

Annual Report of FY 2011 (Outline) (Tentative Translation)

Chapter 1 Summary

The Japan Fair Trade Commission (JFTC) actively implemented competition policy during FY 2011 mainly focusing on the following types of measures.

1 Amendment of the Antimonopoly Act

The bill to amend the Antimonopoly Act (AMA), which is mainly focused on abolition of the JFTC’s hearing procedure for administrative appeals, was submitted to the 174th ordinary Diet session on March 12, 2010. The House of Representatives decided on June 16, 2010 that it would continue to deliberate the bill after the closing of the diet session. It, subsequently, also decided to deliberate the bill throughout from the 175th to the 179th Diet sessions. In the 180th ordinary Diet session, the bill was referred to the Business and Industry Advisory Committee (BIAC) of the House of Representatives on January 24, 2012.

2 Vigorous and Appropriate Law Enforcement

(1) Vigorous Elimination of Violations of the AMA

A. During FY 2011, under a fundamental policy of prompt and effective law enforcement, the JFTC acted swiftly and vigorously against violations of the AMA—especially bid-rigging, price-fixing cartels, and unfair trade practices such as abuse of superior bargaining position that places small and medium-size enterprises at an unfair disadvantage.

The cases in which legal measures were taken in FY 2011 were as follows:

Legal Measures Cases during FY2011	
Bid rigging	Bid-rigging for engineering works Yamanashi Prefecture ordered in the Kyoto area Bid-rigging for engineering works and road pavement works Ibaraki Prefecture ordered Bid-rigging for engineering works Ishikawa Prefecture and City of Wajima ordered

	Bid-rigging conspiracies for automotive wire harnesses and related products automobile manufacturers ordered
Price-fixing cartel	Price-fixing cartel by manufacturers and distributors of air separation gases Price-fixing cartel by manufacturers of LP gas containers Price-fixing cartel by manufacturers and distributors of VVF cables Price-fixing cartel by manufacturers of LP gas instruments Price-fixing cartel by taxi business operators located in Niigata city and elsewhere
Abuse of superior bargaining position	Abuse of superior bargaining position by a supermarket against suppliers Abuse of superior bargaining position by a large-scale retailer specifically dealing with goods for children or babies against suppliers Abuse of superior bargaining position by a large-scale retailer of home electric appliances against suppliers
Resale price maintenance	Maintenance of resale price by importing and distributing company of shoes and sports goods
Interference with a competitor's transactions	Interference with transactions of a particular social game provider by a mobile social networking service provider

B. Regarding so-called "Government-Assisted Bid Rigging" in which officials working for central/local government offices, etc. are involved in bid rigging, administrative measures have been stipulated to prevent involvement in bid rigging etc., in the Act Concerning Elimination and Prevention of Involvement in Bid Rigging, etc. In FY 2011, the JFTC discovered bid rigging in engineering works and road pavement works ordered by Ibaraki Prefecture, accordingly, the JFTC applied this Act and requested measures for improvement to the Governor of Ibaraki (August 4, 2011).

(2) Promotion of Fair Trade Practices

A. Approach to Abuse of Superior Bargaining Position

- (a) The JFTC has long conducted surveillance so that abuse of superior bargaining position that constitutes an unfair trade practice under the AMA will not occur, and has responded strictly to conducts that violate the AMA.
- (b) The JFTC deals vigorously with violations of the AMA. In addition, the JFTC conducted fact-finding surveys in the fields where the fair trade practices for small and medium size enterprises should be further promoted. In FY 2011, the JFTC published the "Fact-Finding Report on Tradings between Franchise Headquarters and Their Franchisees" (released on June 7, 2011) and the "Fact-Finding Report on Tradings between Food Product Manufacturers and Wholesalers" (released on October 19, 2011), and it conducted fact-finding surveys on the trade between shippers and logistic enterprises.
- (c) The JFTC conducted a total of 41 lecture programs to specific industry fields, where the abuse of the superior bargaining position has been revealed, or has been suspected through various fact-finding surveys. The aim of the programs is to further improve the legal compliance of enterprises in the fields. In each program, the JFTC explained with specific examples in line with each actual situation in the industry.
- (d) The JFTC held "JFTC Traveling Consultation Sessions for Small and Medium-size Enterprises" in 33 locations throughout Japan, and also dispatched lecturers to training sessions held by trade associations to raise awareness. The JFTC also produced video outlining regulations on abuse of superior bargaining position for enterprises which are unable to participate in briefing sessions and consultation sessions about regulation on abuse of superior bargaining position, and delivered the video on the JFTC website.

B. Approach to Unjust Low Price Sales

The JFTC takes prompt action against cases of unjust low price sales in the retail sector. In particular, in cases of unjust low price sales by large-scale enterprises and in cases repeated violations that are believed to have a large impact on surrounding retailers, the JFTC conducts individual investigations into the impact on the business activities of the surrounding retailers, and deals strictly with cases by adopting legal measures where problems are discovered.

C. Vigorous Elimination of Violations of the Subcontract Act

- (a) The JFTC, considering actual transactions that it is hardly expected for subcontractors to provide their information voluntarily, has regularly conducted fact-finding surveys of the leading subcontracting enterprise and their sub-contractors, in cooperation with the Small and Medium-Size Enterprise Agency. Moreover, the JFTC has kept on making effort to find violations in ad-hoc survey on specific businesses and enterprises.
- (b) The JFTC strives to ensure fairness in subcontracting transactions and to protect the interest of subcontractors through prompt and appropriate enforcement of the Subcontracting Act, in order for small and medium-size enterprises not to be hindered in their autonomous business activities.

The main cases in which recommendations were issued in FY 2011 are as follows.

Main recommendation cases during FY 2011

- Reduction of subcontracting payments by a consigning freight forwarding business operator (main subcontracting enterprise)
- Reduction of subcontracting payments and settlement of raw materials at a time earlier than the date of payment by a confectionery wholesaler (main subcontracting enterprise)
- Reduction of subcontracting payments and return of goods as well as unjust request for financial interest by a shoes retailer (main subcontracting enterprise)
- Refusal to receive goods and reduction of subcontracting payments by a wholesale and retail trader of ceramic wares (main subcontracting enterprise)

- (c) On November 21, 2011, the JFTC made a request to approximately 36,000 main subcontracting enterprises and related trade associations for comprehensive compliance with the Subcontract Act, etc. with a letter signed by both the Chairman of the JFTC and the Minister of Economy, Trade and Industry in order to prevent illegal conducts against the Subcontract Act such as failing to make payment of subcontract proceeds after the lapse of the date of payment, reducing the amount of subcontract proceeds without reasons attributable to the subcontractor, unjustly setting subcontract proceeds, etc.

(3) Improvement for Review of Business Combinations

A. Appropriate Implementation of Business Combination Regulations

The AMA prohibits acquisition of shares, shareholdings, mergers, and other transactions that could substantially restrain competition in particular business fields. The JFTC is committed to preserving the competitive structure of Japanese markets through the appropriate implementation of regulations on business combinations. During FY 2010, the JFTC took appropriate action on the following proposed business combinations and published the details of these cases.

Main Business Combination Cases During FY 2011

- Merger between Nippon Steel Corporation and Sumitomo Metal Industries, Ltd.
- Integration of Hard Disc Drive (HDD) manufacturing and sales entities

B. Review of Regulations on Business Combination (Procedures and Criteria)

In accordance with the "New Growth Strategy" approved at the Cabinet meeting on June 18, 2010, the JFTC verified its regulations on business combination. From the view point to make its review of business combination further improved in its swiftness, transparency and predictability and to enhance its international conformity, the JFTC revised its review procedures and criteria based on the verification result. The JFTC announced its decision to amend, in part, the JFTC regulations on June 14, 2011, and the amendment was put in force on July 1, 2011.

3 Survey to Develop Competitive Environment

(1) Efforts on Competition Assessment

From October 2007 onwards, each Ministry is, in principle, obliged to conduct ex-ante evaluation of the regulations at the time of newly establishments, revises or abolition of its regulations. In such a case, each shall analyze regulation-impact on competition ("Competition Assessment"). This has been implemented on a trial basis since April 2010. For the Competition Assessment, each Ministry must complete a checklist for analysis of impact by regulation on competition ("Competition Assessment Checklist"), and submit this together with Competition Assessment form to the Ministry of Internal Affairs and Communications ("MIC"). The MIC is required to send the Competition Assessment Checklist to the JFTC. In FY2011, the JFTC received 82 Competition Assessment Checklists from the MIC.

In light of this, the JFTC explained points to remember to ensure an accurate response to the Competition Assessment Checklist at the meeting of coordinators for policy evaluation from each Ministry held by the MIC in June 2011, to provide the information necessary to conduct a Competition Assessment.

(2) Efforts in Prevention of Bid-rigging

From the viewpoint that approaches of procuring entities are extremely important to ensure prevention of bid rigging, the JFTC collaborates with them by dispatching lecturers to training sessions for those in charge of procurement held by central government agencies and local governments, and by providing them with materials. The JFTC also holds training sessions for those in charge of procurement in local governments. In FY2011, the JFTC dispatched lecturers to central government, local public bodies and specified enterprises on 158 occasions and held 20 training sessions throughout Japan.

Also, in light of the current situation where there is no end to the cases to which the Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. is applied, the JFTC conducted questionnaire surveys and interviews of procuring agencies to which the Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. may apply, with the aim of clarifying the current status and issues with regard to efforts to prevent activities which fall under the Act Concerning Elimination and Prevention of Involvement in Bid Rigging etc. and to enhance the effectiveness of those efforts in procuring agencies and, on September 28, 2011, the JFTC formulated and published “A Report Concerning Measures Taken by Procuring Agencies to Prevent Procurement Officials from Being Involved in Bid-rigging.”

(3) Survey on Business Practices between Financial Institutions and Enterprises

The financial sectors have long been under the JFTC scrutiny. The JFTC has conducted such fact-finding surveys as asking enterprises (“borrower enterprises”) which have received loans from financial institutions about unfair transactions such as where a financial institution uses its superior bargaining position in a transaction with them to sell its financial products. The JFTC released the results in the form of publications called “Reports on a Survey on Business Practices between Financial Institutions and Enterprises” in 2001 and 2006. However, it has been more than

four years since the 2006 follow-up survey. Considering the situation where economic conditions have suffered amid changes such as the bankruptcy of Lehman Brothers in the fall of 2008 and the rapid appreciation of the yen since the summer of 2010, the JFTC has conducted another follow-up fact-finding survey to find out if business practices between financial institutions and borrower enterprises have changed, and it unveiled the results of the survey in June 2011.

4 Reinforcement of Business Base on Competition Policy

(1) Response to the Globalization of the Economy

In recent years, whereas there has been an increase in the number of cases involving violations of the competition laws of multiple countries and regions and of cases requiring competition authorities of multiple countries and regions to conduct concurrent investigations, the needs of globalization of enforcement activities and of strengthening of cooperation and coordination among competition authorities have been growing. In response to this environment, the JFTC is cooperating closely with competition authorities of other jurisdictions, including notifying the competition authorities of relevant jurisdictions of its enforcement activities, in accordance with the bilateral antimonopoly cooperation agreements, the economic partnership agreements and others.

Whereas the JFTC proactively participated in multilateral conferences such as the International Competition Network (ICN), the Organization for Economic Co-operation and Development (OECD), Asia-Pacific Economic Cooperation (APEC), the United Nations Conference on Trade and Development (UNCTAD) and so on, the JFTC has taken the leading role in the East Asia Conference on Competition Law and Policy and the East Asia Top Level Official's Meetings on Competition Policy. In particular, in the ICN's 11th Annual Conference (April 2012), the ICN Framework for Merger Review Cooperation was established. This framework was proposed by the Chairman of the JFTC with the aim of promoting efficient and effective enforcement cooperations among ICN member agencies, and the JFTC is managing its implementation.

In response to the recent accelerated trends of strengthening existing competition laws and of introducing new competition laws in developing countries, the JFTC provides the competition authorities of such countries with technical cooperation such as dispatching its staff as training lecturers and offering training

programs to them and through other means.

The JFTC is also working to enhance its international presence and to provide information on Japan's competition policies globally through the distribution of English-language brochures, enriched press releases on its English-language Website, and the dispatches of speakers to seminars and conferences organized by overseas bar associations or other organizations, etc.

The major international activities of the JFTC during FY 2011 are as follows.

Major International Activities during FY2011

- 10th ICN Annual Conference (May 2011)
- ICN Framework for Merger Review Cooperation
- East Asia Top Level Officials' Meeting on Competition Policy (September 2011)
- Bilateral meetings with foreign competition authorities (Canada, EU, China, Korea and India)
- Providing trainings on competition policy (Vietnam, Indonesia, Philippines, Malaysia, etc.)

(2) Public Relations Activities, etc.

The JFTC listened to opinions individually from members of the Antimonopoly Policy Cooperation Committee with the aim of utilizing the opinions and requests concerning competition policy as references of policy implementation and of helping the promotion of understanding on competition policy.

Besides, in its intention to make swift response to the changes of economic society and to promote effective and proper competition policy measures, the JFTC holds the Council on Antimonopoly Policy with the aim of widely exchanging opinions with experts and of seeking further understanding of the competition policy. In FY2011, the JFTC held the Council on Antimonopoly Policy 4 times.

Furthermore, the JFTC commissioners exchanged opinions with experts in 9 (Nine) cities around the country, while in each region of the country, the directors of regional offices and experts in the regions gathered for discussion.

Other than the above activities, the JFTC hosted "One Day JFTC" aiming at further advocacy on the Antimonopoly Act and the Subcontract Act and enhancement of consultation service in the cities but those at where the head office and the regional offices are located, whereas the JFTC held "Consumers Seminar"

to introduce to consumers the Antimonopoly Act and what the JFTC works on.

Moreover, 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 the economic activity ("Class Delivery Service").

The major activities of the JFTC during FY 2011 are as follows.

Major Activities during FY 2011

- Opinion gathering from 150 members of the Antimonopoly Policy Cooperation Committee
- Hosting Council on Antimonopoly Policy (4 times)
- Hosting meetings with local experts (Obihiro, Fukushima, Maebashi, Yokohama, Shizuoka, Fukui, Okayama, Tokushima and Oita)
- Hosting meetings with other experts in local areas (73 times)
- Hosting "One Day JFTC" (Obihiro, Akita, Maebashi, Tokushima, Matsue, Kagoshima, Kanazawa and Wakayama)
- Hosting consumers seminars (39 times)
- Hosting lectures on the Antimonopoly Act (32 times: Junior high schools; 9 times: High schools; and, 55 times: Universities)

The JFTC's major activities during FY 2011 are summarized by category as follows:

1 Investigation and Disposition of Suspected Violations of the Antimonopoly Act

(1) During FY 2011, the JFTC investigated 180 suspected violations of the AMA and completed 171 of those investigations.

(2) During FY 2011, legal measures were taken in 22 cases. By category, the 22 cases were broken down into 5 cases of price-fixing cartels, 12 cases of bid-rigging and 5 cases of unfair trade practices (Figure 1). In addition, the JFTC issued surcharge payment orders for a total amount of 44,257,840,000 yen (Figure 2).

During FY 2011, in addition, the JFTC received a total of 143 applications from enterprises to report their own violations under the leniency program.

(3) The JFTC also issued 2 warnings to practices that might violate the Antimonopoly Act and 138 cautions to practices that might lead to violations (excluding 1,772 cautions under the expedited investigation process that were issued in cases of unjust low price sales) and strived for prompt and appropriate law enforcement.

Figure 1: Number of Cases with Legal Measures Taken

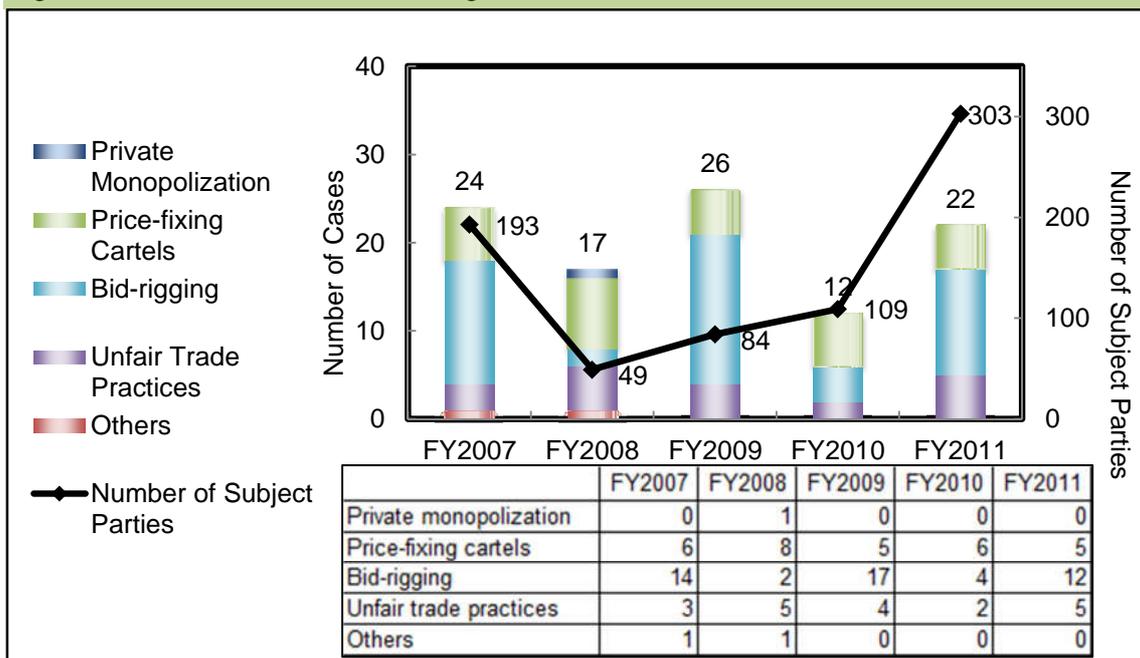
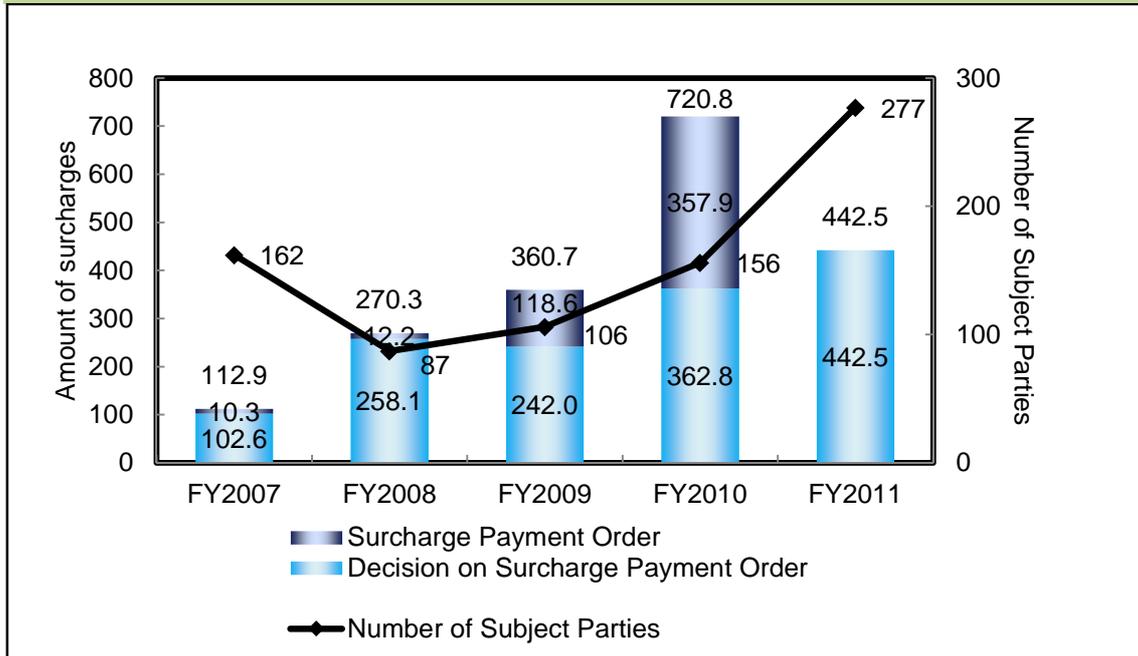


Figure 2: Amount of Surcharges

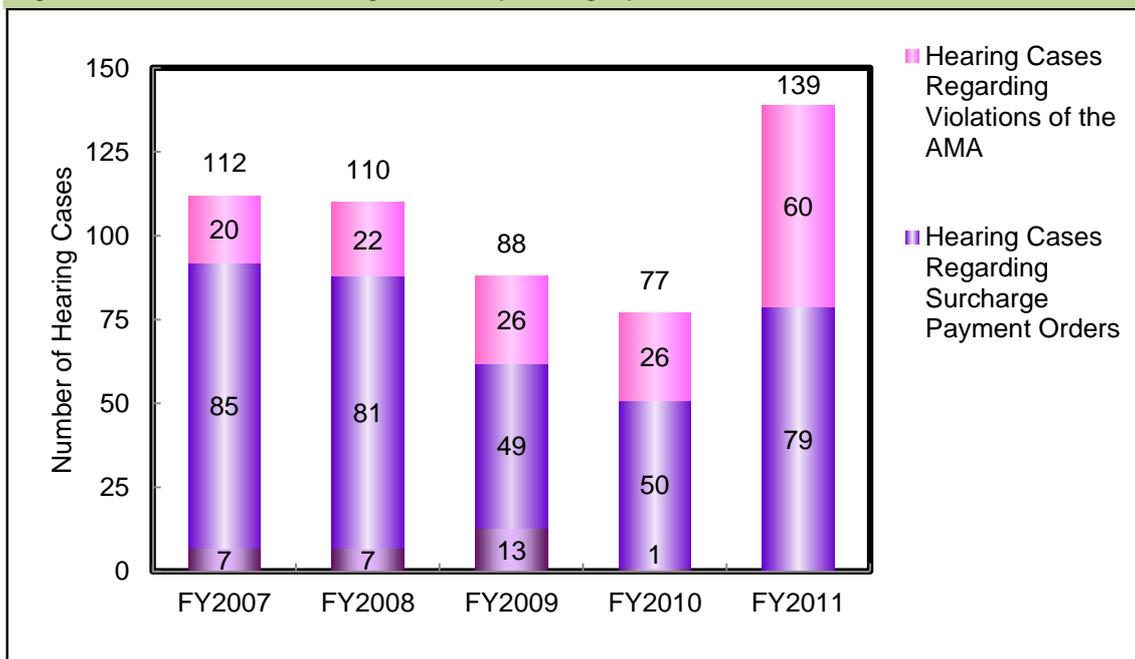


(Notes) Includes decisions on surcharge payment orders under the former law prior to the implementation of the 2005-amended AMA (meaning the Act for the Partial Amendment of the Antimonopoly Act [Law No.35, 2005] and hereinafter the same will apply), and excludes surcharge payment orders nullified by the initiation of hearing procedures under the former law.

(4) The total number of hearing procedures in progress totaled 139 cases during FY 2011 (60 cases regarding violations of the AMA, and 79 cases regarding surcharge payment orders). Of those, 54 cases were continued from the previous fiscal year, while 85 cases were newly initiated during FY 2011 (Figure 3).

Decisions were rendered in 12 cases during FY 2011. All those decisions were made under the law after the implementation of the 2005-amended AMA (cease and desist orders in 4 cases; and, surcharge payment orders in 8 cases). Other than that, decisions were made in 2 cases to close the hearing procedures (since all hearing procedures in progress relating to all the respondents in the same case ended, the total number of hearing procedures in progress reduced by 1), and review requests were withdrawn in 3 cases. As a result, the number of hearing procedures in progress (that will be carried over to FY 2012) as of the end of FY 2011 amounted to 123 cases.

Figure 3: Number of Hearing Cases by Category



2 Clarification of Law Enforcement and Prevention of Violations of the Antimonopoly Act

To prevent violations of the AMA, the JFTC provides individual consultations to enterprises and trade associations that seek guidance as to whether specific business activities they are planning could be in violation of the AMA. During FY 2011, the JFTC received consultations regarding 1,884 cases of individual company activities and regarding 300 cases of trade association activities.

3 Establishment of Theoretical and Empirical Bases for Competition Policy

Since the launch of the Competition Policy Research Center (CPRC) in June 2003, the CPRC has developed its activities to strengthen the theoretical and empirical bases required for the enforcement of the AMA and other related laws and the planning, preparation and evaluation of competition policies. In FY 2011, the CPRC addressed 10 research themes and vigorously conducted its activities that included an international symposium (held jointly with Nikkei Inc.), 4 open seminars and 15 workshops.

4 Activities Related to Business Combination Regulations

In its activities related to business combinations under the provisions of Articles 9

through 16 of the AMA, the JFTC approved 7 cases of holding of voting rights for banks and insurance companies; received 100 reports regarding holding companies and other matters, and 275 notifications regarding share acquisitions of operating companies, mergers, splits, joint share transfers, and business transfers; and conducted necessary examinations.

5 Approaches to Unfair Trade Practices

(1) Approaches to Abuse of Superior Bargaining Position

During FY 2011, the JFTC issued cease and desist orders and surcharge payment orders in 3 cases on the abuse of superior bargaining position by large-scale retailers.

Now that an abuse of superior bargaining position subject to a surcharge payment order under the 2009 revision of the Antimonopoly Act, the case of abuse of superior bargaining position by a supermarket against its suppliers included in the 3 cases mentioned above is the first case in which the JFTC issued a surcharge payment order for abuse of superior bargaining position. Totally, including two other cases, the JFTC issued surcharge payment orders of 4,639,200,000 yen. In addition, while the JFTC has established the “Abuse of Superior Bargaining Position Case Task Force” aiming at effectiveness and efficiency in investigation and implementation of necessary remedial measures on the cases of abuse of superior bargaining position, the JFTC cautioned against 52 cases in FY 2011.

(2) Approaches to Unjust Low Price Sales

In FY2011, the JFTC issued 1 warning to a liquor retailer due to plausible unjust low price sales. In FY 2011, the JFTC issued 1,772 cautions to retailers of liquor, petroleum products, and household electrical products due to the suspicions unjust low price sales. (Breakdown: 1,138 cases for liquor, 444 cases for petroleum products, 142 cases for household electrical products, and 48 cases for others)

6 Activities Related to the Subcontract Act

To ensure fair subcontract transactions and to protect the interests of subcontractors, the JFTC conducted fact-finding survey that covers 38,503 main

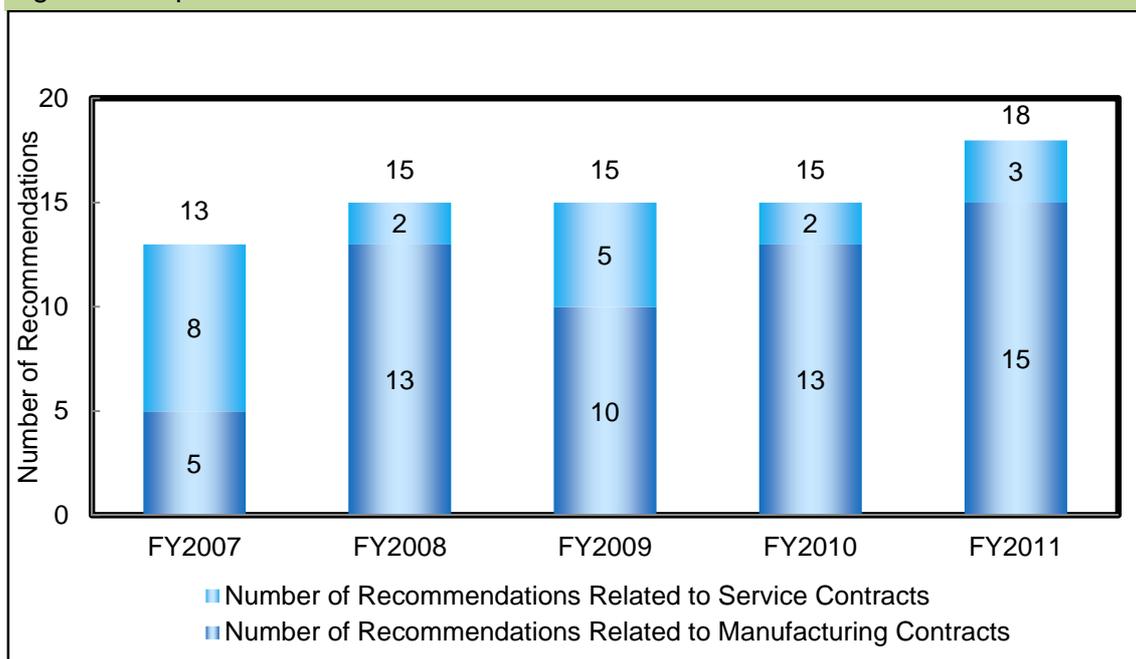
subcontracting enterprises and 212,659 subcontractors engaged in transactions with those enterprises. Based on the result of the fact-finding survey, the JFTC issued recommendations in 18 cases (15 cases regarding manufacturing contracts and 3 cases regarding service contracts. See note.) (Figure 4) The JFTC gave 4,326 instructions in accordance to the Subcontract Act.

Of those,

- (1) in the cases related to the reduction of subcontracting payments, the reductions totaling 1,714,170,000 yen were reimbursed by 86 main subcontracting enterprises to 6,391 subcontractors,
- (2) in the cases of returned goods, the commodities equivalent to 1,249,370,000 yen in total were taken back by 4 main subcontracting enterprises from 118 subcontractors,
- (3) in the cases related to delay in payment of subcontract proceeds, the total amount of 166,610,000 yen was paid by 78 main subcontracting enterprises to 1,953 subcontractors as the interests on the delayed payments,
- (4) in the cases of unfair request of economic benefits, the provided benefits totaling 49,060,000 yen were reimbursed by 5 main subcontracting enterprises to 70 subcontractors,
- (5) in the cases of refusing to receive commodities, the commodities equivalent to 40,330,000 yen were received by 2 main subcontracting enterprises from 27 subcontractors, and
- (6) in the cases of calling on subcontractors to make early payments in settlements of raw materials and such like, the costs totaling 2,490,000 yen were reimbursed by 1 main subcontracting enterprise to 11 subcontractors,

(Note) "Manufacturing contract" means manufacturing contract and repair contract. "Service contract" means information-based product creation contract and service contract. Hereinafter the same will apply.

Figure 4: Disposition of Cases under the Subcontract Act



(Note) In certain recommendation cases, violations were found in multiple types of subcontracting. The above numbers reflect the primary type of subcontracting in such cases.

7 Other Activities

(1) Policy Evaluation

The JFTC made policy evaluations based on the Government Policy Evaluations Act. During FY 2011, the JFTC performed 7 post-evaluations including “Prompt and Appropriate Business Combination Reviews” and “Vigorous Measures against Violations of the AMA” with the methodology of results evaluation. The JFTC released its policy evaluation reports.

(2) Correspondence to the Great East Japan Earthquake

In the wake of the Great East Japan Earthquake on March 11, 2011, the JFTC has provided various consultations for the enterprises facing the problems of the disaster, and also has published guidance for businesses who may also suffer similar situation on the Antimonopoly Act and Subcontract Act, so as to prevent infringements against them.

The guidance consists of the JFTC’s observations on major questions asked in relation to the earthquake and on conceivable problems in the form of “Q&A regarding the Great East Japan Earthquake” (March 30, 2011. Additional Q&As were published in phases thereafter). The JFTC also publicized on its website

“guidance for coordination among enterprises to deliver relief goods and materials for the Earthquake stricken areas” ,””guidelines concerning business practices on electricity-saving measures in summer under the Antimonopoly Act” and “a compilation of conceivable instances related to initiatives at times of emergency (including earthquakes)”.

Also, with regard to non-performance of obligations such as the submission of reports in accordance with the provisions of Article 9 of the Antimonopoly Act as a result of the Great East Japan Earthquake, since it was deemed necessary to extend the deadline (June 30, 2011) initially set under the Act Regarding Special Measures to Weigh the Preservation of Rights and Profits of the Victims of Specified Disasters [Law No. 85 of 1996] Cabinet Order Regarding the Deadline for Exemption from Liability for Non-Performance of Obligations Pertaining to the Submission of Reports, etc. in accordance with the Provision of Article 9 (4) of the Antimonopoly Act as a Result of the Great East Japan Earthquake was promulgated on June 21, 2011, and the deadline was extended to September 30, 2011.