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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN JAPAN

-- 2012 --

This report is submitted by Japan to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 30-31 October 2013.

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

1.1 Efforts towards the amendment of the Antimonopoly Act

1.1.1 Submission of the Antimonopoly Act Amendment Bill (2013) to the Diet

1. The bill to amend the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as “the Antimonopoly Act”), including primarily the abolition of hearing procedure of the Japan Fair Trade Commission (hereinafter referred to as “the JFTC”), was submitted to the 174th ordinary session of the Diet on March 12, 2010. It was to remain under deliberation in the House of Representatives while the Diet was closed. The same situation continued from the 174th ordinary Diet session to the 180th ordinary Diet session, after which it was discarded due to incompleteness of deliberation in the 181st extraordinary session on November 16, 2012.

2. A new bill, which was substantially the same as the above bill with the exception of some technical revisions, was submitted again to the 183rd ordinary session of the Diet on May 24, 2013. On June 26, 2013, it remained once again under deliberation in the House of Representatives while the Diet was closed.

1.1.2 Major points of the Antimonopoly Act Amendment Bill (2013)

- The JFTC’s hearing procedure for administrative appeal will be abolished, and the provision which stipulates that the jurisdiction of the first instance over any appeal suit pertaining to decisions by the JFTC shall lie in the Tokyo High Court will also be abolished.
- To ensure the expertise of the court, any appeal suits pertaining to cease and desist orders etc., shall be subject to the exclusive jurisdiction of the Tokyo District Court. Also, any trials and judgments at the Tokyo District Court will be ruled by a panel of three or five judges.
- To ensure due process, provisions will be prepared and provided to recipients to explain the content of anticipated cease and desist orders, including references and copies of evidence in hearing procedures prior to issuing cease and desist orders.

1.2 The Act on Special Measures Preventing and Correcting Actions That Interfere with Shifting Consumption Tax with the Aim to Ensure the Smooth and Appropriate Pass-on of consumption Tax

1.2.1 Background to the enactment of the Act on Special Measures for Consumption Tax

3. In light of the need to ensure the smooth and appropriate pass-on of consumption tax when its rate is raised in April 2014 and October 2015, the “bill concerning the Act on Special Measures Preventing and Correcting Actions That Interfere with Shifting Consumption Tax with the Aim to Ensure the Smooth and Appropriate Pass-on of consumption Tax ” (hereinafter referred to as “the Act on Special Measures for Consumption Tax”) was submitted to the 183rd ordinary session of the Diet on March 22, 2013. On June 5, 2013, the bill was passed during the floor session in the House of Councilors after a partial revision by the House of Representatives, and was promulgated on June 12, 2013.

4. The date of the enforcement of the Act was October 1, 2013, except for some provisions of the Act, by the Cabinet Order specifying the enforcement date. It was determined that the Act would cease to be valid on March 31, 2017.

1.2.2 Major points of the Act on Special Measures for Consumption Tax

1.2.2.1 Special measures for the correcting practices rejecting consumption tax pass-on, etc.

5. As legislative measures for addressing, correcting and preventing conducts of rejecting consumption tax pass-on etc., under the Act on Special Measures for Consumption Tax, conduct including (1) refusal of shifting consumption taxes by price reduction or slashing and (2) request to purchase goods, use of service, or provision of economic benefits in return for the acceptance of shifting of consumption taxes shall be prohibited.

1.2.2.2 Special measures concerning concerted practices on determining ways of pass-on and representations of consumption tax

6. Pass-on cartels and representation cartels by entrepreneurs or trade associations shall be exempted from application of the Antimonopoly Act if the following requirements, are met: a) prior notification shall be submitted to the JFTC; b) with respect to pass-on cartels, two thirds or more of the participating entrepreneurs shall be small and medium sized businesses; c) “decisions on agreement on prices” shall not be exempted ; and d) with respect to representation cartels, only the concerted practice in relation to decisions on representation methods concerning consumption taxes shall be exempted.

2. Enforcement of competition laws and policies

2.1 Measures against violations

2.1.1 Measures taken in 2012

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

8. Out of the 215 cases in which the JFTC closed investigations in 2012, legal measures were taken for 21 cases (cease and desist orders in 21 cases, and surcharge payment orders without cease and desist orders in zero cases). The JFTC also issued “warnings” in 6 cases where suspicions of violations of the Antimonopoly Act were identified, “cautions” in 171 cases, and terminated examinations in 23 cases where evidence of illegal conduct could not be uncovered.

2.1.1.1 *Cease and desist orders*

9. The JFTC has been especially engaged in continuous efforts to eliminate bid rigging for public procurement. In 2012, 4 of the JFTC's cease and desist orders were issued in the case of bid rigging for public procurement.

• Bid rigging (public procurement)	4
• Bid rigging (private demand)	15
• Price cartels, etc. (excluding bid rigging)	0
• Unfair trade practices	2
• Private monopolization	0
• Total	21

2.1.1.2 *Surcharge payment orders*

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

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

12. In 2012, the JFTC issued surcharge payment orders to 112 enterprises totaling 23,972 million Japan yen (hereinafter referred to as "JPY").

2.1.1.3 *Criminal accusations*

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

- a) Substantially restrain competition in a particular field of trade, including price cartels, supply restraint cartels, market allocation agreements, bid rigging, group boycotts and private monopolization. These examples constitute serious cases that are likely to have a widespread influence on the national economy.
- b) Involve firms or industries that are repeat offenders or do not take the appropriate measures to eliminate a violation, and for which the administrative measures of the JFTC are not considered sufficient to meet the aims of the Antimonopoly Act.

14. In 2012, concerning the following case, the JFTC conducted a criminal investigation and filed a criminal accusation with the Prosecutor-General.

- A criminal accusation on the price cartel case against manufacturers and distributors of industrial machinery bearings and automotive bearings

The JFTC filed a criminal accusation with the Prosecutor-General against 3 manufacturers and distributors of industrial machinery bearings and automotive bearings, who had formed and implemented agreements to raise the selling prices at issue, as well as against the 7 individuals who were engaged in sales of the above bearings at that time (filed on June 14, 2012).

2.1.1.4 *Hearing procedures*

15. The JFTC initiated hearing procedures on 42 cases in 2012. As of the end of December 2012, the JFTC has been conducting ongoing hearing procedures in 148 cases, 67 of which concerned allegations of violations to the Antimonopoly Act, and 81 of which concerned surcharge payment orders.

16. In 2012, following hearing procedures, the JFTC issued decisions on 12 cases including a private monopolization case regarding the copyrights of musical works by a copyright administration enterprise.

2.1.2 *Summary of main cases*

2.1.2.1 *Bid rigging (public procurement)*

- Case against participants in Bidding for General Engineering Works, etc., ordered by the Ministry of Land, Infrastructure, Transport and Tourism, and Kochi Prefecture

In relation to a case involving general engineering works and harbor engineering works ordered by the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) through Shikoku Regional Development Bureau, and engineering works ordered by Kochi Prefecture, the companies jointly designated a successful bidder for each work and managed to have the designated bidders receive the order.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on October 17, 2012. (Total amount of surcharge: 1,755million JPY)

Meanwhile, in relation to the above violations, the JFTC also found that officials of the MLIT Shikoku Regional Development Bureau were involved in the bid rigging.

Hence, the JFTC demanded that the MLIT implement improvement measures to ensure that said involvement in bid rigging etc. was eliminated in accordance with the Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that harm Fairness of Bidding, etc. (hereinafter referred to as “Involvement Prevention Act”)

Additionally considering the fact that, despite improvement measures which have been taken by the MLIT so far, involvements by its officials have still recurred, the JFTC urged that the MLIT implement effective improvement measures to definitely prevent a recurrence of involvements throughout the organization.

2.1.2.2 *Bid rigging (private demand)*

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

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

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

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

- Case against manufacturers and distributors in bid-rigging conspiracies for Expanded Poly-styrol Blocks ordered by construction companies

In relation to a case involving Expanded Poly-styrol Blocks ordered by construction companies, the companies jointly designated a successful bidder for each work and managed to have the designated bidders receive the orders.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on September 24, 2012. (Total amount of surcharge: 202 million JPY)

- Case against participants in bid-rigging conspiracies for automotive parts ordered by automobile manufactures

In relation to a case involving automotive parts including automotive generators and related products ordered by automobile manufactures, the companies jointly designated a successful bidder for each work and managed to have the designated bidders receive the orders.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on November 22, 2012. (Total amount of surcharge: 3,388 million JPY)

- Case against participants in bid-rigging conspiracies for automotive headlamps and rear combination lamps ordered by automobile manufactures

In relation to a case involving automotive headlamps and rear combination lamps ordered by automobile manufactures, the companies jointly designated a successful bidder for each work and managed to have the designated bidders receive the orders.

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on March 22, 2013. (Total amount of surcharge: 4,678 million JPY)

(Notes). This case is not included in the number of legal measures taken in 2012 and cease and desist orders described in the paragraph 1) and the table of 1) A. This case is also not included in the number of enterprises, on which the JFTC has imposed surcharge payment orders in 2012, and the amount of surcharge described in paragraph 1) B.

2.1.2.3 *Price Cartels, etc. (excluding bid rigging)*

- Case against manufacturers and distributors of bearings

Manufacturers and distributors of industrial machinery bearings and automotive bearings formed and implemented agreements to raise the selling prices

Given that the above findings are in violation of Article 3 of the Antimonopoly Act (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on March 29, 2013. (Total amount of surcharge: 13,365 million JPY)

(Notes). This case is not included in the number of legal measures taken in 2012 and cease and desist orders described in the paragraph 1) and the table of 1) A. This case is also not included in the number of enterprises, on which the JFTC has imposed surcharge payment orders in 2012, and the amount of surcharge described in paragraph 1) B.

2.1.2.4 *Unfair trade practices*

- Case against a retailer of home electric appliances

A retailer of home electric appliances forced those who were in an inferior bargaining position (hereinafter referred to as “specific suppliers”) among its regular suppliers to dispatch their employees to implement conveying, taking out goods and fabricating stores that did not require the particular techniques or sales skills of these employees. The retailer did not conclude prior agreements regarding the dispatch conditions, and did not pay general employee dispatch costs.

Given that the above findings are in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 9 Item 5 [Abuse of Superior Bargaining Position]), the JFTC issued a cease and desist order and a surcharge payment order on February 16, 2012. (Total amount of surcharge: 4,048 million JPY)

- Case against an importer/seller of toning shoes

An importer/seller of toning shoes forced retailers to sell toning shoes at a price no lower than its designated retail price in their own store or through their wholesalers.

Given that the above findings are in violation of Article 19 of the Antimonopoly Act (falling within Paragraph 9 Item 4 [Resale Price Restriction]), the JFTC issued a cease and desist order on March 2, 2012.

2.1.3 *Lawsuits seeking to overturn the JFTC’s decisions*

17. Regarding lawsuits seeking to overturn the JFTC’s decisions, 10 court decisions which supported the JFTC’s decisions were made in 2012. 5 new lawsuits have also been filed. As of the end of December 2012, there were 14 pending lawsuits.

2.2 *Mergers*

2.2.1 *Statistics relating to mergers*

18. Based on the provisions of the Antimonopoly Act, mergers¹ exceeding a certain size in Japan must be notified to the JFTC prior to the transaction. The JFTC conducts reviews of notified cases, and may conclude that a transaction may substantially restrain competition in a particular field of trade. The JFTC has the power to issue cease and desist orders in such a case (acquisitions of shares, etc.). Throughout 2012, 348 planned mergers were notified to the JFTC. The JFTC conducted Phase II reviews concerning 5 cases and concluded that in 3 cases competition in any particular field of trade might not be substantially restrained given the remedies proposed (Concerning the remaining two cases, the JFTC reached the same conclusions without remedies.). Accordingly, the JFTC took no legal measures against any of the mergers.

Number Year	Notifications	Phase I review	Phase II review (with remedies)
2012	348	340	5 (3)

¹ Hereinafter, “mergers” refer to all forms of business combination including “acquisitions of shares”, “mergers”, “joint incorporation-type splits”, “absorption-type splits”, “joint share transfers”, and “acquisitions of business”.

(Note). The number of “Notifications” above includes that of notifications withdrawn due to the filing company’s issues. // (Note2). The number of the cases for “Phase I review” does not include the cases subject to “Phase II review”.

2.2.2 *Main merger cases*

- Merger between Tokyo Stock Exchange Group, Inc. and Osaka Securities Exchange Co., Ltd.

Outline of the case. The Tokyo Stock Exchange Group, Inc., which owns subsidiary companies including the Tokyo Stock Exchange Inc. (“TSE”), which runs the financial instrument market with a license granted by the Prime Minister under the Financial Instruments and Exchange Act, planned to acquire the stock of Osaka Securities Exchange Co., Ltd. (“OSE”), which runs another financial instrument market with a license, thereby seeking to acquire more than half of the right to vote of the latter. The applicable law clause is Article 10 of the Antimonopoly Act.

Process of the investigation.(2012)

- **January 4:** Receipt of the notification of a plan regarding the merger (start of Phase I review)
- **February 3:** Request for reports, etc. (start of Phase II review)
- **June 15:** Receipt of all reports (deadline for prior notice: September 14, 2012)
- **June 26:** Submission of a report on changes in the notification by the parties, in which the remedies were described
- **July 5:** Notification to the effect that a cease and desist order will not be issued

Outline of the results of the investigation. Given the remedies submitted to the JFTC by the parties concerning services related to listing stocks on emerging markets, services related to trading stocks and services related to Japanese stock index future, the JFTC has concluded that the proposed merger may not be to substantially restrain competition in any particular field of trade. The JFTC also concluded that the merger may not substantially restrain competition with respect to the other fields of trade.

Assessment under the Antimonopoly Act (services related to trading concerning derivatives transactions)

- The parties argue that their service ranges should be defined by the whole set of derivatives transactions or by the whole set of derivatives transactions with underlying assets of shares or stock indexes. However, from the users’ perspective, derivatives transactions with the underlying assets of Japanese stock indexes may not be substituted by derivatives transactions with other types of underlying assets. In addition, the parties argued that future transactions and option transactions constitute the same service range. However, there is no substitutability between these transactions when these trades are conducted for risk-hedging purposes. As mentioned above, the JFTC defines service range with respect to derivatives transactions as “services related to trading concerning Japanese stock index futures transactions” and “services related to trading concerning Japanese stock index option transactions.”
- As a result of the merger, the combined market share of the parties regarding Japanese stock index option transactions is more than 95%. However, the increase in Herfindahl-Hirschman index (HHI) is small due to minuscule market share of TSE, thereby satisfying the safe

harbor criterion. On the other hand, with respect to Japanese stock index futures transactions, the combined market share of the parties is around 70%, and the vigorous competition between the parties in Japanese stock index futures transactions will be lost. Additionally, Nikkei 225 futures transactions offered by leading competitors exert strong competitive pressure against those offered by the OSE, but do not exert effective competitive pressure against TOPIX futures transaction traded on the TSE. Further, it is not considered that there is competitive pressure from neighboring markets on improvement of efficiency as a result of the acquisition. The merger may therefore substantially restrain competition in services related to trading concerning Japanese stock index futures transactions.

- The parties proposed adopting remedies regarding the license of TOPIX that centers on the extension of trading hours for TOPIX futures transactions permitted to NYSE Liffe, which handles the world's largest volumes of trades regarding derivatives transactions. Under the current contract with NYSE Liffe, TSE places restrictions on the trading hours for TOPIX futures transactions so that they are traded from 3 p.m. to 6 a.m. JST. The TSE will reduce the price of the license regarding the use of TOPIX and allow the handling of TOPIX futures transactions by NYSE Liffe from 9 a.m. to 3 p.m. JST, during which the trading volume of TOPIX futures transactions on the TSE is comparatively large. When NYSE Liffe is allowed to handle TOPIX futures transactions from 9 a.m. to 3 p.m. JST, during which the trading volume of TOPIX futures transactions on the TSE is comparatively large, NTSE Liffe will have a direct competitive relationship with the parties. When the price of the license is lowered, NYSE Liffe's competitive strength in TOPIX futures transactions will be reinforced. It is considered, therefore, that the merger may not substantially restrain competition in the field of trade for the services related to trading concerning Japanese stock index futures transactions if the remedies proposed by the parties are implemented.

- Merger between ASML Holding N.V. and Cymer, Inc.

Outline of the case. ASML US, Inc. (headquartered in the United States) ("ASML US"), which belongs to the business combination group (Note 1) whose parent company is ASML Holding N.V. (headquartered in the Netherlands) ("ASML"), which runs the manufacture and sales of lithography systems used in the front-end processes (Note 2) for the manufacture of semiconductors, plans to acquire all the shares of Cymer, Inc. (headquarters: United States; the business combination group whose ultimate parent company is Cymer, Inc. shall be referred to as "Cymer"), which runs the manufacture and sales of light sources, one of the important components of the lithography systems above. The provision of the applicable laws is Article 10 of the Antimonopoly Act.

In manufacturing lithography systems, ASML procures light sources from Cymer. Therefore, the merger falls under the category of vertical merger in which a market of manufacturing and selling light sources is defined as the upstream market and a market of manufacturing and selling lithography systems is defined as the downstream market.

(Note 1). The business combination group shall be as defined in Article 10(2) of the Antimonopoly Act.

(Note 2). The processes for semiconductor manufacture are divided into the front-end processes (an electronic circuit is printed on a wafer (a thin flat disc), which constitutes the basic structure of semiconductor integrated circuits by using lithography systems) and the back-end processes (the cutting off, assembly and final inspection of each chip are carried out by the chip (product)).

Process of the investigation. (2013) (Note 3)

- **January 30:** Receipt of the notification of the plan regarding the merger (start of the Phase I review)
- **February 28:** Request for report, etc. (start of the Phase II review)
- **April 11:** Reception of all the reports, etc. (the prior notice shall be submitted by July 11, 2013.)
- **May 2:** Notice that a cease and desist order shall not be issued

(Note 3). This case is not included in the number of notifications, (348) filed during 2012 set forth in the table of 1).

Outline of the results of the investigation. The JFTC concluded that, taking the measures proposed by ASML US to the JFTC into consideration, the merger would not substantially restrain competition in any particular fields of trade.

The details of this case is discussed in “**Cross-border Merger Remedies**” (OECD contribution paper submitted by Japan) and will not be repeated here.

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

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

19. When administrative bodies propose to enact or amend an economic law or ordinance from the standpoint of a specific policy requirement, the JFTC acts in accordance with these bodies to ensure coordination of the proposed provisions with the Antimonopoly Act and the competition policy. In 2012, as in previous years, the JFTC submitted its opinions after consultation with other administrative agencies.

3.2 *Proposals for the electricity market from competition policy*

3.2.1 *Background of survey and study*

20. On September 21, 2012, the JFTC published the “Proposals for the electricity market from the competition policy.” The JFTC has previously conducted studies and made proposals on regulations in the electricity business. The JFTC, in response to the cabinet decision “Policy on Regulatory and Institutional Reform in the Energy Sector (adopted by the cabinet on April 3, 2012),” conducted another survey on the current state of the electricity market. Based on the survey, the JFTC reviewed the electricity market from the standpoint of competition policy and formulated its ideas. A summary of the report is as follows.

3.2.2 *Changes in the electricity market*

21. The current electricity business system has been in place since 1951, when the government divided the nation into nine service areas (10 after Okinawa was returned to Japan) and allowed the General Electricity Utilities to have monopolies in their respective service areas so as to achieve economies of scale. At that same time, the system has been regulated in terms of supply conditions such as electricity price in order to protect users and to ensure proper transactions. Meanwhile, the changes have been made in the environment surrounding electricity business such as a sharp increase in demand during peak hour has required heavy investments, and advances in technology have increased the possibilities of establishing small-sized power plants dispersed at various locations, as well as a growing criticism of their business

efficiency. In response to these changes, following 1995, a series of deregulations have been steadily introduced.

22. More than a decade has passed since the retail sector was partially deregulated. Nonetheless, the market share held by Power Producers and Suppliers (PPSs)² still remains small. Nor among the General Electric Utilities does competition take place across their respective service areas. As a result, the General Electricity Utilities have near monopolies in their respective service areas³.

3.2.3 *Current state and problems of each sector (result of the survey)*

- Retail sector

PPSs had approximately 3.5% (fiscal year 2010) of the deregulated market in terms of sales volume, so their market share still remains small. Especially PPS's share in the industry use category such as use by factories is particularly smaller than that in the business use category such as use by offices and stores. Due to factors behind this situation, PPSs have power plants with higher variable costs than the General Electricity Utilities, and they have difficulty competing with the General Electricity Utilities in serving users that use a large amount of electricity at nighttime since it is difficult to offer competitive prices and secure a steady supply of large amount of electricity, under these circumstances.

- Generation and wholesale sector

While General Electricity Utilities accounted for more than 70% of the amount of electricity generated, PPSs procure less than 10% of their electricity from the General Electricity Utilities and the electric power exchange, depending on Non-Utility Power Producers for most of their electricity. PPSs also have power plants with high variable cost. In addition, it is difficult for PPSs to construct new power plants with low generation costs.

- Transmission and distribution sector

The method of calculating the transmission fee is subject to regulations, and the General Electricity Utilities separate the accounting for transmission fee. However, from outside of the General Electricity Utilities, it appears that the General Electricity Utilities seem to have incentives to treat PPSs unfavorably by setting excessive transmission fees.

3.2.4 *Basic viewpoint of competition policy*

23. From the viewpoint of competition policy, regulations should be designed based on rational economic judgment and the conduct of enterprises. The content and method of regulations should be those that permit enterprises to reasonably achieve their objectives in light of their incentives. This report notes the following issues from the above viewpoint.

- Unbundling of the General Electricity Utilities' retail units from generation and wholesale units

² "PPSs" are those that submitted to the Ministry of Economy, Trade and Industry notification about their plans to engage in running their businesses that supply electricity to "Specific-Scale Demand" users in the deregulated sector.

³ As of December 2012, there was only one precedent in which a General Electric Utility supplied electricity beyond its traditional service area.

In order for users to enjoy the benefits of the liberalization of the electricity system, it is important to vitalize competition in the retail sector. However, PPSs have not been able to exert substantial competitive pressure due to limitations on the procurement of electricity. The General Electricity Utilities, which generate approximately 73% of the electricity consumed in Japan, operate in generation/wholesale units. The General Electricity Utilities supply electricity to PPSs, whereas their retail units directly compete with PPSs in the retail sector. Since these two units are vertically integrated, even if PPSs try to seek to procure electricity at competitive prices/conditions etc., to provide PPSs with electricity on terms and conditions that have economic rationality by the generation/wholesale units, there appears to be a lacking in economic rationality from the overall point of view as the General Electricity Utilities.

For this reason, it is considered that in order to provide an incentive to the General Electricity Utilities' to supply these units of electricity for PPSs, the retail units must be unbundled from their generation/wholesale units and considered as two different independent entities.

Additionally, as a result of unbundling the two units, it will become difficult for the generation/wholesale units to reduce trades to PPSs or to set up irrational terms and conditions, because it will be possible to compare the terms and conditions between the generation/wholesale units and the retail unit and those between the generation/wholesale units and PPSs.

- Unbundling of the General Electricity Utilities' transmission and distribution units

Within the General Electricity Utilities, the vertical integration of the electricity transmission and distribution units, which operate the electricity transmission and distribution networks commonly used by electric power supplier including PPSs and the other units, inevitably provides an incentive for the General Electricity Utilities to treat competitors unfavorably both in the retail sector and in the generation and wholesale sectors. In order to ensure respect of the accessibility, neutrality and non-discrimination principle under such circumstances, transmission and distribution networks must be unbundled from their retail units and generation/wholesale units, thereby eliminating incentives of the transmission and distribution units to unfairly treat enterprises with which the General Electricity Utilities compete in the retail sector or the generation/wholesale sector.

3.2.5 *Other suggestions*

24. Considering the nature of the electricity market and the existence of bargaining power disparity between electricity utilities and users on the grounds of the nature, only through each user's individual negotiation with electricity retailers, appropriate trading conditions are not expected. Thus, bargaining power disparity is likely to be improved further by such ways that multiple small-lot users assign their rights to negotiate their contract terms and conditions to other enterprises, or by making collective negotiations with electricity utilities.

25. In supplying electricity, supply-demand balance should be constantly maintained. If a supply-demand imbalance arises, the General Electricity Utilities currently addresses the imbalance by, for example, increasing the transmission fee, etc. to adjust the imbalance caused by PPS. As for the burden of payment related to such an imbalance, from the perspective of ensuring impartiality between the General Electricity Utilities and PPSs, the General Electricity Utilities, which only bears a certain amount of the cost based on certain assumptions under the present circumstances, should be required to incur the amount of payment involved with actual supply-demand imbalance.

3.3 Support on the implementation of competition assessment

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

27. In order to disseminate and establish the Competition Assessment in each ministry, having compiled the Competition Assessment Checklist etc. in reference to the OECD Competition Assessment Tool Kit and distributed it to each ministry, as last year in 2012, the JFTC supported the implementation of Competition Assessment including the provision of consultations for ministries about the concept and method of the Competition Assessment when they answer the Competition Assessment Checklist, by not only answering questions, but also explaining the basic concept regarding competition policy which is the foundation of Competition Assessment.

4. Main surveys related to competition policy

4.1 Survey on Corporate Compliance Efforts with the Antimonopoly Act

28. The number of enterprises listed in the first section of the Tokyo Stock Exchange (at the time of engaging in the violation) that committed illegal conducts in the past six years (January 2006 to December 2011) amounts to 78. Of these 78 enterprises, 48 companies (61.5%) which violated the Anti-monopoly Act, had prepared and owned compliance manuals related to the Anti-monopoly Act.

29. As these figures indicate, in terms of the effectiveness of compliance related to the Antimonopoly Act (hereinafter, "Antimonopoly Act compliance"), the level of effectiveness is still not sufficient.

30. Based on the current status and issues of corporate Antimonopoly Act compliance, the JFTC conducted a survey in the forms of questionnaires (97 enterprises) and interviews (1681 enterprises) to contribute to the enhancement of the effectiveness of enterprises' Antimonopoly Act compliance by revealing these cases as well as the current status concerning Antimonopoly Act compliance. The JFTC compiled the results of the survey into a report and published it in November 2012.

31. The main points of the report are as follows.

4.1.1 Measures for Ensuring the Effectiveness of Compliance Program with the Anti-monopoly Act (overview)

4.1.1.1 Overall Compliance Program with the Anti-monopoly Act —

— Commitment and Initiative of the Top Management

It is important that the top management of an enterprise expresses its commitment and takes the initiative regarding Antimonopoly Act compliance and sends out a clear message about its emphasis on Antimonopoly Act compliance repeatedly and directly to employees.

- Establishment of Compliance Program with the Antimonopoly Act in Accordance with the Actual Situation
- It is important to focus on the enterprise’s own risks related to the Antimonopoly Act and plan measures for addressing and deterring those particular risks.
- Establishment of Departments in Charge of Legal and Compliance with the Antimonopoly Act and Implementation System
- The appointment of an executive in charge of Antimonopoly Act compliance enables prompt decision-making and helps ensure that compliance measures are thoroughly implemented by the management decision-making body of the enterprise, such as the board of directors.
- Designating an employee from each operating division as a person in charge of Antimonopoly Act compliance within the division, in addition to individuals in charge of Antimonopoly Act compliance in the legal and compliance departments contributes to ensuring subjective efforts to remain in harmony with the actual situation of the business of an enterprise.
- Integrated Approaches as a Group of Enterprises

Competition authorities in each country and region have been cooperating in the detection of international cartels and other violations. Japan’s leniency program can now be utilized jointly by multiple companies belonging to the same corporate group. In this way, integrated approaches to Antimonopoly Act compliance made by an entire group of enterprises, which include overseas business activities, have been becoming more important.

4.1.2 *Measures for Ensuring the Effectiveness of the Antimonopoly Act Compliance Program (itemized discussions) – “The 3Ds” –*

- Deterrence

Concrete measures for Deterrence are considered to include: a) formulation of the Antimonopoly Act compliance manual; b) in-house training on Antimonopoly Act compliance; c) development of a legal consultation system; d) development of internal disciplinary rules; and e) formulation of rules concerning contacts with other competing enterprises.

- Detection

Concrete measures for Detection are considered to include: a) Antimonopoly Act Audits; b) development of internal reporting system; and c) an in-house leniency policy.

- Damage control

Concrete measures for Damage control are considered to include: a) a prompt response and appropriate decision-making at the initiative of top management; b) active use of leniency programs, etc.; c) prior development of a contingency manual; and d) an appropriate internal probe.

4.2 *Report on the Results of a Fact-Finding survey on the Trades between Large-Scale Retailers and Suppliers*

32. On November 30, 2010, the JFTC formulated and published the “Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act (hereinafter referred to as “the Superior Bargaining Position Guidelines”)” with the goal of increasing the transparency of law enforcement and predictability for entrepreneurs. The JFTC has prevented illegal acts by clarifying the concept of abuse of a superior bargaining position.

33. In the “Report on the Trade between Food Manufacturers and Wholesalers” published on October 19, 2011, the JFTC reported that the results of a fact-finding survey on the trades between food manufacturers and wholesalers “revealed the cases that the wholesalers made unreasonable requests to the manufacturers due to the retailers’ requests to wholesalers.” The JFTC stated its intention to continue to observe the current situation of the trades. In addition, the JFTC conducted a fact-finding survey on the trades between large-scale retailers and suppliers in order to confirm the level of recognition among entrepreneurs of the Superior Bargaining Position Guidelines and the actual situation about requests or conducts categorized in the guidelines as types of requests or conducts that come under the abuse of a superior bargaining position, and to contribute to appropriate law enforcement in the future. The JFTC sent questionnaires to 822 large-scale retailers (with revenues of more than 7 billion yen) and 10,000 suppliers, and compiled the results of the survey into a report (published on July 11, 2012).

34. The main points of the report are as follows.

4.2.1 Main points of the survey results

35. The survey results revealed conduct by partial large-scale retailers and others that could lead to the abuse of a superior bargaining position. The survey results also revealed that if a large-scale retailer performed conducts that could lead to the abuse of a superior bargaining position to a supplier, the burden caused to the supplier by such conducts was shifted to the supplier’s client. Furthermore the level of recognition of the Superior Position Guidelines among large-scale retailers, etc. whose revenues are less than 10 billion yen, is lower than the level of recognition of the guidelines among other retailers whose revenues are not less than 10 billion yen. When employees are compared by their positions, the level of recognition among a “general employee of a purchasing division” is lower than that of “representatives, executives, etc.” and “persons in administrative positions such as general managers, managers, etc.”, regardless of the size of the revenues of the enterprise.

4.2.2 Response of the JFTC

36. Based on the survey results, with a view to preventing large-scale retailers from the abuse of a superior bargaining position, the JFTC pointed out issues found in the survey results to the trade associations of large-scale retailers and requested that they take voluntary actions to promote fair trade in the industry, including thoroughly informing members about the Superior Position Guidelines once again. Subsequently, to prevent illegal acts, the JFTC made further efforts to promote fair trade between large-scale retailers and suppliers, and held industry-classified seminars for large-scale retailers, particularly for general employees of purchasing divisions.

5. International efforts to strengthen the cooperation and coordination of competition law and competition policy

5.1 *Bilateral efforts*

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

5.1.1 Bilateral meetings with foreign competition authorities

38. In 2012, the JFTC held bilateral meetings on competition policy with the competition authorities of United States and EU.

5.1.2 Efforts for economic partnership agreements

39. While there was not any economic partnership agreements newly signed between Japan and other countries in 2012, Japan conducted negotiations respectively with Canada, Australia and Mongolia for concluding new economic partnership agreements and the JFTC participated in negotiations regarding the part of competition policy.

5.2 *Multilateral efforts*

40. The JFTC proactively participates in the activities of organizations such as the International Competition Network(ICN), the Organization for Economic Co-operation and Development(OECD), Asia-Pacific Economic Cooperation(APEC) and the United Nations Conference on Trade and Development(UNCTAD). In addition to these activities, the JFTC plays a leadership role in the East Asia Conference on Competition Law and Policy and the East Asia Top Level Official's Meeting on Competition Policy.

41. Especially, the "International Competition Network's Framework for Merger Review Cooperation" was established at the ICN's 11th Annual Conference in April 2012. This framework was proposed by the chairman of the JFTC at the time and is overseen by the JFTC for the purpose of promoting effective and efficient multijurisdictional merger review among ICN members.

5.3 *Technical Assistance*

42. Given that developing economies are either actively strengthening their existing competition law systems or introducing new ones, the JFTC provides technical assistance for such countries by dispatching its staff, organizing training programs, etc. In 2012, the JFTC implemented training courses on competition policy for Malaysia, Indonesia, the Philippines, Vietnam and China, etc.

5.3.1 Main international activities during 2012: Summary

- The 11th ICN Annual Conference (Rio de Janeiro, April)
- Operating International Competition Network's Framework for Merger Review Cooperation
- East Asia Top Level Officials' Meeting on Competition Policy (Kuala Lumpur, May)

- Bilateral consultations with foreign competition authorities (United States, EU)
- Providing training on competition policy (Malaysia, Indonesia, the Philippines, Vietnam and China, etc.)

6. Public relations, etc.

6.1 Public relations

43. For the purpose of enhancing public understanding of competition policies, the JFTC engages in public relations activities, providing the general public with information on legislation, including the Antimonopoly Act, and its own activities through press releases, the JFTC website and other means. The JFTC established each website to provide information aimed at the general consumer and children. Some sections of the websites give comprehensive explanations and examples of the Antimonopoly Act and the activities of the JFTC.

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

45. Moreover, the JFTC is open to opinions and responds to requests made by the public at informal gatherings. The process of encouraging, offering and gathering information is designed to help prevent businesses and their associations from committing violations of the Antimonopoly Act, etc., and to ensure that competition policies properly reflect the views and wishes of people from all walks of life.

46. The main activities during 2012 were as follows:

Types of Activities	Press Releases	Exchange of opinions with local experts*	Lectures in schools	Consumers Seminar	One Day JFTC
Number	248	88	99	49	10

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

47. In addition to the above, because the efforts of contractors are extremely important in fully preventing bid-rigging, the JFTC has training workshops about the Antimonopoly Act and Involvement Prevention Act (see Section 2.1.2.1 above) for procurement officials in local government agencies and other authorities and the JFTC has also cooperated with the central government offices, local government agencies and other authorities, by dispatching lecturers and providing materials and other material when they hold similar training workshops. In 2012, the JFTC held 21 training workshops and dispatched lecturers in 205 cases to central government, local government agencies and specified juridical persons.

6.2 Policy evaluation

48. Since FY 2002, the JFTC has implemented a policy evaluation based on "the Government Policy Evaluation Act". In 2012, the JFTC implemented 7 ex-post evaluations including the "Prompt and

appropriate merger control” and “Strict coping with the violations of the Antimonopoly Act,” by means of performance evaluation, and published the report on policy evaluation.

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

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

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

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

Report on policy evaluation published in 2012

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

7. Resources (FY 2012)**7.1 Budget (unit: JPY billion and %)**

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

Fiscal Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Budget amount (JPY billion)	7.85	7.82	8.13	8.34	8.42	8.68	8.45	8.96	8.91	8.74
Change over previous year (%)	2.2	Δ0.4	4.0	2.5	0.9	3.2	Δ2.7	6.1	Δ0.5	Δ1.9
General Expenditures Budget: change over previous year (%)	0.1	0.1	Δ0.7	Δ1.9	1.3	0.7	9.4	3.3	1.2	Δ5.2

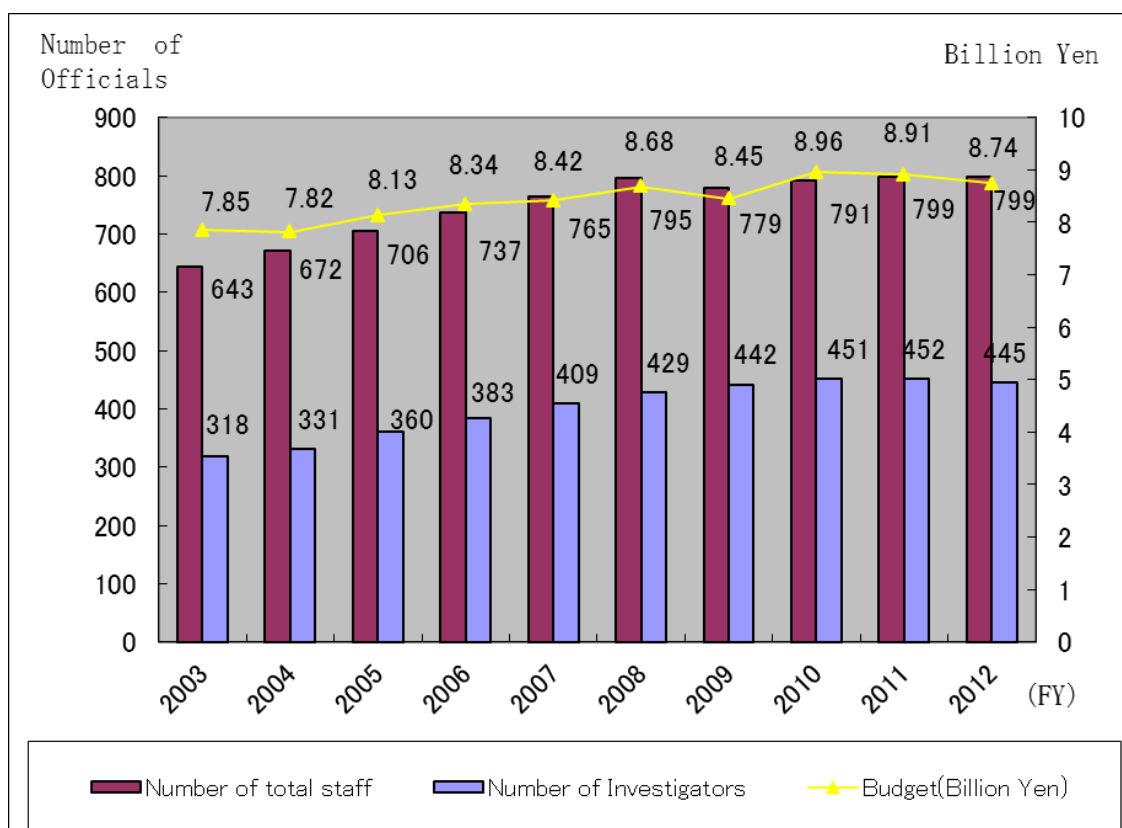
(Note). The General Expenditures Budget refers to the total budget of the Japanese government and is the amount of General Account Budget Expenditures less National Debt Service and Local Allocation Tax Grants.

7.2 Number of officials

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

Fiscal Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of officials	643	672	706	737	765	795	779	791	799	799
Enforcement against anti- competitive practices	318	331	360	383	409	429	442	451	452	445
Merger review enforcement	30	32	32	35	36	36	36	35	37	41
Advocacy efforts	30	30	37	36	34	35	35	36	35	33

(Notes). 1)The number of officials engaged in enforcement against anticompetitive practices refers to the investigation Bureau and Investigation Divisions of local offices..2)The number of officials engaged in merger review enforcement refers to the Mergers and Acquisitions Division. 3)The number of officials engaged in advocacy efforts refers to the General Affairs Division of the Economic Affairs Bureau and the Coordination Division.

Budget and Number of Officials (FY 2003-2012)**8. Activities of the Competition Policy Research Center**

54. The Competition Policy Research Center (hereinafter referred to as the “CPRC”) develops research activities as the result of a collaboration between the JFTC staff, director, chief researchers, and visiting researchers (a total of 16 persons at the end of December 2012) specialized in the fields of economics and law. These research activities are aimed at strengthening the theoretical and empirical basis for the implementation of the Antimonopoly Act and the preparation of competition policies. The director, chief researchers and visiting researchers are mostly university professors participating in the CPRC on a part-time basis.

55. In 2012, the CPRC published 8 joint research reports and 4 discussion papers. It organized 3 open seminars and 1 international symposium. The research reports and discussion papers as well as the presentation materials of the open seminars and international symposia are made available at the CPRC website.

8.1 Joint research reports

- Handbook of Economic Analysis in Competition Policy - CPRC Handbook Series No.1 (February 2012)
- Utilization of Economic Analysis in Cartel Regulation - CPRC Handbook Series No.2 (February 2012)

- Ex-post Evaluation of the Antitrust Remedy on a Merger for its Potential Portfolio Effects of Patented Essential Technologies (February 2012)
- Law and Economics of Resale Price Maintenance (March 2012)
- State Aid Regulation and Competition Law in EU - The Discussion under EU Competition Law - (July 2012)
- Competition Policy in Network Industries – Comparative Legal Studies and Economic Analysis on Margin Squeeze Regulation in Japan, US, and EU – (October 2012)
- Study of the Recent Development of Antitrust Analysis on the SSOs' patent Policies Designed to Reduce Opportunities for Hold-up (October 2012)
- Research on Abnormally Low Tenders (October 2012)

8.2 *Discussion papers*

- "Buyers' collective action regulation in US antitrust laws - A Theoretical Analysis of Monopsony" (March 2012)
- "Economic Analysis of a Grant-back Provision" (April 2012)
- "Analysis and Evaluation of SMP Regulation in EU Telecommunications" (October 2012)
- "Estimation of Demand Functions – CPRC Handbook Series No. 3" (November 2012)

8.3 *Hosting open seminars*

56. The CPRC hosts open seminars to introduce the results of its joint research reports, etc. In 2012, the following 3 open seminars were held.

Date	Theme	Speaker	Moderator, Panelists and Commentators
May 18	State Involvement in Corporate Revitalization and Competition Policy	Kazuhiko Toyama, CEO of Industrial Growth Platform, Inc.	Moderator: Yosuke Okada, CPRC Director and Professor of Graduate School of Economics, Hitotsubashi University Commentator: Noriyuki Doi, CPRC Chief Researcher and Professor of Economics, Kwansei Gakuin University
June 14	Patent Wars and Competition Law – Current Trends in US and EU -	Masako Wakui, Specially Appointed Professor, College of Law and Politics, Rikkyo University	Moderator: Koki Arai, CPRC Deputy Director Commentator: Yosuke Okada, CPRC Director and Professor of Graduate School of Economics, Hitotsubashi University
November 9	Patent System and Competition Policy –	Yoshiyuki Tamura, Professor of Graduate School of Law,	Moderator: Yosuke Okada, CPRC Director and Professor

	Focusing on FTC Report 2011	Hokkaido University	of Graduate School of Economics, Hitotsubashi University
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(Note). Titles listed in the above table were applicable at the time.

8.4 *Hosting an international symposium*

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

58. An international symposium entitled "Economic Studies of Cartels and Bid-Rigging, and the Competition Law" was held in March 2012. Participating invitees included Professor Robert Porter (Professor of Economics at Northwestern University), Professor Kai-Uwe Kühn (Chief Economist of Directorate General for Competition of European Commission and Professor of Economics at University of Michigan at Ann Arbor), Professor Hiroshi Ohashi (Associate Professor of Economics at the University of Tokyo and a Chief Researcher of CPRC), Mr. Hiromitsu Miyakawa (a Lawyer Associated with Jones Day) (Note). Titles listed in the above table were applicable at the time.