

**Remarks as Prepared for the
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Hiroyuki ODAGIRI

Commissioner of the Japan Fair Trade Commission

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If it works well, competition policy should boost innovation and encourage investment. However, it can also be used to further other economic policy goals. Should industrial or other government policy objectives ever override competition policy priorities?

- What are the respective enforcement priorities of the Japan Fair Trade Commission and China's National Development and Reform Commission under their new leaderships? What have both agencies learnt from their recent enforcement activities?

<Introduction>

Thank you very much. It is quite an honor that I can speak today at this prestigious Royal Institute of International Affairs. And it is personally also a big pleasure to come back to London and give a speech, because more than 20 years ago, I was a faculty member of London Business School for two years. One of my colleagues at the time was Paul Geroski who later became the Chairman of Competition Committee but sadly passed away rather young. Another was David Currie, or perhaps I should say Lord Currie, who is now the Chairman of Competition and Markets Authority.

Now, I was asked by the organizer to speak if industrial or other government policy objectives ever override competition policies

The simple answer is "no". Japan Fair Trade Commission, or JFTC, is an independent agency and applies the Antimonopoly Act to any businesses whether they are private or state-owned, Japanese or foreign owned, and whether they are under the jurisdiction or guidance of other ministries or not. It is true that certain acts are exempt from the Antimonopoly Act on the ground of public interests, such as a cartel in the insurance industry for the purpose of facilitating re-insurance, and another in the transportation industry for the purpose of providing transportation services in isolated areas. However, the number of such exemptions is now minimal. In fact the number exceeded 1,000 during the 1960s but is now mere 28. Thus I would say that there is no room for other government policies to override competition policies.

However, in order to give an international comparative perspective, it is perhaps

useful to explain historical evolution of competition policy in Japan. This is particularly so because there are people who argue that a culture of competition is not widespread in Japan, and that the cooperative behavior had been prevalent including collusion. Also there are people who argue that the Japanese government actively and successfully drew a picture of desirable industrial structure and encouraged harmonious cooperation among enterprises.

I personally disagree with such a view. Until three years ago when I became a commissioner, I had been a professor of economics and one of the books I wrote and published from Oxford University Press is titled "Technology and Industrial Development in Japan". In this book, through a number of detailed industry studies, my coauthor and I argued that there were many entrepreneurial and competitive activities in Japan since the so-called Meiji Restoration that took place in the middle of the 19th century. Thus, for instance, although cartels were legal until 1947 and a number of cartels were actually formed in the textile industry for instance, such cartels were frequently broken owing to anti-collusive, competitive behavior of the cartel members or because of the presence of outsiders and new entrants. Such competitive behavior and innovation, we argued, have been the engine of Japan's successful catch-up and further growth.

Still, it is also true that the government made efforts to promote industries and so I will now talk about how the competition law started in Japan and how it interacted with the industrial policy.

<History>

In 1947, two years after the end of the war, the Antimonopoly Act or, more formally, the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade, was enacted and the Japan Fair Trade Commission (JFTC) was established as an independent commission. It is the third oldest competition law in the world after the US and Canada and we now have 68 years history.

However, in the early period, the immediate challenge for Japan was economic reconstruction from the damages of the war and to achieve economic independence. Government policy, therefore, focused on fostering and strengthening domestic industries and promoting export to earn foreign

exchanges. This led to the enactment of various laws exempting a wide range of industries from the Antimonopoly Act. For instance, the so-called rationalization cartel became exempt.

The government, particularly the Ministry of International Trade and Industry or MITI was concerned with what they called excess competition among domestic producers saying, for instance, that in the automobile industry in the 1960s there were more than 10 producers in Japan while the US, with a much bigger market, had only four, and even Toyota, the largest one, is just one twenty-sixth of the size of General Motors. The MITI argued that they have to be integrated, particularly in anticipation of the coming liberalization of trade and investment. They often used administrative guidance, which might have been incompatible with competition policy. Thus, the enforcement of Antimonopoly Act was rather inactive and some people call this period, that is, the 1950s and 1960s, the “dark ages of the Antimonopoly Act.”

However, this changed in the 1970s. Importantly, there are two landmark cases.

One is the merger between Yawata and Fuji, the two largest steel makers at the time. They announced their merger plan in 1968, and the Minister of International Trade and Industry issued a statement saying that he welcomes it. However, the merger would create a serious concern on competition because their combined market share would exceed 30 percent in more than 20 products. After a careful deliberation, JFTC accepted the merger; however, it demanded various remedies, including the divestiture of certain production equipment. This merger review by JFTC attracted a big interest. In particular, 90 major economists signed a petition and expressed their concern about the anti-competitive effects. This was the first time that major economists took such an action, and attracted much interest not only from the businesses but also from the press and the general public. Thus, even though the merger itself was approved and Nippon Steel Company was born, the case helped the public to understand the importance of competition policy, sending out a message that large-scale merger would be carefully scrutinized by JFTC and is by no means straightforward.

The second landmark case is the oil cartel case. In 1974, JFTC filed with the Public Prosecutor General criminal accusations against 11 oil wholesalers and

their executives, who were involved in price cartel, and also against the Petroleum Association of Japan for their role in output allocation. This was the first case of criminal accusation in Japan. After six years of deliberation, the Tokyo High Court found the Association not guilty but the wholesalers guilty. The Supreme Court supported this decision four years later.

The reason that the Court found the Association not guilty is quite important, because the Petroleum Association argued that they did it following the administrative guidance of the MITI. The Court accepted this to be true and yet said that the fact that the Association followed the administrative guidance does not imply that it is exempt from the Antimonopoly Act. That is, the court said that quantity allocation cartel is illegal with or without administrative guidance. Still, noting that the industry had been under the administrative guidance for decades, the court said that the misunderstanding of the Association that it is exempt from the Antimonopoly Act is not totally unreasonable and therefore concluded that the Association should not be judged as guilty. Despite the non-guilty decision, the court decision became very influential, because it clearly stated that administrative guidance or any other industrial policy cannot be an excuse for the violation of the Antimonopoly Act.

Later JFTC published the “Administrative Guidance Guidelines” and clarified circumstances in which administrative guidance can cause the violation of the Antimonopoly Act.

After these cases and particularly since the 1990s, deregulation was promoted by the government, and the enforcement of Antimonopoly Act was strengthened. Thus, most of the exemptions to Antimonopoly Act have been abolished, including rationalization cartels. Surcharges, that is, administrative fines for the violators were introduced in 1977 right after the oil cartel case. In the beginning, it was in principle 1.5 percent of sales, but increased to 6 percent in 1990 and is now 10 percent. The oil cartel case was the only criminal case until 1990 but since then we have 14 cases. This of course is in addition to many more cases in which we took administrative actions.

Another important change since the latter half of the 1980s was privatization of a few public corporations such as those in the telecommunications sector and the railway sector. The main aim of such privatization was to promote efficiency and innovation through competition. Naturally, JFTC has a major role here and, in the

telecommunications sector, in order to promote mutual understanding on what practices were illegal under the Antimonopoly Act and also the Telecom Act, the Ministry in charge and JFTC jointly issued “Guidelines for Promotion of Competition in the Telecommunications Business Field” in 2001. In 2007, for instance, JFTC took a legal action against NTT East, which is one of the privatized companies, as its conduct had the consequence of eliminating rivals and hence fell under private monopolization that is prohibited by the Antimonopoly Act.

So, let us now come back to the original question of whether industrial or other government policy objectives override competition policies. The answer, at least at present, is no. I can say that the importance of competition law and policy is now widely recognized in Japan both by the industry, policymakers, and the general public. As a result, when considering a policy applicable to an individual industry, the ministry in charge now carefully considers how it will serve to improve competitive environments or promote competition in the relevant market. JFTC often expresses its view to the ministry and the two often collaborate.

Since about 10 years ago, the motto of JFTC has been “No Competition, No Growth.” Thus, to support sustainable economic growth as a competition authority, JFTC set out three priorities, i) rigorous and effective enforcement, ii) active advocacy to promote competition and growth, and iii) the promotion of international cooperation with foreign competition authorities and international organizations such as OECD and ICN, that is, International Competition Network.

So, speaking today here nicely fits this priority of the JFTC, that is, advocacy and international cooperation, and I thank you for giving me this opportunity. And I will be happy to respond to any questions you may have. Thank you.