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

-- 2014 --

27-28 October 2015

*This report is submitted by Japan to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.*

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

### ***1.1 The development of the relevant laws and regulations with the amendment of the Antimonopoly Act***

1. The bill to amend the Antimonopoly Act (hereinafter referred to as “the AMA”) including the abolition of the Japan Fair Trade Commission’s (hereinafter referred to as “the JFTC”) Hearing Procedure for appealing against the JFTC’s administrative orders and the necessary revisions to develop procedures for hearings prior to the issue of the JFTC’s administrative orders was passed and approved on December 7, 2013. The amendatory act was promulgated on December 13, 2013, and put into force on April 1, 2015.

2. In accordance with the amendment of the AMA above, the JFTC developed necessary changes to the relevant Orders and regulations, including, the enactment of the rule on hearing opinions (promulgated on January 21, 2015, and put into force on April 1, 2015), to establish the due process after abolishing the Hearing Procedure for appeal. The new rule includes the provisions that the JFTC hears the opinions of the would-be addressees of the cease and desist order and allow them to read and copy the evidence which proves the fact found by the JFTC.

### ***1.2 Partial Amendments of the “Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act***

3. On the basis of the “Implementation Plan for Regulatory Reform” (June 24, 2014, The Cabinet Decision) (hereinafter the “Plan”), in order to make clarifications to the items in Chapter 1 (“Resale Price Maintenance”) and Chapter 2 (“Vertical Non-Price Restraints”) of Part II of the “Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act” (published on July 11, 1991) (hereinafter the “Distribution Guidelines”) as the measures to be implemented within FY 2014 in the Plan, the JFTC made partial amendments to the Distribution Guidelines, and published them on March 30, 2015. This clarifications includes the JFTC’s policies regarding the criteria for judgement of the legality or illegality for vertical restraints and the view on “justifiable grounds” in the regulation of Resale Price Maintenance.

## **2. Enforcement of competition laws and competition policies**

### ***2.1 Measures against violations***

#### ***2.1.1 Measures taken in 2014***

4. Under the AMA, the JFTC conducts necessary investigations based on Article 47. If the JFTC finds a violation, it conducts a hearing of opinions from the would-be addressee of the cease and desist order (Article 49) and issues the finalized order based on the results of the hearing. In the event that the JFTC does not have enough evidence to take legal measures, but identifies suspicions of a violation to the AMA, 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 AMA, 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 AMA.

5. Out of the 116 cases in which the JFTC closed investigations in 2014, legal measures were taken for 14 cases (cease and desist orders in 14 cases, and surcharge payment orders without cease and desist orders in zero cases). The JFTC also issued “warnings” in 2 cases where suspicions of violations of the AMA were identified, “cautions” in 98 cases (Details of caution cases are not made public.), and terminated examinations in 2 cases where evidence of illegal conduct could not be uncovered.

#### 2.1.1.1 Cease and desist orders

6. The JFTC has been especially engaged in continuous efforts to eliminate unreasonable restraint of trade. In 2014, 13 of the JFTC's legal measures were carried out against unreasonable restraint of trade.

- Bid rigging 4
- Price cartels, etc. (excluding bid rigging) 9
- Unfair trade practices 1
- Private monopolization 0
- Total 14

#### 2.1.1.2 Surcharge payment orders

7. Surcharges are applied to enterprises that carry out unreasonable restraints of trade (cartels, bid rigging, etc.), private monopolizations (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 [hereinafter referred to as ASBP]).

8. 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, the way of which is diverse depending on the type of the conduct in question as determined according to operation scales and business categories.

9. In 2014, the JFTC issued surcharge payment orders to 225 enterprises totaling 41,204 million Japanese yen (hereinafter referred to as "JPY").

#### 2.1.1.3 Criminal accusations

10. 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 AMA.

11. In 2014, the JFTC conducted a criminal investigation and filed a criminal accusation to the Prosecutor-General in the following cases.

- A Criminal Accusation on Bid-Rigging Concerning Snow-Melting Equipment Engineering Works for Hokuriku Shinkansen Ordered by the Japan Railway Construction, Transport and Technology Agency

The JFTC filed a criminal accusation with the Prosecutor-General against 8 enterprises which had agreed to designate successful bidders and to bid at prices allowing the designated successful bidders to win with respect to snow-melting equipment engineering works for Hokuriku Shinkansen and, in accordance with the agreement, designated the successful bidders for each of the works, as well as against the 8 individuals who were engaged in equipment engineering business of the 8 accused enterprises. The criminal violation of the 8 companies and the 8 persons were convicted through the court procedure in 2014.

Additionally, the JFTC found the employees of Japan Railway Construction, Transport and Technology Agency (hereinafter “JRCTTA”) were involved in the above violations. The JFTC demanded that the chairman of the JRCTTA 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. on March 19, 2014.

#### **2.1.1.4 Hearing Procedures after the issue of the JFTC’s administrative orders**

12. The JFTC initiated the Hearing Procedures after the issue of the JFTC’s administrative orders on 142 cases in 2014. As of the end of December 2014, the JFTC has been conducting ongoing the Hearing Procedures in 305 cases, 151 of which concerned cease and desist orders, and 154 of which concerned the surcharge payment orders.

13. In 2014, the JFTC concluded the Hearing Procedures and issued the decisions on 3 cases.

#### **2.1.2 Summary of main cases<sup>1</sup>**

##### **2.1.2. Private monopolization**

- Case against JA Fukui Prefectural Economic Federation of Agricultural Cooperatives

In relation to a case involving country elevator works<sup>2</sup> ordered by the agricultural cooperatives in Fukui prefecture, JA Fukui Prefectural Economic Federation of Agricultural Cooperatives (hereinafter “JA Fukui Keizairen”) controlled the business activities of bid participants by taking advantage of position as the agent for ordering all of these works and designated successful bidders and managed to have the designated successful bidders win the biddings.

Given the above findings are in violation of Article 3 of the AMA (“Prohibition of Private Monopolization”), the JFTC issued a cease and desist order on January 16, 2015.

Meanwhile, in relation to the above violations, the JFTC also found that the ways of the order of the agricultural cooperatives in Fukui city, etc were not appropriate for the purpose of the competitive bidding system and prevented fair and free competition. The JFTC therefore requested them to call for appropriate bids.

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<sup>1</sup> Some cases against which the JFTC took legal measures in 2015 are described in this section.

These cases are not included in the number of cease and desist orders or the number of the enterprises on which the JFTC has imposed surcharge payment orders, or in the amount of surcharges imposed by the JFTC in 2014 shown in the paragraph 5 of 2.1.1 and the table in paragraph 6 of 2.1.1.1 or paragraph 9 of 2.1.1.2.

<sup>2</sup> “Country elevator” means a facility for drying, husking and storage of grains.

#### 2.1.2.2 Bid rigging

- Case against Participants in Bidding for Low Temperature Air Conditioning System Works Ordered by JA in Hokkaido

In relation to a case involving the low temperature air conditioning system works<sup>3</sup> ordered by the agricultural cooperatives in Hokkaido prefecture, the enterprises 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 AMA (“Prohibition of unreasonable restraint of trade”), the JFTC issued a cease and desist order and surcharge payment orders on January 20, 2015. (Total amount of surcharge: 16million JPY)

- Case against Participants in Bidding for the Country Elevator Works and the Rice Milling Facility Works ordered by the Agricultural Cooperatives, etc.

In relation to a case involving the Country Elevator Works and the Rice Milling Facility Works ordered by the Agricultural Cooperatives, etc., the enterprises 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 AMA (“Prohibition of unreasonable restraint of trade”), the JFTC issued a cease and desist order and surcharge payment orders on March 26, 2015. (Total amount of surcharge: 1,175million JPY)

Meanwhile, in relation to the above violations, the JFTC also found that a part of ZEN-NOH’s<sup>4</sup> employees induced or facilitated the violations. The JFTC therefore urged ZEN-NOH to take appropriate measures to prevent recurrence of the conducts mentioned above.

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

- Case against Manufacturers of Corrugated Board Sheet or Manufacturers of Corrugated Board Box

Manufacturers of specific corrugated board sheet and manufacturers of specific corrugated board box formed and implemented agreements to raise the selling prices and the processing fees of corrugated board boxes sold to large-lot users.

Given that the above findings are in violation of Article 3 of the AMA (“Prohibition of unreasonable restraint of trade”), the JFTC issued cease and desist orders and surcharge payment orders on June 19, 2014. (Total amount of surcharge: 13,293 million JPY)

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<sup>3</sup> “Low temperature air conditioning system works” means the construction works for air conditioning systems used in facilities to store or precool agricultural products.

<sup>4</sup> National Federation of Agricultural Cooperative Associations

- Case against Manufacturer of Steel Ball

Manufacturers of Steel Ball formed and implemented agreements to raise or maintain the selling prices.

Given that the above findings are in violation of Article 3 of the AMA (“Prohibition of unreasonable restraint of trade”), the JFTC issued a cease and desist order and surcharge payment order on September 9, 2014. (Total amount of surcharge: 1,324 million JPY)

#### 2.1.2.4 Unfair trade practices

- Case against a Ready-mixed Concrete Association

A Ready-mixed Concrete Association (hereinafter “Association”) prevented customers from purchasing ready-mixed concrete from non-member of the Association, by means of announcing to customers that the price of ready-mixed concrete would be changed to catalogue price, for which only cash payment would be accepted if customers purchase it from non-member.

Given that the above findings are in violation of Article 19 of the AMA (falling within Paragraph 14 [Interference with Competitor’s Transactions] of the Designation of Unfair Trade Practices), the JFTC issued a cease and desist order on February 27, 2015.

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

14. Regarding lawsuits seeking to overturn the JFTC’s decisions, 5 court decisions were made in 2014. 1 new lawsuits have also been filed. As of the end of December 2014, there were 7 pending lawsuits.

## 2.2 *Mergers*

### 2.2.1 *Statistics relating to mergers*

15. Based on the provisions of the AMA, mergers<sup>5</sup> 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 to take elimination measures against acquisitions of shares etc. in such a case. Throughout 2014, 271 planned mergers were notified to the JFTC. In 2014, there was no case in which the JFTC concluded that competition in any particular field of trade might not be substantially restrained with remedies.

Number Year	Notifications	withdrawn	Phase I review	Phase II review
2014	271	11	257	3

(Note). The JFTC conducted Phase II reviews concerning 3 cases in 2014, in none of which the JFTC concluded that competition in any particular field of trade might not be substantially restrained with remedies. (As for the cases of “Proposed Integration of Zimmer and Biomet” and “the Proposed Acquisition of Shares of Chuetsu Pulp & Paper Co.,Ltd. by Oji Holdings Corporation” described as “the

<sup>5</sup> 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”

main merger cases" below, the JFTC received the notifications in 2014, and the JFTC concluded in both cases that there are no problems under the AMA on the premise that the remedies would be taken in 2015.)

### 2.2.2 Main merger cases

- Review on the Proposed Integration of Zimmer and Biomet

Regarding the transaction of Zimmer, Inc. (Head office based in the USA; the corporate group to which the company belongs is hereinafter referred to as "Zimmer") and Biomet, Inc. (Head Office based in the USA; the corporate group to which the company belongs is hereinafter referred to as "Biomet", and hereinafter Zimmer and Biomet are collectively referred to as "the Parties") (hereinafter referred to as "the Transaction"<sup>6</sup>), the JFTC received a written notification of the plan from the Parties based on the regulations of the AMA, and has undertaken its investigation. As a result, on the premise that the remedy proposed by the Parties would be taken, the JFTC concluded that the Transaction would not substantially restrain competition in any particular fields of trades.

The JFTC kept exchanging information and cooperating with the United States Federal Trade Commission (USFTC), the European Commission (EC) which also investigated the same transaction.

**Outline of the results.** The Parties were competing each other in the markets including manufacturing of medical devices. Among medical devices markets, the JFTC examined some artificial joints, because the Parties have a large market share in these markets. On the premise that the remedy proposed to the JFTC by the Parties would be taken, the JFTC concluded that the Transaction would not substantially restrain competition in any fields of trades including "UKA (one type of artificial knee joints)" and "artificial elbow joints" which the Parties would have large market share. Furthermore, the JFTC conducted an economic analysis on this case, and took the result of the economic analysis into account in making its judgment.

#### **Assessment under the Antimonopoly Act (UKA market and artificial elbow joints market)**

After the Transaction, the market share of the Parties would become approximately 90% in the UKA market, and 60-70% in the artificial elbow joints market, which would create a significant gap from those of competing enterprises. Additionally, competition previously conducted between the Parties would be lost. Meanwhile, each competitive pressure (entry pressure, competitive pressure from users, competitive pressure from adjacent markets) in the UKA market and the artificial elbow joints market are limited. Therefore, the JFTC concluded that the Transaction would substantially restrain competition in the UKA market and artificial elbow joints market.

#### **Proposal of remedy by the Parties.**

a) The Parties submitted the proposal of Remedy on UKA and artificial elbow joints (hereinafter referred to as "the Remedy") to the JFTC mainly as follows:

(1) Tangible assets (e.g., inventory, design history, experimental and clinical data) and intellectual property rights (e.g., patents, trademarks, know-how) pertaining to the Parties' leading brands

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<sup>6</sup> The Transaction is (1) for a subsidiary company of Zimmer, Inc. and a parent company of Biomet, Inc. to merge, with the parent company of Biomet, Inc. being the surviving company, and (2) for Zimmer, Inc. to acquire all the stocks of the company after the merger.



corresponding to approximately 50% of the market share in the UKA and approximately 20% of the market share in the artificial elbow joints in FY2012 are to be divested;

(2) Buyers are to be enterprises which have adequate experience and capability in the orthopedics and artificial joints business and be independent of and financially unrelated to the Parties, that need to be selected in light of the criteria such as possessing the funds, specialty and incentive to maintain and develop the business subject to the divestitures, The possible buyers are to be notified to and obtain an clearance from the JFTC after concluding contracts with the buyers;

(3) If the Parties don't reach to conclude contracts with buyers within a certain period of time, an independent third party (divestiture trustee) carries out disposal of the business listed in (1) above after obtaining an approval from the JFTC; and,

(4) The time limit to execute the divestitures is to be within 3 months from the day the clearance from the JFTC regarding possible buyers.

#### **b) Assessment of the Remedy**

On the premise that the Remedy described in a) above would be taken, the Parties' combined market share and rank in the UKA market after the Transaction would be approximately 40% and the second place; and the Parties' combined market share and rank in the artificial elbow joints market after the Transaction would be approximately 40% and the first or second place. However, in both of the UKA market and artificial elbow joints market, the Parties' market share after the Transaction would be lower than the market share of the Parties before the Transaction.

Regarding buyers, it is considered that buyers who satisfy the requirements described in a) (2) above would become independent competitors influential in the UKA and artificial elbow joints markets. Whether the actual buyers satisfy the said requirements will be assessed by the JFTC after receiving reports from the Parties.

The time limit to take the Remedy is appropriately and clearly specified.

**Conclusion.** On the premise that the Remedy would be taken, the JFTC concluded that the Transaction would not substantially restrain competition in the UKA and artificial elbow joints markets.

Review on the Proposed Acquisition of Shares of Chuetsu Pulp & Paper Co., Ltd. by Oji Holdings Corporation

**Outlines of the transaction.** Regarding the acquisition of stock of Chuetsu Pulp & Paper Co., Ltd. (hereinafter, "Chuetsu Pulp & Paper") by Oji Holdings Corporation (hereinafter, "Oji Holdings"; this acquisition of stock is hereinafter reoffered to as "the Acquisition", and hereinafter Chuetsu Pulp & Paper and Oji Holdings are collectively referred to as "the Parties"), the JFTC received a written notification of the plan from the Parties based on the regulations of the AMA, and has undertaken its investigation. As a result, on the premise that the remedy proposed by the Parties would be taken, the JFTC concluded that the Acquisition would not substantially restrain competition in any particular fields of trades

**Outline of the results.** The JFTC examined about 35 types of paper manufacturing markets in which the Parties competed or traded with each other. On the premise that the remedy proposed to the JFTC by the Parties would be taken, the JFTC concluded that the Acquisition would not substantially restrain competition in any fields of trades including printing tissue paper, art paper,

base stock for back carbon paper, unglazed shipping sacks craft paper, other unglazed bag and sack paper, and unglazed bleached craft paper where the Parties' markets share are relatively high (hereinafter, "six types of products").

**Assessment under the Antimonopoly Act (six types of products)**

After the Acquisition, each of the market share of the Parties in the six types of products will become about 60% (printing tissue paper), about 75% (art paper), about 65% (base stock for back carbon paper), about 50% (unglazed shipping sacks craft paper), about 45% (other unglazed bag and sack paper), and about 55% (unglazed bleached craft paper). While there exist major competing enterprises in each field of trade, it has been found that neither import pressure nor entry pressure is recognizable; that competitive pressure from users is deemed to be limited; and that paper manufacturers tend to raise prices at the same time. Therefore, the JFTC concluded that the Acquisition would substantially restrain competition in the six types of products markets.

**Proposal of remedy by the Parties.**

a) The Parties submitted the proposal of Remedy to the JFTC mainly as follows:

(1) The Parties will conduct business activities independently from each other with regard to production and distribution of six types of products. In case of a business combination or a business collaboration being carried out between the Parties in the production and distribution of the six types of products, the Parties will have the JFTC's prior approval;

(2) The Parties does not disclose to each other information related to the production and distribution of the six types of products which is not known to the public but significant in terms of competition (e.g. production cost, production volume, sales prices, sales volume, and buyers, etc. );

(3) Board members in Chuetsu Pulp & Paper Group which can be assumed by Oji Group's executives or employees are limited to one external director which has no role in business management.

b) Assessment of the Remedy

In addition to the Remedy proposed by the Parties, through the Acquisition, Oji Group would hold only a little more than 20% of the voting rights of Chuetsu Pulp & Paper Group while the number of directors they are exchanging would be limited to one. In consideration of these, the Parties are deemed to maintain independent business activities in future with regard to the production and distribution of the six types of products.

**Conclusion.** On the premise that the Remedy proposed by the Parties would be taken, the JFTC concluded that the Acquisition would not substantially restrain competition in the six types of products market.

### **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***

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 AMA and the competition policy. In 2014, as in previous years, the JFTC submitted its opinions after consultation with other administrative agencies.

#### **3.2 *Competition Policy and Public Support for Revitalization***

##### **3.2.1 *Purpose and objectives of the study group on competition policy and public support for revitalization***

16. The “Study Group on Competition Policy and Public Support for Revitalization” (hereinafter “Study Group”), which is made up of experts, has been held under the direction of the Minister of State for Special Missions, Cabinet Office (in accordance with the decision issued by the Minister of State for Special Missions, Cabinet Office on August 5, 2014) for the purpose of the necessary review in view of the competition policy, recognizing that it is important to minimize the effect of public support for revitalization on competition in the relevant markets, while also acknowledging that such support is provided to achieve various policy objectives in Japan. The Study Group were held 8 times in total since the first meeting was held on August 13, 2014. The Study Group prepared an interim report of the public support for revitalization in view of the competition policy based on the feedback received from organizations providing public support for revitalization (supporting organizations), enterprises receiving this support (beneficiaries), competitors of these beneficiaries, and experts regarding the systems for and actual state of public support for revitalization in Japan and EU/USA. The Study Group released the interim report on December 19, 2014.

##### **3.2.2 *Main points concerning the interim report of Competition Policy and Public Support for Revitalization***

###### **3.2.2.1 Basic recognition of public support for revitalization in view of the competition policy**

17. Public support for revitalization interferes with the market mechanism in which more efficient enterprises survive in the market. This support would compromise with the market mechanism, distort competition and cause various forms of inefficiency by interfering with the market mechanism much more than in cases when no such support is provided. Taking into account the above problems, public support for revitalization should be provided based on the following three principles carefully considering the impact on the competition in the market before it is provided.

- (1) Principle of subsidiarity
- (2) Principle of minimum necessity
- (3) Principle of transparency

###### **3.2.2.2 Effects of public support for revitalization on competition and action toward these effects**

###### **3.2.2.2.1 Period/ frequency of support**

18. The longer the period of public support for revitalization is, the greater effect the support has on competition. In addition, repeated support will have a greater impact on competition than once-only support.

The period of support should be kept as short as possible for ensuring business revitalization, to shorten the period of distortion of competition. This period should not be extended. In addition, support should not be provided multiple times, but only once.

#### 3.2.2.2.2 Scale of support

19. Based on the fact that the greater the scale of support, the greater effect the support has on competition, the scale of support should be kept to the minimum necessary to ensure business revitalization. It is desirable that beneficiaries be required to secure loans and raise capital on their own or the shareholders, etc. of beneficiaries be required to bear losses through capital decrease, etc. before the provision of public support.

#### 3.2.2.2.3 Method of support

20. When financial or non-financial support is provided, it should be noted that the necessity and details of support should be considered based on the principle of subsidiarity. In addition, the minimum means/ways necessary to achieve various policy objectives should be taken in accordance with the principle of minimum necessity.

21. When financial support is provided, the effects on competition may be minimized with restriction of use to business revitalization so that the scale of financial support does not become unnecessarily large. In addition, because liquidity support such as loans and other facilities has less impact on competition than the capital injection, needs for the financial support of beneficiaries must be ascertained in advance to ensure the appropriate level of financial support. Likewise, full consideration must be given to the necessity for the capital injections, in addition to loans and other liquidity support.

22. In providing liquidity support, interest should be imposed at a level close to the conditions of loans from private financial institutions. In addition, when a capital injections is needed, supporting organizations should seek contributors in the private sector first and only inject capital into beneficiaries when it is impossible to find any contributors in the private sector because capital injections will have a great impact on competition.

#### 3.2.2.2.4 Concurrent application of legal liquidation

23. In regards to the concurrent application of legal liquidation when providing public support for revitalization, some functions of public support for revitalization and those of legal liquidation party overlap in terms of support for business revitalization. Thus, the concurrent application of legal liquidation and public support for revitalization may result in excessive support beyond the extent necessary for business revitalization. In this case, public support for revitalization will have a greater impact on competition.

24. Therefore, in general public support for revitalization and legal liquidation should not be concurrently applied. However, if there is a pressing need to apply the unique functions of legal liquidation that are not available under public support for revitalization, the provision of public support for revitalization may be approved for enterprises subject to legal liquidation. In this case, the supporting organizations are required to fully consider the possibility of excessive support resulting from the concurrent application of legal liquidation.

25. Taking the above points into consideration, the concurrent application of public support for revitalization and legal liquidation should involve a full prior examination of their necessity. Even when this necessity is considered to exist, because the concurrent application of public support for revitalization and legal liquidation may lead to excessive support, full attention must still be given to ensuring transparency by obtaining opinions and feedback from the competitors of beneficiaries and other entities concerned regarding

effects of public support for revitalization on competition. In addition, the principle of minimum necessity should be applied in strictly arranging the details of public support for revitalization, taking into full account the effects of legal liquidation.

#### 3.2.2.2.5 Measures for when distortions of competition is not enough limited despite arranging the details of support

26. After arranging for specific support, if there is any remaining effects on competition that cannot be ignored, measures must be taken to minimize effects of public support for revitalization on competition (measures for minimizing effects). In regards to the measures for minimizing effects, when necessary, beneficiaries may be required to take certain actions as conditions for the provision of support by the supporting organizations in cooperation with a regulatory agencies, making sure not to impede business revitalization.

27. As for measures for minimizing effects, preliminary measures to restrict the business operations of beneficiaries (behavioral measures) and diminish their presence in the market (structural measures) may be adopted.

### 3.2.2.3 Framework for securing the appropriacy of public support for revitalization

#### 3.2.2.3.1 Division of roles between the Japan Fair Trade Commission and supporting organization

28. The best arrangement is for the JFTC to prepare and publish the cross-industry guidelines<sup>7</sup> containing matters in view of the competition policy that the supporting organizations should keep in mind when providing public support for revitalization. In addition, each supporting organization should consider and evaluate the effects on competition based on the aforementioned guidelines, cooperating with regulatory agencies as needed, when determining the specific support for each case.

#### 3.2.2.3.2 Ex-post measures to restore competition

29. When beneficiaries gain a greater competitive advantage than initially expected, the adoption of ex-post measures to restore competition (cessation of support, reduction of support and measures financially disadvantageous to beneficiaries) is considered to be inappropriate because it may impair the incentive for beneficiaries to carry out business revitalization or the incentive for these beneficiaries' stakeholders (such as financial institutions providing loans to beneficiaries) to commit themselves to the relevant business revitalization. In addition, taking financial disadvantageous measures to beneficiaries is considered to be difficult in light of the law system.

#### 3.2.2.3.3 Relevant business regulations, etc.

30. When beneficiaries and their competitors are subject to a public regulation system, the regulatory agencies may take measures concerning the granting of licenses, permits, etc. to correct distortion in competition and ensure a competitive environment. In this case, the regulatory agencies should consider measures that promotes competition in the market from the view point of ensuring a competitive environment.

#### 3.2.2.3.4 Ensuring transparency

31. In principle, the supporting organizations should publicly announce the general standards for the examination of and the procedures for the provision of public support for revitalization to improve the

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<sup>7</sup> The JFTC is in the process of making the guidelines as of August, 2015.

predictability of beneficiaries, their competitors, and their stakeholders. In addition, if the impact on competition is considered to be large, it is desirable that the details of the support plan and an assessment of the impact of public support for revitalization on competition for individual cases be made as publicly open as possible. Moreover, when assessing the impact on competition, it is desirable that hearing of competitors, etc. be conducted as needed within a scope which does not affect business revitalization.

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

32. 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.

33. 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, in 2014, like the previous year, 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 *Report on Fact-Finding Survey on Transaction of Private Brand Products in the Food Sector***

34. The JFTC has implemented strict and effective law enforcement against practices that may cause unfair disadvantages to business operators and worked to prevent violations based on the Regulation of ASBP under the AMA and the Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (hereinafter "Subcontract Act").

35. As part of efforts to prevent violations of these Acts, the JFTC has surveyed areas of trade where cases are observed that may constitute ASBP or a problem under the Subcontract Act, so as to identify how trade practices are actually carried out in these areas. In the previous fact-finding surveys, the JFTC has found cases of "product returns" or "refusal to receive products" in transactions of some private brand products (hereinafter "PB products") that may constitute ASBP or a problem under the Subcontract Act. Violations in connection with PB products have accounted for a certain share of all violations of the Subcontract Act.

36. In view of these circumstances, the JFTC considered it necessary to conduct survey on the actual conditions of transactions of PB products to see whether retailers, etc. have conducted practices that may constitute a problem under circumstances that domestic sales of PB products have sharply increased since 2008. As a result, the JFTC decided to conduct this survey to study the actual conditions of transactions of PB products in the food sector which accounts for a large part of all sales of PB products. The JFTC conducted a written survey by sending questionnaires to 500 retailers, etc. who are considered to work as contractors of PB products (hereinafter "retailers, etc.") and 3,000 manufactures, etc. who are considered to

manufacture and supply PB products (hereinafter “manufactures, etc.”) and published the results of the survey (published in June 2014).

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

#### *4.1.1 Main points of the survey results*

38. In 10.8% of the trades of PB products subject to survey, there has been some sort of action or trade conditions of PB products that can be linked to ASBP. As the actual form ASBP, actions corresponding to “establishment of a trading condition to require disclosure of information, including cost structure and manufacturing process, despite the fact that if such information is disclosed, manufactures, etc. will be at a disadvantage in negotiations, etc.” in particular were found more frequently.

39. Furthermore, the answers such as “request for support funding (for a sale, etc.)”, “request for purchase or use (of a product or service)” and so on were found more frequently, as the other practices that may constitute ASBP except establishment trading conditions.

#### *4.1.2 Actions of the JFTC*

40. Based on the survey results, to prevent retailers from causing problems under the AMA or Subcontract Act, the JFTC pointed out issues found in the survey to the relevant trade associations and requested that they take voluntary actions to promote fair trade in the industry, including thoroughly informing members about the Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act once again. After that, the JFTC provided retailers with seminars to promote fair trade between retailers, etc. and manufacturers and to prevent violations of the Acts.

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

### *5.1 Bilateral efforts*

41. 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*

42. In 2014, the JFTC held bilateral meetings on competition policy with the competition authorities of Korea and United States.

#### *5.1.2 Efforts for economic partnership agreements*

43. In July 2014, Japan signed the Economic Partnership Agreement with Commonwealth of Australia including a chapter on cooperation in competition policy and the Agreement took effect in January 2015. Furthermore, Japan participates in economic partnership agreement negotiations, such as the Trans-Pacific Partnership (TPP) agreement, the Free Trade Agreement (FTA) between Japan, China and Korea and the Regional Comprehensive Economic Partnership (RCEP). In addition, Japan is in EPA negotiations with the EU and countries such as Canada, Mongolia, Colombia, and Turkey, where the JFTC has participated in negotiations regarding competition policy-related chapters.

### *5.1.3 Memorandum on Cooperation / Cooperation Arrangement between competition authorities*

#### *5.1.3.1 Memorandum on Cooperation with the CADE*

44. The JFTC on April 24, 2014, signed Memorandum on Cooperation with the Administrative Council for Economic Defense of the Federative Republic of Brazil (hereinafter, “CADE”), which is the competition authority of Brazil. Accordingly, cooperation based on this Memorandum was started. This Memorandum provides the manners of notification of the enforcement activities, cooperation, coordination, request for enforcement activities and careful consideration to the important interests, etc. between the JFTC and the CADE.

#### *5.1.3.2 Memorandum on Cooperation with the KFTC*

45. The JFTC on July 25, 2014, signed Memorandum on Cooperation with the Korea Fair Trade Commission (hereinafter, “KFTC”), which is the competition authority of Korea. Accordingly, cooperation based on this Memorandum was started. The outline of this Memorandum is largely similar to the Memorandum on Cooperation with the CADE.

### *5.2 Multilateral efforts*

46. 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 Top Level Official’s Meeting on Competition Policy and the East Asia Conference on Competition Law and Policy.

47. Especially, the “ICN Framework for Merger Review Cooperation” was established at the 11<sup>th</sup> ICN Annual Conference in April 2012. This framework was proposed by the chairman of the JFTC and is overseen by the JFTC for the purpose of promoting effective and efficient cooperation of multijurisdictional merger review among ICN members.

### *5.3 Technical Assistance*

48. Given that developing countries 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 2014, the JFTC implemented training courses on competition policy for the Philippines, Vietnam, China, etc.

#### *5.3.1 Main international activities during 2014: Summary*

The 13th ICN Annual Conference (Marrakesh, April)

Operating ICN Framework for Merger Review Cooperation

East Asia Top Level Officials’ Meeting on Competition Policy (Tokyo, October)

Bilateral consultations with foreign competition authorities (Korea and United States)

Providing training on competition policy (Philippines, Vietnam, China, etc.)



## 6. Public relations and Policy evaluation

### 6.1 Public relations

49. 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 AMA, and its own activities through press releases, the JFTC website and other means. The JFTC established dedicated websites to provide information aiming at the general consumer and children respectively. Some sections of the websites give comprehensive explanations and examples of the AMA and the activities of the JFTC.

50. 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 AMA and the Subcontract Act, and the latter of which is to introduce consumers to the AMA and the JFTC's work. These events were held in local cities, where the JFTC's offices are not located. Also, at the request of junior high schools, high schools, universities, etc., 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.

51. 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 AMA, etc., and to ensure that competition policies properly reflect the views and wishes of people from all walks of life.

52. The main activities during 2014 were as follows:

Types of Activities	Press Releases	Exchange of opinions with local experts*	Lectures in schools	Consumers Seminar	One Day JFTC
Number	292	76	136	40	9

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

53. In addition to the above, because the efforts of procurement officers are extremely important in fully preventing bid-rigging, the JFTC has training workshops on the AMA and the Act on Elimination and Prevention of Involvement in Bid Rigging etc. and Punishments for Acts by Employees that harm Fairness of Bidding, etc. in local government agencies and other authorities. The JFTC has also cooperated with the national government offices, local government agencies and other authorities, by dispatching lecturers, providing materials, etc. when they hold similar training workshops. In 2014, the JFTC held 25 training workshops and dispatched lecturers to national government, local government agencies and specified juridical persons in 299 cases.

### 6.2 Policy evaluation

54. Since FY 2002, the JFTC has implemented a policy evaluation based on the Government Policy Evaluation Act. In FY2014, the JFTC implemented ex-post evaluation relevant to "Public relations for competition policy" by means of performance evaluation, and published the report on it.

55. The purpose of "Public relations for competition policy" is to inform nationwide people about the purpose and contents of the AMA and other related laws, and activities of the JFTC. In addition, the JFTC

aims to advocate competition policy widely to the public through grasping views and wishes from people in communication with wide range of the people. The JFTC evaluated its public relations for competition policy based on 1) the number of “One Day JFTC” (the one day event held in the prefectures where the JFTC has no local office, 2) the number of “Consumers Seminar”, 3) the number of “Lectures in schools”, 4) the number of “Exchange of opinions with experts in local area” and 5) the state of information provision about the Antimonopoly Act, associated policies, and JFTC activities as well as the state of increased understanding among the public about competition policy through gathering the opinions and requests from all levels of public by means of communications. As a result, the public relations for competition policy in the JFTC got an evaluation that the policy achieved its goal considerably.

## 7. Resources

### 7.1 Budget (FY2014 (2014.4~2015.3))

56. The budget of the JFTC is as follows (unit: billion JPY, million USD (1USD=99.19JPY), %).

Fiscal Year (from April to March)	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Budget amount (JPY billion)	8.13	8.34	8.42	8.68	8.45	8.96	8.91	8.74	8.80	11.3
Budget amount (USD million)	82.0	84.1	84.9	87.5	85.2	90.3	89.8	88.1	88.7	113.9
Change over previous year (%)	4.0	2.5	0.9	3.2	Δ2.7	6.1	Δ0.5	Δ1.9	0.7	28.6
General Expenditures Budget: change over previous year (%)	Δ0.7	Δ1.9	1.3	0.7	9.4	3.3	1.2	Δ4.2	4.2	4.6

(Notes). 1) “1USD=99.19JPY” is the average rate between 2005-2014 calculated on the basis of each year’s annual USD - JPY average rate (based on 17:00 (Japan Time)) at Tokyo foreign exchange market published by Bank of Japan. 2) 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 (FY 2014(2014.4~2015.3))

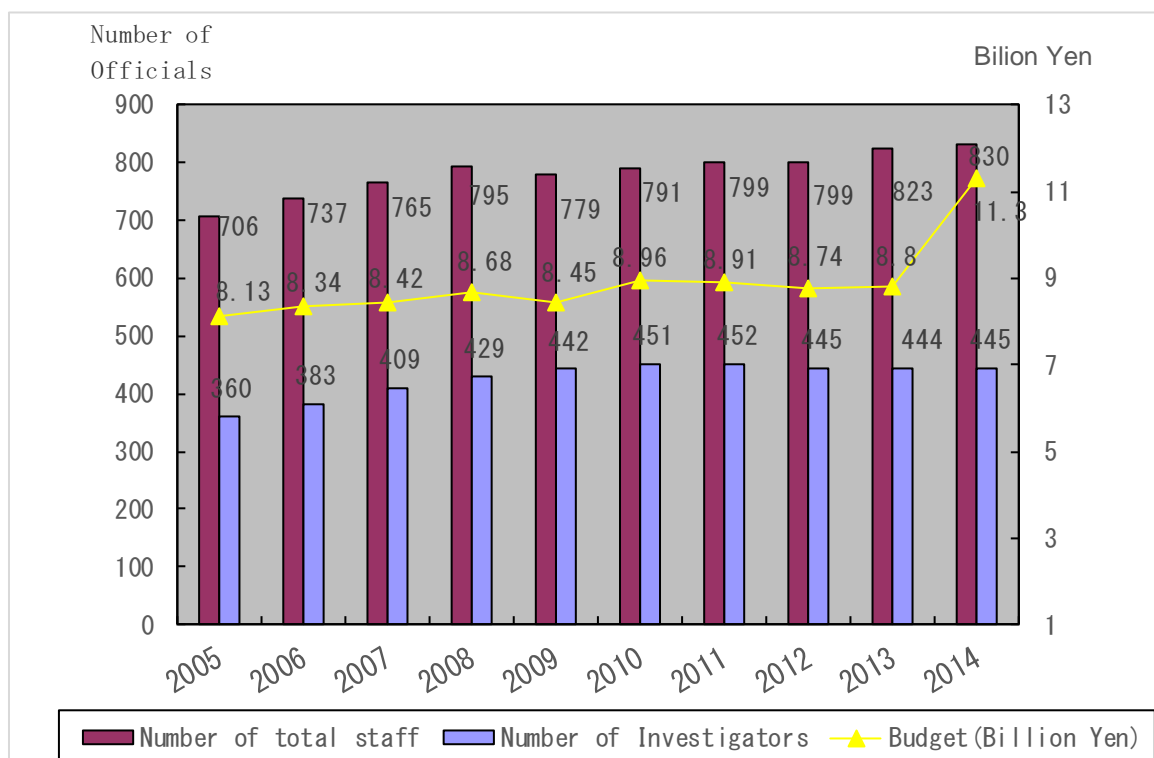
57. The number of officials in the General Secretariat of the JFTC is as follows (unit: persons).

Fiscal Year (from April to March)	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number of officials	706	737	765	795	779	791	799	799	823	830
Enforcement against anti-competitive practices	360	383	409	429	442	451	452	445	444	445
Merger review enforcement	32	35	36	36	36	35	37	41	40	43
Advocacy efforts	37	36	34	35	35	36	35	33	33	33

(Notes). 1) The number of officials engaged in enforcement against anticompetitive practices refers to the number of officials at investigation Bureau and Investigation Divisions of local offices. 2) The number of officials engaged in merger review enforcement refers

to the number of officials at the Mergers and Acquisitions Division. 3) The number of officials engaged in advocacy efforts refers to the number of officials at the General Affairs Division of the Economic Affairs Bureau and the Coordination Division.

### Budget and Number of Officials (FY 2005-2014)



## 8. Activities of the Competition Policy Research Center

58. The Competition Policy Research Center (hereinafter referred to as the “CPRC”) develops research activities through a collaboration between the JFTC staff, director, chief researchers, and visiting researchers (a total of 15 persons at the end of December 2014) 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 AMA 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.

59. In 2014, the CPRC published 4 joint research reports and 2 discussion papers. It organized 2 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

- Studies on Structural Changes in Japanese Industry using Mobility Index and on its Applicability to Competition Policy (September 2014)
- Analysis of Regulations on Abuse of Superior Bargaining Position in Foreign Countries (December 2014)
- Study on Leniency Program in EU (December 2014)

- Study on Behavioral Remedy under Regulations on Mergers in Foreign Countries (December 2014)

### 8.2 *Discussion papers*

- "Competition and International Competitiveness: evidence from Japanese Industries" (February 2014)
- "Empirically Investigating Structural Factors Facilitating Cartels: A Case of Japanese Manufacturing" (April 2014)

### 8.3 *Hosting open seminars*

60. The CPRC hosts open seminars to introduce the results of its joint research reports, etc. In 2014, the following 2 open seminars were held.

<b>Date</b>	<b>Theme</b>	<b>Speaker</b>	<b>Commentator</b>
May 9	Anti-Monopoly Law and Japanese economy – Globalization / Innovation / Regulatory Reform-	Akira Goto, Professor, The National Graduate Institute for Policy Studies	
October 24	Antitrust law and practice in China	Adrian Emch, Partner, Hogan Lovells International LLP Beijing office	Jiang Shan, Professor, Takaoka University of Law

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

### 8.4 *Hosting an international symposium*

61. 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.

62. An international symposium entitled "Competition Policy in the Digital Economy" was held in March 2014. Participating invitees as speakers / panelists included Dr. Jacques Crémer (Professor, Toulouse School of Economics), Dr. Marc Rysman (Professor, Department Economics, Boston University), Dr. Hiroshi Ohashi (Chief Researcher of CPRC · Professor, Graduate School of Economics, University of Tokyo).

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