and published as a fact-finding survey report (published in September 2011).

37. Based on the survey results, the following major schemes are desired for implementation in each contracting agency in order to prevent involvement in bid rigging, etc.

#### 7.3.1 *Improvement of compliance awareness among contracting agencies and their employees*

38. Each official at a contracting agency, including senior officials, is expected to be aware that involvement in bid rigging, etc. runs counter to one's inherent responsibility for appropriate conduct. Therefore, each employee is expected to improve compliance awareness of the Act. The contracting agencies, as an organization, are expected to improve compliance and work on preventing employee from involvement in bid rigging, etc..

- *Expand training.* It is important to secure opportunities to widely publicize and educate executives as well as each employee on what they should comply with in order to prevent the occurrence of involvement in bid rigging, etc.
  - Proactive training irrespective of the scale of an organization, the amount of a bid order, government ministries and agencies or local agencies
  - Improved training of senior/management officials or procurement officials
  - Timely implementation of training
- *Preparation of a compliance manual.* It is important for an organization to prepare a compliance manual that contains concrete explanations of laws and ordinances in order to prevent the involvement in bid rigging, etc. and achieve a solid compliance structure.
- *Clarifying intentions as an organization.* It is important for senior and management officials to clearly state to each employee that the organization does not condone involvement in bid rigging, etc. so that employees do not view involvement in bid rigging as unavoidable or condoned to prevent interruption of bidding operations and prioritize the maintenance for quality. Furthermore, an organization should make clear that involvement in bid-rigging, etc. is subject to disciplinary action.

#### 7.3.2 *Preparation for creating a structure to prevent involvement in bid rigging, etc.*

39. It is important for an organization/structure to incorporate a function aimed at reducing the risk of involvement in bid rigging, etc.

- *Preparation for a structure that promotes compliance.* In order to effectively promote procuring agencies including local ones in compliance with the law, it is important to enhance compliance based on a specific set of authority and responsibilities in an independent and unified manner.
- *Preparation for a checking system to prevent and detect involvement in bid rigging, etc.*
  - Creation of an advance checking system for bidding procedures/conditions
  - Creation of a structure that detects problematic conduct based on a follow up investigation of bidding results
  - Strengthening of the post-bidding investigational capability of third-party organizations

– Creation of a contact point for whistle-blowing

- *Thorough management of confidential information.* Thorough management of confidential information related to bidding, etc. reduces the risk of information leaks and would also contribute to identifying the facts should an information leak occur. Therefore, it is necessary to take measures to specify regulations on storage method or limited access to confidential information.

#### 7.3.3 *Measures aimed at preventing involvement in bid rigging, etc.*

- *Initiatives against external pressure.* Procuring agencies promote an initiative to submit a written report to a superior, et al, if there is external pressure that demands their officials to violate the law.
- *Consideration of personnel affairs.* While it may be difficult for small-to-medium-sized local public bodies, procuring agencies promote a greater effort to periodically change the person in charge of procurement as this would make it harder to conceal or continue involvement in bid rigging, etc.
- *Reemployment of retired employees at bid participating enterprises.* Procuring agencies give due consideration to ensure that involvement in bid rigging, etc. does not take place as a result of pressure from retired employees.

#### 7.4 *A fact-finding survey on trades between food product manufacturers and wholesalers*

40. The JFTC has positively and strictly enforced the Antimonopoly Act against the abuse of superior bargaining position, and has also exerted itself to prevent such abuse through implementing fact-finding surveys etc.. That said there have been instances where wholesalers have abused their superior bargaining position with manufacturers, that is, their suppliers, and such abuse may be originated from the actions of large-scale retailers towards wholesalers.

41. Thus, given that the instances that appear to be an abuse of superior bargaining position in the trading of food products are observed, with a focus on trade between food products wholesalers and large-scale retailers, the JFTC conducted a survey to understand the actual conditions surrounding trade between manufacturers and wholesalers of food products. The survey results were compiled in a report published in October 2011.

##### 7.4.1 *Main points of the survey results are as follows:*

42. According to the survey results from food product manufacturers, there were indications of food product manufacturers being subject to actions that could lead to the abuse of superior bargaining position by food product wholesalers. Similarly, the survey results from food product wholesalers also indicated the abuse of their superior bargaining position.

43. When investigating the reason behind food product wholesalers abusing their superior bargaining position with food product manufacturers, it became clear that, in some cases, food product wholesalers had received demands etc. from client retailers and in turn made unreasonable demands on the food product manufacturers. These cases indicated that large-scale retailers were at the root of this problematic conduct.

#### 7.4.2 *Further action by the JFTC going forward*

- The JFTC holds industry-classified seminars, etc. for food product wholesalers and large-scale retailers, in order to promote fair trade and the prevention of illegal conduct between food product manufacturers and wholesalers, as well as between food product wholesalers and large-scale retailers.
- The JFTC reports survey results to related business organizations so as to ensure that there is no illegal conduct trade between food product manufacturers and retailers. Furthermore, the JFTC demands the industry to implement self-imposed initiatives to realize appropriate trade practices, through methods such as wide distribution of information to affiliated members on the JFTC's Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act.
- In addition to promoting the aforementioned items A and B aimed at preventing illegal conduct, the JFTC also continues to focus on the industry's actual trade conditions of. If an action is considered to have been in violation of the Antimonopoly Act, the JFTC will take stringent measures.

### **8. Activities of the Competition Policy Research Center**

44. The Competition Policy Research Center (hereinafter referred to as the "CPRC") develops research activities as the result of a collaboration between the JFTC staff, director, chief researchers, and visiting researchers (a total of 16 persons at the end of December 2011) specialized in the economic and law field. These research activities are aimed at strengthening a theoretical and empirical basis for the implementation of the Antimonopoly Act and the preparation of competition policies.

45. In 2011, the CPRC published 5 joint research reports and 7 discussion papers. It organized 5 open seminars and 1 international symposium, and offered specialized training in economics with the aim of improving the staff's economic analysis skills.

#### **8.1 *Joint research reports***

- An Analysis of Anti-competitive Effects on Business Conduct in a Successive Oligopoly Market (April 2011)
- Anti-competitive and Pro-competitive with respect to Exclusive dealing contract (July 2011)
- An Analysis of Impact of Regulation on Competition – An Economic Analysis of Self-regulation on Advertisement Time - (November 2011)
- Ex-ante Evaluation of Business Combination – Application of Economic Analysis on Competition Policy (November 2011)
- Comparative Law Research on Exemption Institution of Competition Law in Insurance Business - with a Focus on Comparison Examination with EU Competition Law (December 2011)

#### **8.2 *Discussion papers***

- "Territorial Restrictions and Consumer Welfare in a Mixed Oligopoly: The Japanese Gas Supply Market " (January 2011)
- "The Effects of Non-assertion of Patents Provisions -R&D Incentives in Vertical Relationships-" (April 2011)
- "Ex-post Examination of Business Combination: Impacts on Retail Prices " (May 2011)

- "The Impact of Mergers on Profits, Share Value, Innovation, and Product Prices in Japan in the 2000s " (July 2011)
- "Interpretation of Restraint on Competition in EU Competition Law " (September 2011)
- "Competition Policy in Japan: An Economic and Legal Introduction with Illustrative Cases " (September 2011)
- "Durable Goods Price Cycles: Theory and Evidence from the Textbook Market " (October 2011)

### 8.3 *Hosting Open Seminars*

46. The CPRC hosts open seminars to introduce the results of its joint research reports, etc. These open seminars are also used as a forum for speeches by the senior officers of competition authorities and visiting academics that are based abroad. In 2011, the following 5 open seminars were held.

Date	Theme	Speaker	Moderator, Panelists and Commentators
Jan. 21	1st CLEP (Competition and Law, Economy Policy) Conference	Junko Shibata (Professor, Kagawa-Ehime Universities' Graduate School of Law) Hiroshi Ohashi (Associate Professor, Graduate School of Economics, University of Tokyo) Satoshi Myojo (Associate Professor, Graduate School of Economics, Kobe University) Akira Goto (Commissioner of the JFTC)	Moderator: Hiroyuki Odagiri (Director of CPRC; Professor, Faculty of Social Innovation, Seijo University)
Jun. 3	Towards Desirable Competition Policy and Regulatory Impact Analysis	Hiroyuki Odagiri (Director of CPRC; Professor, Faculty of Social Innovation, Seijo University) Hiroshi Kasahara (Director, Coordination Division, Economic Affairs Bureau, General Secretariat, the JFTC)	Moderator: Tatsuya Maruyama (Associate Professor, Graduate School of Economics, Kyoto University ) Panelist: Hiroyuki Odagiri, Hiroshi Kasahara, Tatsuya Maruyama Norihiko Kasuga (Associate Professor, Faculty of Business Administration, Kinki University)
Jun. 17	Economic Analysis and Competition Policy of Alliances between Firms and Partial Equity Ownership	Hodaka Morita (Associate Professor, The University of New South Wales (Australia))	Moderator: Hiroyuki Odagiri (Director of CPRC; Professor, Faculty of Social Innovation, Seijo University) Commentator: Toshiaki Tada (Attorney, Hibiya Sogo Law Office)

Oct. 12	The Operative Situation of China's Anti-Monopoly Law and its Future Problems	Shi Jianzhong (Professor and Vice President, China University of Political Science and Law; Chief, Competition Law Research Center); Ex-member of China Antimonopoly-Law Drafting Expert Group	Moderator: Koki Arai (Deputy Director of CPRC) Commentator: Fujio Kawashima (Graduate School of International Development, Nagoya University) Kuninobu Takeda (Chief Researcher of CPRC, Associate Professor, Osaka University Law School)
Dec. 9	The Effect of Buyer Power on Competition in Distribution Markets	Yasutomo Kojima (Associate Professor, Faculty of International Agriculture and food studies, Tokyo University of Agriculture) Kazuhiko Fuchikawa (Adjunct Lecturer, Omiya Law School)	Moderator: Hiroyuki Odagiri (Director of CPRC; Professor, Faculty of Social Innovation, Seijo University) Commentator: Naoki Ohkubo (Chief Researcher of CPRC, Professor, Faculty of Law, Gakusyuin University) Yoshio Takahashi (Executive Director, the Distribution Economics Institute of Japan, Adjunct Lecturer, Musashi University)

(Note). Titles listed in the above table were applicable at the time.

#### **8.4 *Hosting an international symposium***

47. Playing a central role in the international exchange of competition policies, the CPRC hosts international symposiums that bring together senior officials of foreign competition authorities and academic specialists.

48. An international symposium entitled "Competition Law and Merger Regulation" was held in March 2011. Participating invitees included Mr. Damien Neven (Chief Economist, European Commission Directorate General for Competition; Professor, University of Geneva), Mr. Hiroyuki Odagiri (Director of CPRC; Professor, Faculty of Social Innovation, Seijo University), Mr. Noboru Kawahama (Chief Researcher of CPRC; Professor, Graduate School of Law, Kyoto University), Mr. Takashi Mitachi (Senior Partner, Managing Director, The Boston Consulting Group Japan Co., Ltd.). (Note) Titles listed in the above table were applicable at the time.

#### **8.5 *Implementation of Specialized Training in Economics***

49. The CPRC offers economics training to enhance the economic analysis skills of the JFTC's staff. In 2011, academic experts etc. were invited as lecturers to provide training in industrial organization, economic mathematics, etc.

## **9. JFTC's response to the Great East Japan Earthquake**

50. In response to the Great East Japan Earthquake that occurred on March 11, 2011, the JFTC has implemented the following initiatives to provide a clearer understanding of the Antimonopoly Act and the Subcontract Act regarding government and business activity related to the earthquake.

### **9.1 *Q&A regarding the Great East Japan Earthquake***

51. Having received inquiries on the Antimonopoly Act and the Subcontract Act in relation to the earthquake, the JFTC posted a compilation of responses to major inquiries on its website, and included a point of contact for individual consultations or to receive reports and information on suspicions of violation.

52. For example, due to the shortage of goods and materials caused by the earthquake, the JFTC has made the following observations with regards to the activities of enterprises or business organizations that jointly adjust or decide on the number of items sold per customer:

- Prioritization of the supply of goods and materials to areas affected by the earthquake as well as wide distribution of goods and materials to customers do not constitute a problem under the Antimonopoly Act, provided that both actions are a response to urgent situations and occur in regions experiencing a serious shortage of goods and materials..
- Such actions would however constitute a problem under the Antimonopoly Act if they were to continue after the shortage has been resolved.

53. The JFTC published these observations on March 30, 2011, and additional Q&A's were published on April 5, 19, May 20 and June 1 of the same year.

### **9.2 *Regarding the industry's coordination to deliver relief goods and materials to earthquake-stricken areas***

54. The JFTC posted the following views on the website (published on March 18, 2011) regarding the Antimonopoly Act in relation to relief goods and materials delivered to areas affected by the earthquake: (1) smooth delivery of relief goods and materials to areas affected by the earthquake is aimed at social and public welfare; (2) such action is to be conducted only during the period when there is a serious shortage of goods and materials; (3) as long as this coordination is unlikely to discriminate against certain businesses, it does not constitute a problem under the Antimonopoly Act. The JFTC also demanded each ministry and agency to broadly distribute these views.

### **9.3 *Views on the Antimonopoly Act in relation to summer-time energy-saving initiatives at industry organizations,***

55. The JFTC widely publicized its views on the Antimonopoly Act in relation to summer-time energy-saving initiatives at industry organizations, etc. (published on April 11, 2011). It also responded to requests for consultation on initiatives from related ministries and agencies.

### **9.4 *A compilation of conceivable instances related to initiatives at times of emergency (including earthquakes)***

56. The JFTC published its views on the Antimonopoly Act (based on inquiries from enterprises, etc.) on its website (published March 13, 2012) in order for enterprises to swiftly cooperate in supplying products and labor at times of emergency (including earthquakes) without causing problems under the Antimonopoly Act.