

ANNUAL REPORT ON COMPETITION POLICY IN JAPAN
(January-December 2007)

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

1 Efforts toward the amendment of the Antimonopoly Act

1) Background to submission of the amendment bill of the Antimonopoly Act (“AMA”)

On October 16, 2007, in line with the June 2007 report prepared by the Advisory Panel on Basic Issues Regarding the Antimonopoly Act (an advisory panel to the Chief Cabinet Secretary), the Japan Fair Trade Commission (JFTC) published “Prospective Amendments to the AMA” and continued with its study of the Act’s amendment bill. The bill was approved at the Cabinet meeting held on March 11, 2008, and, on the same day, was submitted to the 169th ordinary session of the Diet. As deliberations on the bill were not completed during the session, the bill was carried over to the 170th extraordinary session.

2) Major points of the amendment bill of the Antimonopoly Act

The following are the major points of the bill:

A) Review of the surcharge system

- a) A surcharge system will be introduced against the exclusionary type of private monopolization. The amount of surcharge shall be the amount obtained by multiplying the sales of the goods or services concerned by six hundredths (two hundredths for retailers, and one hundredth for wholesalers).
- b) An entrepreneur that repeatedly commits violations in the form of concerted refusal to trade, discriminatory pricing, unjust low price sales, or resale price restriction shall be subject to a surcharge system. The amount of surcharge shall be the amount obtained by multiplying the sales of the goods or services resulting from the pertinent violation by three hundredths (two hundredths for retailers, and one hundredth for wholesalers).
- c) An entrepreneur that continues to abuse its superior bargaining position shall be subject to a surcharge system. The amount of surcharge shall be the amount obtained by multiplying the amount of the pertinent violating transaction with its counterparty by one hundredth.

B) Review of the surcharge rate for unreasonable restraint of trade

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

C) Review of the Leniency Program

To encourage violators to provide further information for the JFTC’s fact-finding investigations on violations, the number of leniency applicants will be expanded to a maximum of five for each violation.

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

- a) Introduction of a Prior Notification System for Share Acquisitions.
- b) Revision of the scope of Notification Thresholds for Acquiring Corporations, etc.
- c) Revision of the scope of Notification Thresholds for Foreign Corporations.
- d) Revision of the scope of Notification Thresholds for Mergers, Demergers or Acquisitions of Businesses.

- e) Expansion of the scope of the exemption from notification of Mergers, Demergers or Acquisitions of Businesses.
- f) Introduction of Substantive provisions and Notification provisions for joint share transfers.

E) Special provisions concerning Document Production Order

Special provisions concerning Document Production Order will be introduced to facilitate remedies in litigation relating to suspension or prevention of infringement by means of unfair trade practices.

2 Bilateral cooperation agreements

1) Signing of “Agreement between Japan and the Republic of Chile for a Strategic Economic Partnership”

Both Foreign Ministers signed the Agreement between Japan and the Republic of Chile for a strategic Economic Partnership in March 2007. The Agreement came into effect in September 2007. It has a chapter dedicated to competition, which stipulates that each country must take measures it considers appropriate against anti-competitive activities and shall cooperate in the field of controlling anti-competitive activities.

2) Signing of “Agreement between Japan and the Kingdom of Thailand for an Economic Partnership”

The leaders of the two governments signed the Agreement between Japan and the Kingdom of Thailand for an Economic Partnership in April 2007. The Agreement came into effect in November 2007. It has a chapter dedicated to competition, which stipulates that each country must promote fair and free competition by proscribing anti-competitive activities and shall cooperate in the field of notification to the other party, cooperation and coordination regarding enforcement activities.

3) Signing of “Agreement between Japan and the Republic of Indonesia for an Economic Partnership”

The leaders of the two governments signed the Agreement between Japan and the Republic of Indonesia for an Economic Partnership in August 2007. The Agreement came into effect in July 2008. It has a chapter dedicated to competition, which stipulates that each country must promote competition by addressing anti-competitive activities and shall cooperate in the field of notification to the other party, cooperation and coordination regarding enforcement activities.

2) Other moves toward agreements

The Japanese government is continuing discussions on competition policies with Switzerland, Vietnam and Australia in negotiations for economic partnership agreements (EPAs).

II Enforcement of competition laws and policies

1 Measures against violations

1) Measures taken in 2007

Under the AMA, the JFTC conducts necessary investigations based on Article 47. If it finds any violation, the JFTC notifies the person who is to be the addressee of the cease and desist order of such matters as the expected content of the order (Paragraph 5 of Article 49) and gives the person

an opportunity to express an opinion and to submit evidence (Paragraph 3 of Article 49) before issuing the cease and desist order in consideration of the opinion and evidence. Even if the JFTC doesn't have enough evidence to take legal measures, when it identifies any suspicions of violations of the AMA, it issues warnings and instructs the parties concerned to take measures. In addition, the JFTC issues cautions as a means of preventing such violations when it doesn't have enough evidence to specifically identify a violation of the AMA, but is only able to recognize certain conduct that could lead to violations.

Out of 50 examinations concluded by the JFTC in 2007, it took legal measures in 20 cases (cease and desist orders in 18 cases and a surcharge payment order without a cease and desist order in 2 cases). The JFTC also issued warnings in 11 cases in which it identified suspicions of violations of the AMA, issued cautions in 11 cases, and terminated examinations in 8 cases in which it was unable to uncover evidence of illegal conduct.

A) Legal measures

The JFTC has been especially engaged in continuous efforts to eliminate bid rigging. In 2007, 12 of the JFTC's legal measures were carried out against bid rigging.

| | |
|---|----|
| • Private monopolization | 0 |
| • Bid rigging | 12 |
| • Price cartels, etc. (excluding bid rigging) | 3 |
| • Unfair trade practices | 4 |
| • Unjustly restricting the functions or activities of constituent entrepreneurs by trade associations | 1 |

B) Surcharge payment orders

The AMA states that when enterprises or trade associations form cartels, a surcharge will be levied in the following cases:

- a) Cases pertaining to the prices of goods or services; and
- b) Cases that affect the prices of goods or services by effectively restricting the volume of supply.

The amount of the surcharge is calculated by multiplying the amount of sales of the concerned goods or services during the period of the cartel by a certain percentage. In the case of trade associations, the surcharge payment is levied on the enterprises constituting the association. In 2007, the JFTC issued surcharge payment orders to 207 enterprises totaling 40,757.2 million yen. In addition, the JFTC issued orders to 12 enterprises totaling 1,063.78 million yen following decisions in 2007 in cases for which a hearing procedure concerning a surcharge payment order before 2006 was conducted.

Of the 207 entrepreneurs ordered to pay surcharges, 15 enterprises requested hearings in 2007. The JFTC initiated hearings on all of the cases, and surcharge payment orders totaling 27,171.0 million yen were nullified.

C) Criminal accusations

The JFTC has adopted an active policy to apply criminal penalties to violations that a) substantially restrain competition in a particular field of trade, including price cartels, supply restraint cartels, market allocation agreements, bid rigging and boycotts, which constitute serious cases that are likely to have a widespread influence on the national economy; or b)

involve firms or industries that are repeat offenders or which do not take appropriate measures to eliminate a violation, and for which the administrative measures of the JFTC are not considered sufficient to meet the aims of the AMA.

In 2007, the JFTC filed an accusation regarding 2 cases as follows:

The JFTC filed accusations with the Prosecutor-General against the construction companies that had predetermined a bid winner from among special joint ventures for each competitive tender on the construction project for extending Subway Line No. 6 from Nonami to Tokushige procured by the Transportation Bureau of the City of Nagoya and also agreed to help a prearranged winner to win the bid. (The accusations were filed on February 28 and March 20, 2007.)

The JFTC filed accusations with the Prosecutor-General against the corporations and other entities which, in compliance with the intent of the Japan Green Resources Agency, had predetermined a bid winner, and also agreed to help a prearranged winner to win a bid over businesses concerning geological research and location survey planning on main forest road projects procured by the agency in FY 2005 and 2006 by way of designated competitive bids, etc. (The accusations were filed on May 24 and June 13, 2007.)

D) Hearing procedures

The JFTC initiated hearing procedures on 8 cases in 2007. As of the end of December 2007, the JFTC was conducting ongoing hearing procedures for 85 cases, of which 18 concerned allegations of violations of the AMA, 62 concerned surcharge payment orders and 5 concerned allegations of violations of the Premiums and Representations Act.

The JFTC issued decisions on 44 cases in 2007 after hearing procedures, including the case of Fixing of the Selling Price of Polypropylene.

2) Summary of main cases

A) Case against participants in the bidding for human waste treatment facilities procured by municipal governments and other parties

The JFTC found that, for the purpose of preventing the decline of the contract price, the bidders collaboratively determined the prospective bid winner so that they could help it win human waste treatment facilities projects procured by municipal governments and other parties, and therefore issued cease and desist orders and surcharge payment orders on January 16, 2007, because such an act is in violation of Article 3 of the AMA (“Prohibition of unreasonable restraint of trade”).

B) Case against participants in the bidding for floodgate construction procured by the Ministry of Land, Infrastructure and Transport (hereinafter referred to as “MLIT”) and other parties

a) The JFTC found that, for the purpose of preventing the decline of the contract price, the bidders collaboratively determined the prospective bid winner so that they could help it win specific dam floodgate projects ordered by the MLIT through its Regional Development Bureaus.

b) The JFTC found that, for the purpose of preventing the decline of the contract price, the bidders collaboratively determined the prospective bid winner so that they could help it win specific river floodgate projects procured by the MLIT through its Regional Development Bureaus.

- c) The JFTC found that, for the purpose of preventing the decline of the contract price, the bidders collaboratively determined the prospective bid winner so that they could help it win the specific dam floodgate projects procured by the Japan Water Agency.
- d) The JFTC found that, for the purpose of preventing the decline of the contract price, the bidders collaboratively determined the prospective bid winner so that they could help it win the specific floodgate projects procured by the Ministry of Agriculture, Forestry and Fisheries through its Regional Agricultural Administration Office.

The JFTC issued cease and desist orders and surcharge payment orders on March 8, 2007, because such acts are in violation of Article 3 of the AMA (“Prohibition of unreasonable restraint of trade”).

The JFTC also found that a person who then worked for the MLIT had had “Involvement in bid rigging, etc.” as provided in the Act concerning Elimination and Prevention of Involvement in Bid Rigging, etc and therefore demanded that the Minister of the MLIT take improvement measures under the said act.

Further, the JFTC found that certain acts performed by some retired officials of the MLIT or the Japan Water Agency had induced and facilitated each violation, and therefore demanded that the MLIT and the agency should take necessary action to prevent the future occurrence of any similar acts.

C) Case against large-scale retailers

- a) Unjust acts committed by large-scale retailers with respect to stocked merchandise suffering from a low turnover ratio
 - i) Even when there was no reason attributable to the suppliers, large-scale retailers returned goods in all or in part that were suffering from a low turnover ratio to the suppliers and on which they decided not to make any discount sale on their own account.
 - ii) Even when there was no reason attributable to the suppliers, large-scale retailers coerced the suppliers into accepting a price reduction of the delivery price of goods purchased by the retailer by such amounts as were necessary to make up for the decreased profitability as a result of discount sales that they decided to make.
- b)
 - i) In a case where a large-scale retailer refurbished its shop and made discount sales on stocked merchandise for the purpose of a clearance sale, the retailers coerced the supplier of such merchandise to reduce its invoiced price by an amount corresponding to one half of the discounted amount, even when there was no reason attributable to the supplier.
 - ii) Large-scale retailers returned goods in all or in part that remained unsold despite discount sales made under i) above to the suppliers, even when there was no reason attributable to the suppliers.
- c) When refurbishing their stores, large-scale retailers coerced their suppliers to dispatch employees to engage them in displaying or replenishing goods as part of the retailers’ own business operations.

Given the above findings of fact, the JFTC issued cease and desist orders on March 27, 2007, because the above acts are in violation of Article 19 of the AMA (under Paragraphs 1, 2 and 7 of “Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers”).

D) Case against participants in the bidding for the construction of natural gas-based eco-stations
a) The JFTC found that the bidders had collaboratively determined the prospective bid winners so that they could win the project of constructing natural gas-based eco-stations in the Kanto Koshinetu district, ordered by gas companies, petroleum product retailers and so forth through designated competitive tender.

b) The JFTC found that the bidders had collaboratively determined the prospective bid winners so that they could win the project of constructing natural gas-based eco-stations in the areas where Osaka Gas Co., Ltd. lays natural gas pipes, ordered by Osaka Gas, petroleum product retailers and so forth through designated competitive tender.

Given the above findings of fact, the JFTC issued cease and desist orders and surcharge payment orders on May 11, 2007, because the above acts are in violation of Article 3 of the AMA (“Prohibition of unreasonable restraint of trade”).

The JFTC also found that certain acts performed by Osaka Gas had induced or facilitated violations by the violating companies, and therefore requested Osaka Gas not to engage in any similar acts in the future.

E) Case against the entrepreneurs manufacturing and selling silica calcium boards for interior finishing work

The JFTC found that the entrepreneurs had agreed to raise the board’s selling price by about ten percent over its current selling price, and therefore issued cease and desist orders and surcharge payment orders on May 24, 2007, because such an act is in violation of Article 3 of the AMA (“Prohibition of unreasonable restraint of trade”).

F) Case against Shiga Pharmacist Association

The JFTC found that the association had requested sellers of specified pharmaceuticals not to indicate selling prices of non-prescription drugs in newspaper inserts, and therefore issued a cease and desist order on June 18, 2007, because such an act is in violation of Article 8, Paragraph 1, Item 4 of the AMA (“Prohibition of unjustly restricting the functions or activities of the constituent entrepreneurs by trade associations”).

G) Case against participants in the bidding for civil engineering and construction projects procured by the Defense Facilities Administration Agency

The JFTC found that the bidders for specific civil engineering and construction projects procured by the Defense Facilities Administration Agency (DFAA) had designated predetermined winners or the special joint ventures consisting of the predetermined winners for the projects, in line with the results of the allocations which were made by the DFAA officials and conveyed by bid liaison personnel on the industry side. The bidders also agreed that other entrepreneurs than the predetermined winners of the bids would cooperate to ensure that the predetermined winners of the bids would receive the orders. The JFTC therefore issued cease and desist orders and surcharge payment orders on June 20, 2007, because such acts are in violation of Article 3 of the AMA (“Prohibition of unreasonable restraint of trade”).

The JFTC also found that the DFAA staff members at that time had had “Involvement in bid rigging, etc.” as provided in the Act concerning Elimination and Prevention of Involvement in Bid Rigging, etc. However, given that the DFAA had already taken

improvement measures, including improvement of the bidding system, the JFTC decided to refrain from requesting any corrective actions under the said law, and notified the DFAA of its former staff members' involvement in the bid rigging.

The JFTC also notified the above-mentioned facts on involvement in bid rigging to the Board of Audit of Japan for the purpose of ensuring the elimination and prevention of any involvement in bid rigging.

H) Case against taxicab business operators

The JFTC found that, in an attempt to prevent lower-fare providers of taxi services from signing up for the common ticket business, taxicab business operators operating in Niigata City were collaborating to force common ticket business operators to refuse to accept signing agreements with lower-fare providers for the common ticket business in the Niigata transportation area, and therefore issued cease and desist orders on June 25, 2007, because such an act is in violation of Article 19 of the AMA (under Paragraph 1, Item 2 "Concerted refusal to trade" among "Unfair trade practices").

I) Case against manufacturers and distributors of polyethylene pipes and joints for gas

The JFTC found that certain manufacturers and distributors of polyethylene gas-reticulation pipes and joints for sale to customers had agreed to raise the products' delivery prices to customers from their current levels, and therefore issued cease and desist orders and surcharge payment orders on June 29, 2007, because such an act is in violation of Article 3 of the AMA ("Prohibition of unreasonable restraint of trade").

J) Case against oil product retailers

The JFTC found that, at gas stations located in Oyama City, Tochigi Pref., gasoline product retailers continuously sold ordinary gasoline at prices lower than its purchase price, making it difficult for other gasoline product retailers based in the same city to do business activities, and therefore issued a cease and desist order on November 28, 2007, because such an act is in violation of Article 19 of the AMA (under Paragraph 6 "Unjust low price sales" among "Unfair trade practices").

K) Case against participants in the bidding for the work to lay gas conduit pipes ordered by Tokyo Gas Co., Ltd. and Osaka Gas Co., Ltd.

a) Participating bidders had collaboratively determined the prospective bid winners so that they could win the work of laying high-pressure gas conduit pipes procured by Tokyo Gas Co., Ltd.

b) Participating bidders had collaboratively determined the prospective bid winners so that they could win the work of laying medium-pressure gas conduit pipes procured by Osaka Gas Co., Ltd.

Given the above findings of fact, the JFTC issued surcharge payment orders on December 3, 2007, because the above acts are in violation of Article 3 of the AMA ("Prohibition of unreasonable restraint of trade").

3) Litigation

A) Lawsuits seeking to overturn a JFTC decision

Regarding lawsuits seeking to overturn JFTC decisions, 2 court decisions were made in 2007.

Meanwhile, 9 new lawsuits were filed. As of the end of December 2007, there were 12 pending lawsuits.

B) Lawsuits seeking injunction based on Article 24 of the Antimonopoly Act

Throughout 2007, 2 new lawsuits were filed based on Article 24 of the AMA. As of the end of December 2007, there were 6 pending lawsuits.

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

Throughout 2007, one new lawsuit was filed based on Article 25 of the AMA. As of the end of December 2007, there were 6 pending lawsuits.

D) Other claims for compensation for damages related to the Antimonopoly Act

In accordance with the provisions of the Civil Law, local governments that placed construction orders have initiated lawsuits seeking compensation for damages suffered as a result of a violation of the AMA.

Since the revised Local Autonomy Law came into effect in September 2002, residents living in the district of the local government that placed the order of public works may file a lawsuit against a municipality to seek compensation for damages. With this reform, the system of resident subrogation lawsuits, in which residents living in the district of the local government subrogated the local government and sought compensation for damages, was abolished.

A major pending lawsuit seeking compensation for damages brought by an ordering party a lawsuit seeking compensation in connection with the bidding for a project to construct a garbage incineration facility ordered by a local public entity

During 2007, six new lawsuits were filed under the provisions in the Civil Code, which are currently pending (to the best of the JFTC's knowledge), seeking compensation for damages from the respondents of the JFTC's decision in connection with the bid rigging for a project to construct a garbage incineration facility for a local public entity.

2 Mergers and acquisitions

1) Efforts to make progress on the transparency and predictability of mergers and acquisitions regulations

A) Partial revision of "Guidelines to the Application of the Antimonopoly Act Concerning Review of Business Combination"

To improve further the predictability, transparency and speed of the review of business combinations, on March 28, 2007, the JFTC made necessary revisions to the "Guidelines to the Application of the Antimonopoly Act Concerning Review of Business Combination" (published on May 31, 2004). Also, for greater transparency of prior consultation procedures, the JFTC revised "Policies for Prior Consultation Regarding Business Combination Plans" (published on December 11, 2002).

B) Publication of cases of business combination

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

entrepreneurs planning business combinations.

C) Report on the ex-post review of business combinations

For the purposes of further elaborating the review of business combinations, with respect to past cases that the JFTC had already reviewed, the JFTC analyzed the competitive situation in the market subsequent to the business combination and assessed the appropriateness of the pro-competitive factors recognized by the JFTC at the time of review or the effectiveness of the remedies, as follows:

a) Ex-post review of import pressure (Part I of the Report)

The JFTC analyzed import data across different products regarding cases in which the JFTC had assessed import pressures as a pro-competitive factor. The JFTC went on to conduct a more detailed data analysis and an interview survey concerning the degree of such import pressures following the relevant business combination, on a case in which the JFTC had positively assessed potential import pressure (“Merger between Mitsui Petrochemicals Industries, Ltd. and Mitsui Toatsu Chemicals, Inc. ”) (case published in 1997).

b) Ex-post review of the remedies (Part II of the Report)

Regarding the remedies taken in previously published cases, the JFTC classified and organized such remedies based on their respective characteristics. The JFTC went on to conduct a more detailed data analysis and an interview survey concerning how the remedy was implemented and its effects following the business combination, on a case in which the JFTC had considered a remedy regarding the granting of a license on a patent right (“Acquisition of the Stock of SANYO Electric Vending Machine Co., Ltd. by Fuji Electric Co., Ltd.”) (case published in 2001).

2) Statistics relating to mergers and acquisitions

Based on the provisions of Article 15, Article 15-2 and Article 16 of the AMA, mergers, demergers and business acquisitions of a certain size in Japan must be notified to the JFTC prior to the transactions and based on Article 10 of the AMA, stockholdings of a certain size must be reported after the transactions. The JFTC conducts reviews of notified or reported cases, and when it determines that a transaction may be to substantially restrain competition in a particular field of trade, the JFTC has the power to take measures, including the prohibition of the said transaction. Throughout 2007, 70 company mergers were notified based on the provisions of Article 15, 31 demergers were notified based on the provisions of Article 15-2, 105 cases of business acquisitions were notified based on the provisions of Article 16 and 1,055 stockholdings were reported to the JFTC based on the provisions of Article 10 of the AMA. None of the stockholding, merger, demerger or business acquisition cases notified and reported in 2007 were cases in which the JFTC took any legal measures.

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

| | 2005 | 2006 | 2007 |
|-----------------------|------|------|-------|
| Stockholdings | 841 | 917 | 1,055 |
| Mergers | 83 | 79 | 70 |
| Demergers | 16 | 18 | 31 |
| Business acquisitions | 152 | 146 | 105 |

| | | | |
|-------|-------|-------|-------|
| Total | 1,092 | 1,160 | 1,261 |
|-------|-------|-------|-------|

3) Main mergers and acquisitions cases

- Acquisition of Fixed Assets for a Magnetic Head Manufacturing Business from Alps Electric Co., Ltd. by TDK Corporation

A) Overview

This case concerns a plan in which TDK Corporation (hereinafter referred to as “TDK”), a company engaged in the business of magnetic heads for hard disk drives (hereinafter referred to as “HDDs”) would acquire the fixed assets relating to the business of HDD magnetic heads from Alps Electric Co., Ltd. (hereinafter referred to as “Alps Electric”), a company operating the same business.

The applicable article concerned with this case is Article 16 of the AMA.

B) Particular fields of trade

a) Product Summary

Magnetic heads are one of the key parts of an HDD, which is a device that magnetically stores data and programs on magnetic disks. Magnetic heads convert electronic signals into magnetic signals and vice versa with the use of an electromagnetic conversion element performing magnetic field generation for writing signals onto a disk serving as a storage medium as well as detecting the magnetic flux for reading recorded signals from the disk.

For high-speed retrieval of high-capacity data stored on disks in the HDD, the disk rotates at an ultra high speed ranging from several thousand to tens of thousands of revolutions per minute. If the magnetic head were to come in contact with the magnetic material on the storing surface of the disk, it would be worn by friction. For this reason, the HDD is designed to create an airflow from the high-speed disk revolutions between the magnetic material surface and the magnetic head so that the head can maintain a slight space, specifically 0.02 micrometers (one micrometer equals a one-millionth of a meter), from the disk surface.

Magnetic heads vary in specifications depending on the HDD size, but they are manufactured using the same production equipment. When it is necessary to produce magnetic heads for HDDs with a different size, it is possible to do so in a very short period of time by changing the program responsible for the configuration of the manufacturing equipment.

b) Technologies Relating to Magnetic Heads

(1) Technologies requisite to magnetic heads

At present, there is a major need to increase the density and capacity for the purpose of enhancing the performance of HDDs. Achieving higher density and larger capacity concerns multiple technical factors, including not only magnetic heads but also disks, head control and device control. A particular emphasis is placed on technology for boosting the reading capacity and increasing the writing density of magnetic heads.

(2) Recent technological trend

In terms of writing technologies, the longitudinal magnetic recording (LMR; Note 1) technology is now reaching its limit in terms of recording density. Recently, the market has witnessed an increase in the number of products adopting the perpendicular magnetic recording (PMR; Note 2) technology. The technology for reading method is also shifting from the giant magneto-resistive (GMR; Note 3) technology to the tunneling

magneto-resistive (TMR; Note 4) technology. It is said that the TMR method has dramatically improved recording density.

Based on this technological advance, magnetic head manufacturers compete to develop TMR/PMR products. From the first quarter of 2006 to the first quarter of 2007, magnetic head manufacturers began mass-producing such products, with the exception of Alps Electric.

Alps Electric has lagged behind the competition in developing TMR magnetic heads, which will be the mainstream product in the future, as it gave priority to developing magnetic heads incorporating a technology different from the TMR approach.

(Note 1) This technology records signals as magnetic patterns parallel with the recording film surface.

(Note 2) This technology records signals as magnetic patterns perpendicular to the recording film surface. As this technology can record the same data in a smaller area than the LMR technology can, it is understood to improve the surface recording density.

(Note 3) This technology is based on the giant magneto-resistance effect.

(Note 4) This technology is based on the tunneling magneto-resistance effect. With a higher magneto-resistance ratio than that of the GMR technology, it can read fainter signals.

c) Trade of Magnetic Heads

Apart from the companies concerned, there are four other manufacturers of magnetic heads worldwide. All four are HDD manufacturers.

Users of magnetic heads, namely HDD manufacturers, coordinate magnetic heads, media and other parts to construct HDDs. Therefore, HDD makers request magnetic head manufacturers to produce magnetic heads that meet the specifications they designate. Before their products are adopted, magnetic head manufacturers need to submit samples for different HDD models to HDD manufacturers and obtain technical approval for design, prototyping, and mass production.

Magnetic head manufacturers make price negotiations on the basis of the prices calculated in the form of “X percent of the HDD price” provided by HDD manufacturers, referring to the past price information and market price data published by research companies.

d) Definition of the Particular Field of Trade

(1) Product Range

Magnetic heads are produced in accordance with the specifications designated by HDD manufacturers and all quantities are delivered to HDD manufacturers placing orders as components. The relationship between an HDD manufacturer and its supplier of magnetic heads can be regarded as if they were integrated in terms of development, production and pricing of magnetic heads. Whether magnetic heads are manufactured by HDD manufacturers themselves or by contracted magnetic head makers, competition for the HDD involves fierce competition mainly in the technical development of magnetic heads as a key component of the HDD.

Even though their size varies, magnetic heads all serve the same functions. In addition, supply substitutability is acknowledged with respect to magnetic heads with different specifications.

For these reasons, magnetic heads for HDDs, including those produced internally by HDD manufacturers, are considered to form a particular field of trade.

(2) Geographic Range

As users of magnetic heads, HDD manufacturers deal with magnetic head manufacturers that are expected to satisfy the qualification for technical requirements and to supply products at the right prices. Magnetic head manufacturers sell their products at the same base price irrespective of the region for which they are designated.

Therefore, the entire world, including the Japanese market, is deemed to in effect form a single market for magnetic heads.

C) Review of the impact of the business combination on competition

a) Market scale

In fiscal year 2006, approximately 1.4 billion magnetic heads were shipped on an HGA (Note) basis. This denotes a shipment value of some 5.6 billion dollars. The market is gradually increasing, chiefly in terms of the models for 2.5-inch HDDs.

(Note) A magnetic head is formed on a slider. The HGA, which stands for head gimbal assembly, refers to a component with the slider attached to a suspension.

b) Market share and the Herfindahl-Hirschman Index (HHI)

After the business combination under review, the total sales volume share of the groups of the companies concerned would be approximately 40% and would be ranked first.

After the business combination, the HHI is expected to soar by some 600, to around 3,000.

| Rank | Manufacturer | Market Share |
|------|-------------------------------------|--------------|
| 1 | TDK (Japan) | Approx.30% |
| 2 | Company A (USA) | Approx.30% |
| 3 | Company B (USA) | Approx.15% |
| 4 | Company C (Japan) | Approx.10% |
| 5 | Alps Electric (USA) | Approx.10% |
| 6 | Company D (Japan) | Approx.5% |
| (1) | Subtotal of the companies concerned | Approx.40% |
| | Total | 100% |

(Notes) All figures represent actual results in fiscal year 2006.

(Source: JFTC; created based on materials submitted by the companies concerned)

c) Price Trend

As the relationship between an HDD manufacturer and its supplier of magnetic heads is such that they are integrated in terms of development, production and pricing of magnetic

heads, it is difficult for magnetic head manufacturers to set their own prices without regard to the HDD manufacturing and sales market. So, the magnetic head prices are continuously sliding down in sync with the HDD prices.

d) Competitive Pressure from Users

Major computer manufacturers have very strong pricing power over HDD manufacturers. Therefore, HDD manufacturers make strong technical and cost reduction requests to magnetic head manufacturers.

e) Existence of Competitors

The market has several competitors with a sales volume share of 10% or more.

f) Competitors' Excess Capacity

There is still some gap between full capacity and the actual operation of magnetic head manufacturers. It is quite possible for competitors to increase their production.

g) Related Markets (Competing Goods)

Since 2006, the storage capacity of semiconductor-based flash memories has been growing rapidly and their prices have been falling quickly. There is a growing shift towards installing flash memories instead of small-sized HDDs.

HDD manufacturing companies E and F, which are producing no magnetic heads on their own, have developed flash memories with larger storage capacity comparable with that of 2.5-inch and larger HDD models and are increasing their production. If prices of flash memories go down, there will be a rapid switch from large-capacity HDDs to flash memories.

h) Trends in Technological Innovation

Magnetic head manufacturers are competing intensely on technical development for the higher density and larger capacity HDDs sought by HDD manufacturers. A key to change market share is whether any product incorporating new technologies can be transferred to mass-production.

Since Alps made a slow start in developing TMR magnetic heads, which will be the mainstream product in the future, transactions between Alps and HDD manufacturers are already on the decline.

D) Evaluation under the Antimonopoly Act

a) Review of substantial restraint of competition by unilateral conduct

It is difficult for magnetic head manufacturers to set prices on their own. They are under very strong pressure from users. Competitors have excess supply capacity and flash memories are competing with HDDs to a certain extent. For these reasons above, the effect of the transaction is not considered to be to substantially restrain the competition by unilateral conduct in the particular field of trade.

b) Review on substantial restraint of competition by coordinated conduct

The effect of the transaction is not considered to be to substantially restrain competition by coordinated conduct by the parties and their competitors in the particular field of trade, given that HDD manufacturers as users put strong pressures on magnetic head makers for technological development and price cuts and that there are sharp fluctuations in market shares as a result of technological innovations.

E) Conclusion

In light of the circumstances mentioned above, the JFTC judged that the proposed business

combination would not be to substantially restrain competition in any particular field of trade.

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

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

When administrative bodies propose to enact or amend an economic law or ordinance from the standpoint of a specific policy requirement, the JFTC acts in consultation with these bodies to ensure coordination among the proposed provisions, the AMA and competition policy. In 2007, as in previous years, the JFTC acted in consultation with other administrative agencies and submitted the JFTC's opinions.

2 Publication of " Guidelines concerning the Activities of Farmers' Associations under the Antimonopoly Act "

On April 18, 2007, the JFTC formulated and published "Guidelines Concerning the Activities of Farmers' Associations under the Antimonopoly Act."

The guidelines are designed to clarify, by citing specific cases, the actions deemed problematic under the AMA as unfair trade practices, thereby aimed at preventing violations of the Act by Farmers' Associations, as well as by individual cooperatives, and serving to promote fair and free competition in the area of agriculture. Specifically, the JFTC has cited those acts that have previously posed problems under the Act as well as acts that are likely to be actually performed or are deemed to require more clarity as to how they would be interpreted under the Act, while also taking into consideration the results of the interview survey conducted among concerned parties.

3 Publication of " Guidelines for the use of Intellectual Property under the Antimonopoly Act "

In September 2007, the JFTC formulated and published "Guidelines for the Use of Intellectual Property under the Antimonopoly Act."

The guidelines are a comprehensive revision of the "Guidelines for Patent and Know-how Licensing Agreements under the Antimonopoly Act" which was published in July 1999, and are designed to provide more clarity on the opinions underlying the Act in relation to the use of intellectual property, in light of recent, intensified efforts toward the protection and use of intellectual property.

The main points of the guidelines:

While the "Guidelines for Patent and Know-how Licensing Agreements under the Antimonopoly Act" cover patents, utility models and techniques protected as know-how, the revised guidelines cover that which corresponds to intellectual properties related to technology in general (including software which is protected by copyrights);

The revised guidelines specify the principles of the so-called "safe harbor", which determines, without investigating the specific form of the relevant restriction, that, upon certain criteria being met, any use of intellectual property affects competition only to a minor extent.

4 Revision to the Exemption System from the Antimonopoly Act concerning International Air Transport Agreements

On the basis of the report called "Actual Status of the International Aviation Market and Issues of Competition Policy: Focusing on the Exemption System from the AMA concerning International Air Transport Agreements" submitted by the Study Group on Regulation and

Competition Policy consisting of academic and other experts, the JFTC studied the appropriate direction for the system for the exemption of International Air Transport Agreements from the AMA. As a result, the JFTC reached the following conclusions:

The reasons for which, at the time of the 1999 revision, the system for exempting International Air Transport Agreements from the AMA was maintained, that is, the fact that “Also, other countries have exemption systems of International Air Transport Agreements from the competition law” does not exist to justify continued maintenance of the exemption at present;

As the result of a new, detailed examination of each International Air Transport Agreement with a different country in light of their actual conditions, it is difficult to provide a good rationale for the continuation of the AMA exemption and, therefore, the system should undergo a prompt, in-depth review. With respect to non-application of the AMA required by virtue of an international commitment, it will be sufficient to apply appropriate provisional measures to such non-application as remains in effect based on a specific request made by the other contracting country.

In light of the above conclusions, the JFTC in December 2007 requested the MLIT to conduct an in-depth review of the system in line with the above-mentioned report.

IV Japan Fair Trade Commission resources (FY 2007)

1 Budget (unit: ¥ billion and %)

| Fiscal Year | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|------|------|------|------|------|------|------|------|------|
| Budget amount (¥ billion) | 5.78 | 5.9 | 6.04 | 6.16 | 7.85 | 7.82 | 8.13 | 8.34 | 8.42 |
| Change over previous year (%) | 2.8 | 2.1 | 2.3 | 2.0 | 2.2 | 0.4 | 4.0 | 2.5 | 0.9 |
| General Expenditures Budget: change over previous year (%) | 5.3 | 2.6 | 1.2 | 2.3 | 0.1 | 0.1 | 0.7 | 1.9 | 1.3 |

(Notes)

1. The General Expenditures Budget refers to the total budget of the Japanese government and is the amount of General Account Budget Expenditures less National Debt Service and Local Allocation Tax Grants.
2. The rate of increase for the JFTC budget of FY 2003 is compared to the post-reclassification budget (7.69 billion yen) in order to avoid the effects of an increase in personnel expenses, which required an independent calculation, in line with the JFTC's transfer to the Cabinet Office.

2 Number of officials

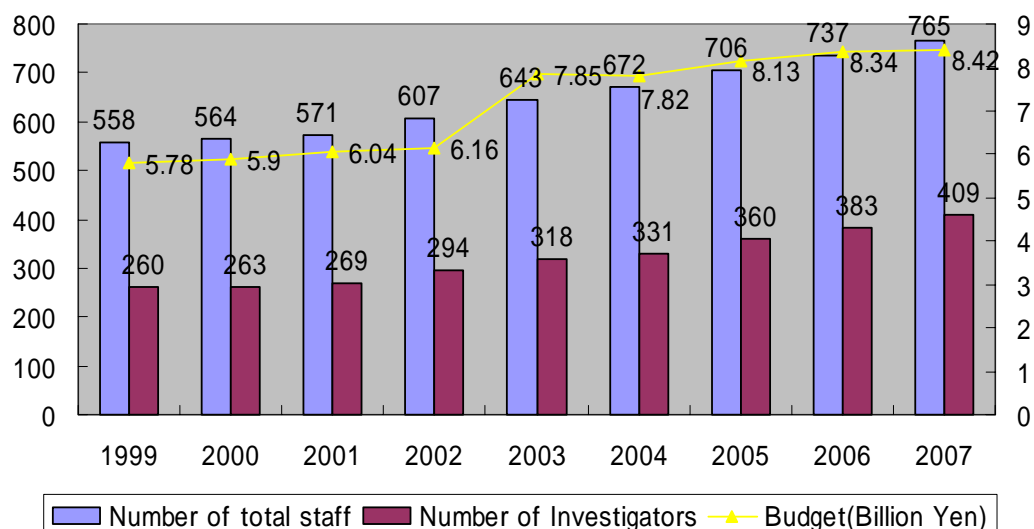
The number of officials in the General Secretariat of the JFTC (unit: persons)

| Fiscal Year | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|------|------|------|------|------|------|------|------|------|
| Number of officials | 558 | 564 | 571 | 607 | 643 | 672 | 706 | 737 | 765 |
| Enforcement against anti-competitive practices | 260 | 263 | 269 | 294 | 318 | 331 | 360 | 383 | 409 |
| Merger review enforcement | 19 | 22 | 22 | 28 | 30 | 32 | 32 | 35 | 36 |
| Advocacy efforts | 22 | 22 | 22 | 25 | 30 | 30 | 37 | 36 | 34 |

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

Staff and budget (FY 1999-2007)



3 Activities of the Competition Policy Research Center

The Competition Policy Research Center (hereinafter referred to as the “CPRC”) enhances research activities as a result of collaboration between visiting researchers (15 persons at the end of December 2007) who are specialists in the area of economics or law and the JFTC staff in order to strengthen the theoretical and empirical basis for the implementation of the AMA and the planning of competition policies.

In 2007, the CPRC published 2 joint research reports and 6 discussion papers. It organized 10 workshops, 3 open seminars and one international symposium and offered specialized training in economics, with the aim of improving the staff’s economic analysis skills.

1) Joint research reports

- A) Investigation of Target, Material Fact and Circumstantial Evidence for Cartel and Bid-rigging (2007/7)
- B) Fact-finding of Competition in the Media Content Industry (2007/7)

2) Discussion papers

- A) "An Experimental Study of Procurement Auctions with Leniency Programs" (2007/1)
 - Yasuyo Hamaguchi (Instructor at the Faculty of Economics, Nagoya City University)
 - Toshiko Ishikawa (Hitachi Research Institute)
 - Masayuki Ishimoto (JFTC)
 - Yuji Kimura (Researcher at the CPRC, JFTC)
 - Tadanobu Tanno (Associate Professor at the Faculty of Management, Atomi University)

- B) "Does the Public Sector Make a Significant Contribution to Biomedical Research in Japan? A Detailed Analysis of Government and University Patenting, 1991-2002" (2007/1)
 - Kenta Nakamura (Hitotsubashi University, Japan Society for the Promotion of Science)
 - Yosuke Okada (Professor of Economics, Hitotsubashi University and Chief Researcher at the CPRC)
 - Akira Tohei (JFTC)

C) "Basic principle of Market Definition : The Visualization of Competitive

Constraints" (2007/2)

Shuya Hayashi (Associate Professor, Graduate School of Law, Nagoya University and Chief Researcher, CPRC)

D) "Mergers and Economic Performance: Do Efficiency Gains Justify Horizontal Mergers?" (2007/3)

Hiroyuki Odagiri (Professor of Economics, Hitotsubashi University)

E) "Discriminatory Pricing and a **Tendency to Inhibit** fair Competition - **Law and Economics in the case of TOKAI and NIPPON GAS** - " (2007/6)

Yosuke Okada (Professor of Economics, Hitotsubashi University and Chief Researcher at the CPRC)

Shuya Hayashi (Associate Professor, Graduate School of Law, Nagoya University and Chief Researcher at the CPRC)

F) "Vertical Integration in the Japanese Movie Industry" (2007/10)

Mitsuru Sunada (Researcher at the CPRC)

3) Hosting an Open Seminar

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

In January 2007, Yosuke Okada (Professor of Economics, Hitotsubashi University and Chief Researcher at the CPRC) was invited to speak at an open seminar on the subject of “Economic Reasons for Regulations on Discriminatory Pricing and Unjust Low Price Sales”.

In May 2007, Noriyuki Yanagawa (Associate Professor, Faculty of Economics, Graduate School of Economics, University of Tokyo and Visiting Researcher at the CPRC) was invited to speak and Shuya Hayashi (Associate Professor, Graduate School of Law, Nagoya University and Chief Researcher at the CPRC), was invited to serve as a commentator at an open seminar on the theme of “The ideal method of designing the system against bid rigging”.

In November 2007, Mitsuo Matsushita (Professor of Law, Seikei University and Professor Emeritus, University of Tokyo) was invited to speak and Shuichi Sugahisa (Director, International Affairs Division, General Secretariat, Secretariat, JFTC) was invited to serve as a commentator at an open seminar on the theme of “Application of the AMA to International cases”.

4) Hosting an international symposium

To act as a center of international exchange on competition policies, the CPRC hosts international symposiums joined by officials of overseas competition authorities and academic specialists.

In March 2007, an international symposium called “M&A and Competition Policy ”was held in close collaboration with the 21st Century COE/RES Program of Hitotsubashi University and Nihon Keizai Shimbun, Inc., etc. Invited participants included Dr. Robert D. Willig (Professor of Economics and Public Affairs, Woodrow Wilson School, Princeton University), Dr. Paul Seabright (Professor of Economics, Université des Sciences Sociales de Toulouse) and Dr. Hiroyuki Odagiri (Professor of Economics, Hitotsubashi University).

5) Implementation of Specialized Training in Economics

The CPRC gives training in economics to enhance the economic analysis skills of the JFTC’s staff. In May, June and December 2007, Yutaka Akiyama (Associate Professor at the Faculty of

Economics, Keio University), Takako Fujiwara-Greve (Associate Professor at the Faculty of Economics, Keio University), Yosuke Okada (Professor of Economics, Hitotsubashi University, Chief Researcher at the CPRC), Isao Miura (Professor at the Faculty of Economics, Kyushu University) and Hiroaki Ishigaki (Senior Consultant, NERA Economic Consulting) were invited as lecturers to provide training in econometrics and special lectures.

V Main surveys related to competition policy

1 Report of the Study Group on the Introduction of a Group Litigation System (published in July 2007)

To further study the introduction of a group litigation system, the JFTC held a “Study Group on the Introduction of a Group Litigation System” (chaired by Professor Makoto Kojo, Faculty of Law, Sophia University), which discussed points at issue such as types of right of action, groups that have the right of action, and the scope of violations that give rise to the right of action, and subsequently published a report entitled “A Desirable Form of the Consumer Group Litigation System under the Antimonopoly Act and the Premiums and Representations Act.”

The main points of the report are as follows:

To protect the interests of consumers in general, it is possible to consider introducing a group litigation system that grants to particular groups the right to seek an injunction aimed at preventing the occurrence or spread of similar extensive damages arising from any act of violations of the AMA or the Premiums and Representations Act;

There is no urgent necessity to introduce an entrepreneur group litigation system, in light of the existing system (Articles 24 and 25 of the AMA, and Article 30 of the Code of Civil Procedure), the characteristics of damages to entrepreneurs (entrepreneurs are thought to be more motivated than consumers to resort to legal actions in an individual and ex-post-facto manner to redress violations committed by their trade partners) and the current circumstances surrounding trade associations;

Misleading representations are likely to cause minor harms to a large number of consumers. To protect consumers from damages and then prevent the spread of damages, there is a relatively strong need to authorize consumer groups to seek injunctions against misleading representations;

To achieve the earliest possible establishment of a system for injunction claims by consumer groups, a consumer group litigation system should first be introduced to the Premiums and Representations Act, and ongoing study should be undertaken of the possibility of introducing it to the AMA as a challenge for the next stage;

The processes for designing a specific system should be executed in consideration of the litigation system introduced to the Consumer Contract Act, which enables injunctions by qualified consumer organizations, in order to create a system empowering particular consumer groups to claim injunction against acts in violation of the Premiums and Representations Act.

2 Report of the Fact Finding Survey on Textbook Distribution (published in August 2007)

It is recognized that the supply network in the textbook distribution market has been unchanged and there are few new entrants, and that no competition is taking place in this area. The level of commission concerning textbook supplies has been fixed on almost all occasions, and various trade practices in textbook distribution have long remained unchanged. Thus some related parties argue

that it should be made possible to introduce more effective methods of supply corresponding to changes in the times. The JFTC conducted a survey aimed at understanding the facts of distribution concerning the textbook supply.

The Survey Report suggests that the many different parties involved in textbook distribution should consider ways to build a more efficient textbook distribution system that corresponds to changes in the times, such as computerization and streamlined distribution, including an option of securing more than one supply channel.

3 Actual condition of the establishment of compliance in the construction business, particularly compliance with the AMA (published in May 2007)

In light of the frequent cases of bid rigging, including ones assisted by procurement officials, the JFTC conducted a questionnaire survey targeted at the construction business. The survey was carried out with 1,700 construction business operators, including SMEs. Results were summarized and published on May 16, 2007.

The key points of the report are as follows:

- 1) Good progress has been made with respect to the legal compliance system among large companies; however, it is desirable that 100 percent implementation is achieved in those areas concerning the legal compliance system, including, at a minimum, the development of compliance manuals.
- 2) Among SMEs, there has been insufficient progress in areas concerning the development of the legal compliance system and in substantive efforts; however, it appears that it is possible to positively address matters involving relatively little costs such as the development of compliance manuals;
- 3) The proportion of companies intending to make use of the Leniency Program are under 10% among companies capitalized at less than ¥500 million and over 22% among those capitalized at ¥500 million or more. The proportion stands at 22% among companies capitalized at ¥5 billion or more, which is slightly higher than the 18% obtained in a similar survey conducted last year on those listed on the first section of the Tokyo Stock Exchange. That said, the percentage has risen only slightly, despite the announcement of the application of the Leniency Program.
- 4) Compared with the data obtained from the July 2006 survey targeting local public entities, the latest results show that differences have arisen between construction business operators and procurement parties with respect to the kinds of efforts that are considered to be effective for the prevention of bid rigging, and to the reforms necessary for improvement of the bidding system. For example:
 - A) Regarding efforts considered to be effective in preventing bid rigging, many construction business operators refer to industry-wide efforts and reform of the bidding system, while many procurement parties consider that improvement of corporate compliance and strengthening of measures against bid rigging are necessary;
 - B) With respect to the reforms necessary for improving the bidding system, many construction business operators refer to upgrading and expansion of the comprehensive evaluation method and tougher regulations against receiving orders by dumping, while many of the procurement parties suggest expansion of general competitive bidding and strengthening of measures against bid rigging.