

Unclassified

DAF/COMP/AR(2016)32

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

14-Nov-2016

English - Or. English

Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE

DAF/COMP/AR(2016)32  
Unclassified

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

-- 2015 --

**29-30 November 2016**

*This report is submitted by Japan to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 29-30 November 2016.*

**JT03405268**

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The Japan Fair Trade Commission (JFTC) actively implemented competition policies during FY2015, with particular focus on the following measures.

**1. Revisions of the Antimonopoly Act (AMA) etc.**

***1.1 Submission of the Bill to amend the Trans-Pacific Partnership agreement related laws (including a partial amendment of the AMA)***

1. In the Trans-Pacific Partnership agreement which was signed on February 4th in 2016 by 12 countries including Japan, there is an article which says “Each Party shall authorize its national competition authorities to resolve alleged violations voluntarily by consent of the authority and the person subject to the enforcement action.” (Chapter 16, Article 16.2, 5.) This article is not secured by the current AMA, and it is decided that a commitment procedure which is a system to “resolve alleged violations voluntarily by consent” should be introduced to secure the article. The Bill to amend the Trans-Pacific Partnership agreement related laws which include a partial amendment of the AMA to introduce a commitment procedure was submitted to the 190th ordinary session of the Diet on March 8th in 2016. On March 24th in 2016, the Bill was submitted to the special committee on the Trans-Pacific Partnership agreement etc. in the House of Representatives, then, on June 1st in 2016, it was decided to keep reviewing the Bill while the Diet was closed.

***1.2 Formulation and publication of the Guidelines on Administrative Investigation Procedures under the AMA***

2. In the Article 16 of the Supplementary Provisions of “the bill to amend the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade” (Act No.100, 2013) it was decided that “the investigation procedures of the JFTC will be considered from a point of view to ensure that a party concerned with a case defends itself sufficiently, in keeping with consistency with other administrative procedures in Japan. The government will aim at drawing the conclusion of the consideration within one year in principle from the promulgation of the amended act and will take appropriate measures as necessary.”

3. In considering the Article 16 of the Supplementary Provisions of “the bill to amend the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade, “Advisory Panel on Administrative Investigation Procedures under the Antimonopoly Act” was held under the Minister of State for Special Missions, and the advisory panel made a report which suggests setting guidelines. Based on this suggestion, from the perspective of further ensuring the appropriateness of administrative investigation procedures, the JFTC decided to prepare the “Guidelines on Administrative Investigation Procedures under the Antimonopoly Act” in which the JFTC clarifies the standard steps and key points to note in the JFTC’s administrative investigation procedures, taking the past practices into account., and inform officers engaged in administrative investigations of alleged antitrust cases of the Guidelines. From the same perspective as above, in order to enhance transparency of the JFTC’s investigation procedures and contribute to the smooth implementation of the JFTC’s case investigations, the JFTC also decided to make the Guidelines known to the public (formulation and publication on December 25th, 2015, being applied from January 4th, 2016).

***1.3 The JFTC convenes meetings of Study Group on the AMA***

4. From the view point of resolving problems of the current surcharge system where the JFTC calculates and imposes surcharges uniformly under the calculation method stipulated by law, the JFTC has been holding the “Study Group on the Antimonopoly Act” (Chaired by Prof. Daitaro KISHII of the Hosei University) since February 2016 to review the status of the surcharge system.

## 2. Vigorous and Appropriate Law Enforcement

### 2.1 Active prevention of violations of the AMA

5. Under the fundamental policy of prompt and effective law enforcement, the JFTC endeavours to adequately respond to societal needs by addressing various types of violations, including, among others, violations that could have significant impact on the public such as price-fixing cartels, bid rigging, or market allocation, as well as unfair trade practices such as abuse of superior bargaining position and unfair price cutting that places small- and medium-sized enterprises at an unfair disadvantage.

6. In FY2015, the JFTC investigated 138 suspected violations of the AMA and completed investigations for 123 of these.

7. In FY2015, the JFTC implemented legal measures in 9 cases. These cases are classified as follows: 2 cases of price-fixing cartels, 4 cases of market allocation (bid rigging in public demand), 1 case of market allocation (bid rigging in private sector), and 2 cases of others (Figure 1). In addition, the JFTC issued surcharge payment orders for a total of 8,510.76 million yen (Figure 2).

8. Under the leniency program to motivate enterprises to report their own violations, the JFTC received 102 reports in total in FY2015.

Cases involving legal measures in FY2015	
Price-fixing cartel	<ul style="list-style-type: none"> <li>Price-fixing cartel by the manufacturers selling aluminium electrolytic capacitor and tantalum electrolytic capacitor</li> </ul> <p>The manufacturers selling aluminium electrolytic capacitor and tantalum electrolytic capacitor formed and implemented agreements to raise sales prices of aluminium electrolytic capacitor and tantalum electrolytic capacitor.</p> <p>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 March 29, 2016. (Total amount of surcharge: 6,697 million JPY).</p>
Bid rigging in public demand	<ul style="list-style-type: none"> <li>Bid-rigging for snow-melting equipment works for Hokuriku Shinkansen ordered by the Japan Railway Construction, Transportation and Technology Agency</li> </ul> <p>In relation to a case involving the snow-melting equipment works for Hokuriku Shinkansen ordered the Japan Railway Construction, Transportation and Technology Agency, the enterprises jointly designated a successful bidder for each work and managed to have the designated bidders receive the order.</p> <p>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 October 9, 2015. (Total amount of surcharge: 1,034 million JPY).</p> <ul style="list-style-type: none"> <li>Bid-rigging for poly aluminium chloride ordered by the local governments in Tohoku district, Niigata district and Hokuriku district</li> </ul> <p>In relation to a case involving the poly aluminium chloride ordered by the local governments in Tohoku district, Niigata district and Hokuriku district, the enterprises jointly designated a prospective supplier for each work and managed to have the designed suppliers receive the order.</p> <p>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 February 5, 2016. (Total amount of surcharge: 106 million JPY).</p>

• Bid-rigging for manufacturing and installation works of country elevator ordered by the agricultural cooperatives, etc. in Hokkaido.

Bid rigging in private demand

In relation to the case involving the manufacturing and installation works of country elevator ordered by the agricultural cooperatives, etc. in Hokkaido, 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 February 10, 2016. (Total amount of surcharge: 671million JPY)

• Unjustly restricting the functions or activities of Licensed Pilots’ Associations

Unjustly restricting the functions or activities of the constituent enterprises by trade association

Tokyo Bay Licensed Pilots’ Association and Ise-Mikawa Wan Licensed Pilots’ Association unjustly restricted the functions or activities of the members by restraining them from making a contract with the users in their own discretion and pooling the pilotage fees of the members and distributing them to the members on a per capita basis.

Given that the above findings are in violation of Article 8 (iv) of the AMA (“Unjustly restricting the functions or activities of the constituent enterprises”), the JFTC issued cease and desist orders on April 15, 2015.

In addition, the JFTC found that Japan Federation of Pilots’ Association’s conduct induced the violations which two local associations above committed. Therefore, the JFTC requested Japan Federation of Pilots’ Associations to improve its guide and to instruct all of Pilots’ Associations in Japan in order to prevent them from conducting a same violation.

Moreover, the JFTC requested Ministry of Land, Infrastructure, Transport and Tourism to instruct Pilots’ Associations in Japan in order to prevent them from conducting a same violation.

Figure 1. Number of cases involving legal measures

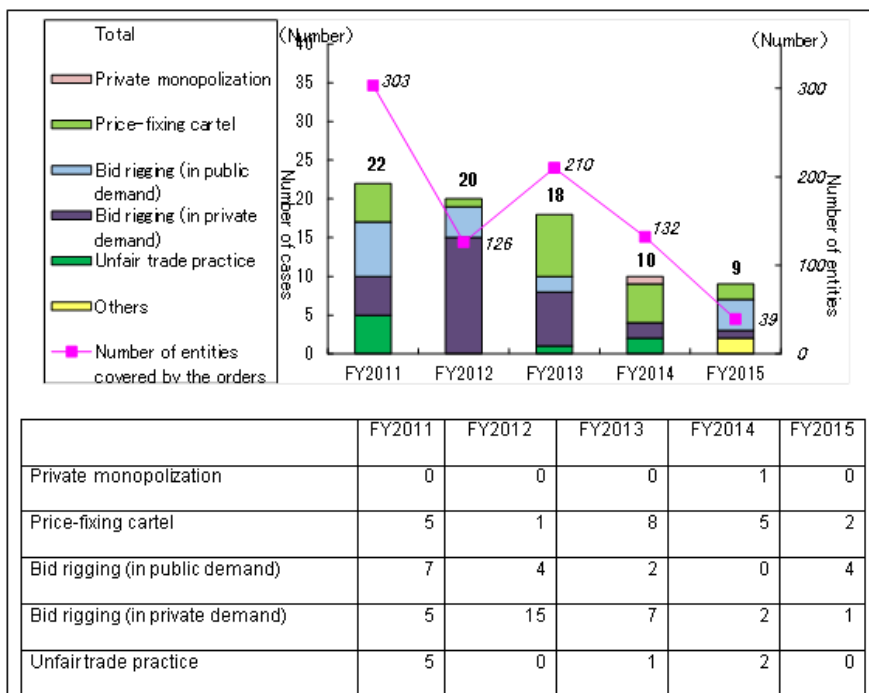
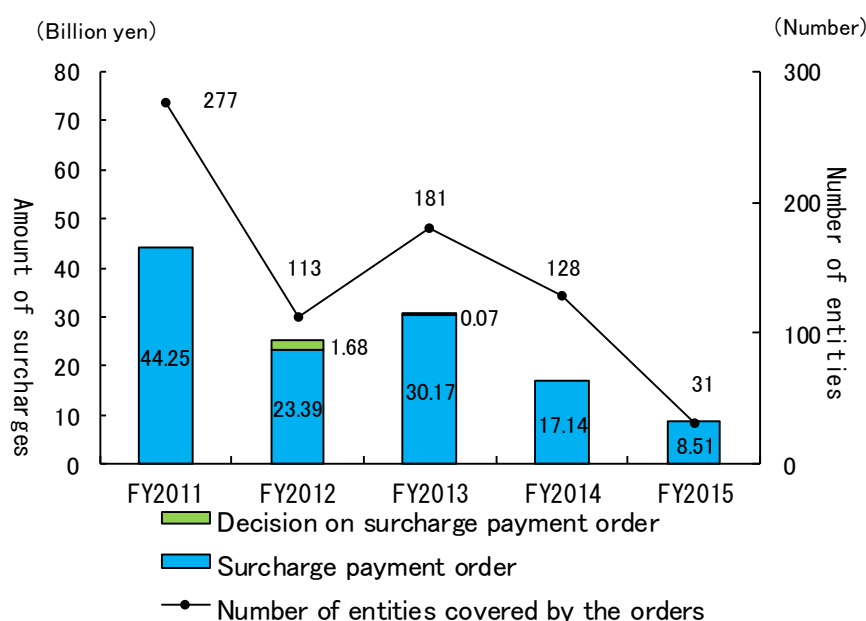


Figure 2. Amount of surcharges



(Note 1) The amounts indicated above include the amounts covered by the decisions on surcharge payment orders issued under the 2005 AMA revision (meaning the AMA just before it was revised under the Act for the Partial Revision of the Antimonopoly Act [Act No. 35 of 2005]; the same applies hereinafter).

(Note 2) With regard to the surcharge payment orders issued under the AMA following the 2005 AMA revision, the amounts initially ordered are adopted.

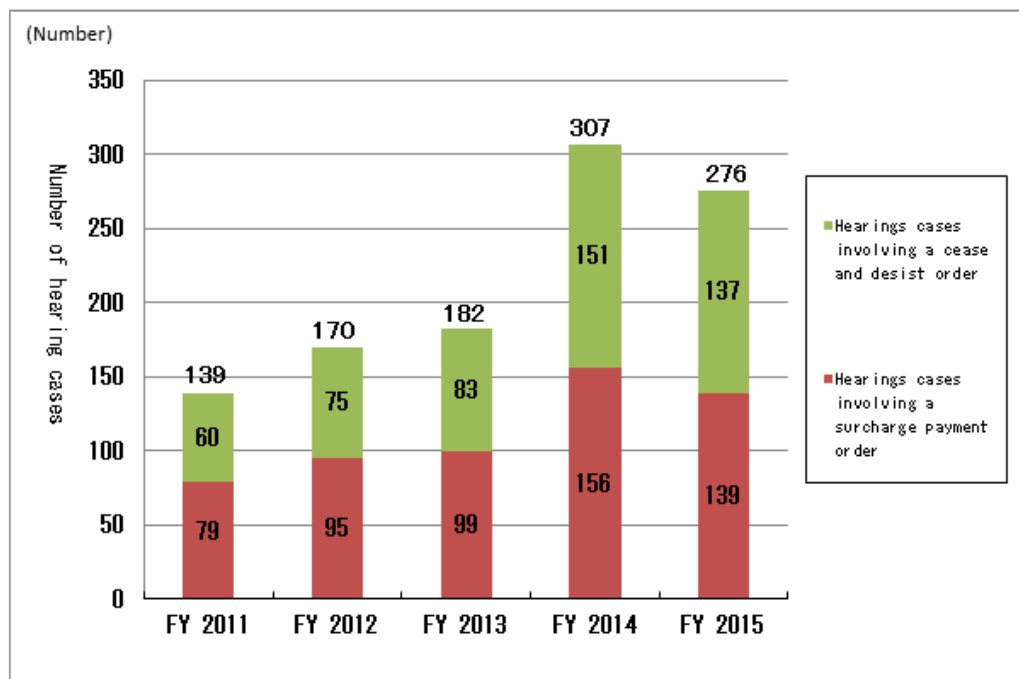
9. In addition to the measures taken to address violations, the JFTC's efforts for prompt and appropriate law enforcement include 6 warnings on practices likely to violate the AMA, 106 cautions on practices likely to lead to violations (excluding 841 cautions under the expedited investigation process applicable to cases of predatory pricing).

10. In the course of investigation into violations of the AMA, the JFTC submits demands and requests to business associations, etc. with regard to matters for which the JFTC considers, in light of competition policies, action is necessary.

11. In FY2015, the JFTC submitted demands to Japan Federation of Pilots' Associations and Ministry of Land, Infrastructure, Transport and Tourism.

12. 276 cases in total were referred to hearing procedures in FY2015 (137 cases involving the cease and desist orders and 139 cases involving the surcharge payment orders). Of these cases, 275 carried over from the previous fiscal year and 1 reopened in FY2015 (Figure 3). Decisions were rendered in 16 cases within FY2015 under the law prior to the 2013 AMA revision. Among them, 7 cases were on the cease and desist orders and 9 cases on the surcharge payment orders. As a result, 260 cases were under hearing as of the end of FY2015 (to carry over to FY2016).

**Figure 3. Number of Hearings**



(Note 1) The number of hearings represents the number of cases identified by the unique case numbers assigned to hearing requests filed against administrative dispositions.

(Note 2) The number of hearings involving a cease and surcharge payment order includes cases recognized under the AMA prior to the 2005 revision.

## 2.2 *Promotion of fair trade practices*

### 2.2.1 *Efforts against the abuse of superior bargaining position*

13. The JFTC has long conducted surveillance to prevent acts of abuse of superior bargaining position that constitute unfair trade practices under the AMA and has responded vigorously to AMA violations.

14. For the purpose of investigating cases of abuse of superior bargaining position and implementing necessary remedial measures effectively and efficiently, the Abuse of Superior Bargaining Position Case Task Force has been established as a dedicated investigatory organ within the JFTC.

15. The JFTC issued 51 cautions due to suspected abuse of superior bargaining position in FY2015.

16. The JFTC conducts fact-finding surveys in domains where fair trade practices for small- and medium-sized enterprises must be further promoted and strives for dissemination and awareness-raising in this respect.

17. In FY2015, the JFTC published the Report on Fact-Finding Survey on Transactions for the Production of TV Programs (released on July 29th, 2015).

18. The JFTC organizes educational training for business operators in specific industry segments where abuse of superior bargaining position has been found, or where other problems have been identified through various fact-finding surveys. This training is offered in the form of an orientation session and is



designed based on carefully selected practical examples taken from the respective industry segments, with the aim of further improving business operators' compliance with laws.

19. In FY2015, the JFTC provided 30 industry-specific educational trainings.

20. The JFTC holds regional outreach sessions intended for small- and medium-sized enterprises, including subcontractors, across the nation. In these sessions, JFTC officers clearly explain the key points of the Subcontract Act and so on and provide participants with advice.

21. In FY2015, the JFTC held such consultation sessions at 63 locations throughout Japan, dispatched officers to provide instruction at 21 training seminars organized by business associations, and provided information about regulation for abuse of superior bargaining position in the form of brochures, DVDs, etc.

#### 2.2.2 *Efforts against unjust low price sales (predatory pricing)*

22. The JFTC takes prompt action against unjust low price sales in the retail industry. When repeated unjust low price sales by large-scale retailers is considered to significantly affect other retailers operating in neighbouring areas, the JFTC investigates the impacts on their respective business activities. If problems are found, the JFTC implements legal measures or responds vigorously by other means.

23. In FY2015, the JFTC issued 2 warnings on the grounds of suspected unjust low price sales of regular gasoline and cautions in connection with 841 cases in the retail sector, including in the liquor, petroleum products and home appliance categories, on the grounds of suspected unjust low price sales (490 cases for liquor, 341 for petroleum products, 3 for home appliances, and 7 for products in other categories).

#### 2.2.3 *Active enforcement on violations of the Subcontract Act*

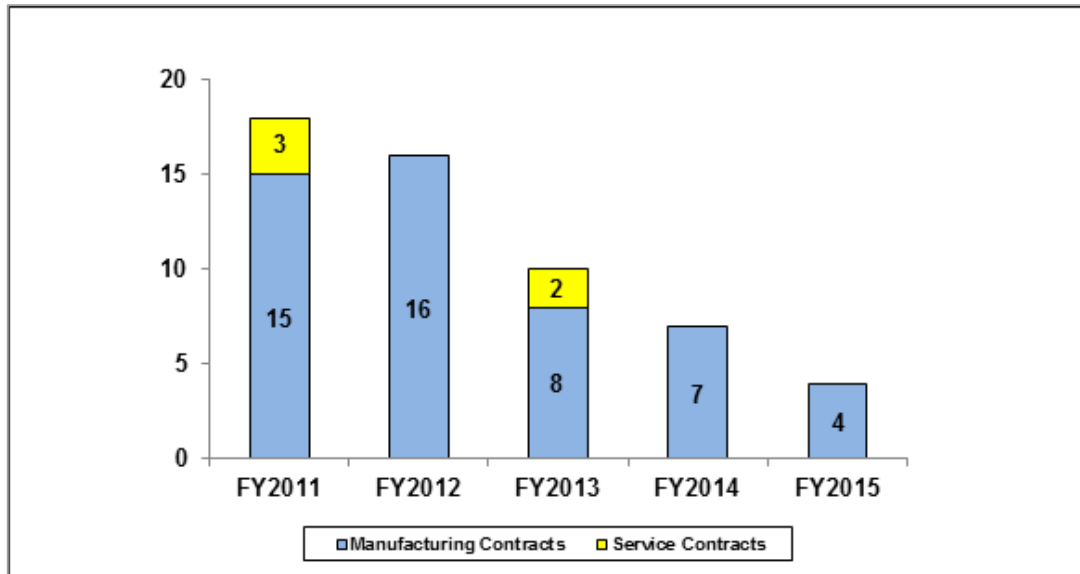
24. Recognizing the circumstances of subcontracting arrangements whereby most subcontractors are unwilling to voluntarily provide information, the JFTC endeavours to detect violations by such means as regularly carrying out written surveys targeted at manufacturers / service providers and their subcontractors in co-operation with the Small and Medium Enterprise Agency. In addition, the JFTC endeavours to ensure fairness in subcontracting transactions and to protect the interests of subcontractors through timely and effective enforcement of the Subcontract Act, in order that small- and medium-sized enterprises will not be prevented from engaging in business activities, particularly in light of the still difficult economic conditions.

25. In FY2015, the JFTC carried out a written survey of 39,101 manufacturers / service providers and 214,000 subcontractors engaging in transactions with those business operators. Based on the results of this survey, the JFTC issued recommendations in 4 cases and instructions in 5,980 cases in accordance with the Subcontract Act (Figure 4).

#### **Box 1. Recommendation cases in FY2015**

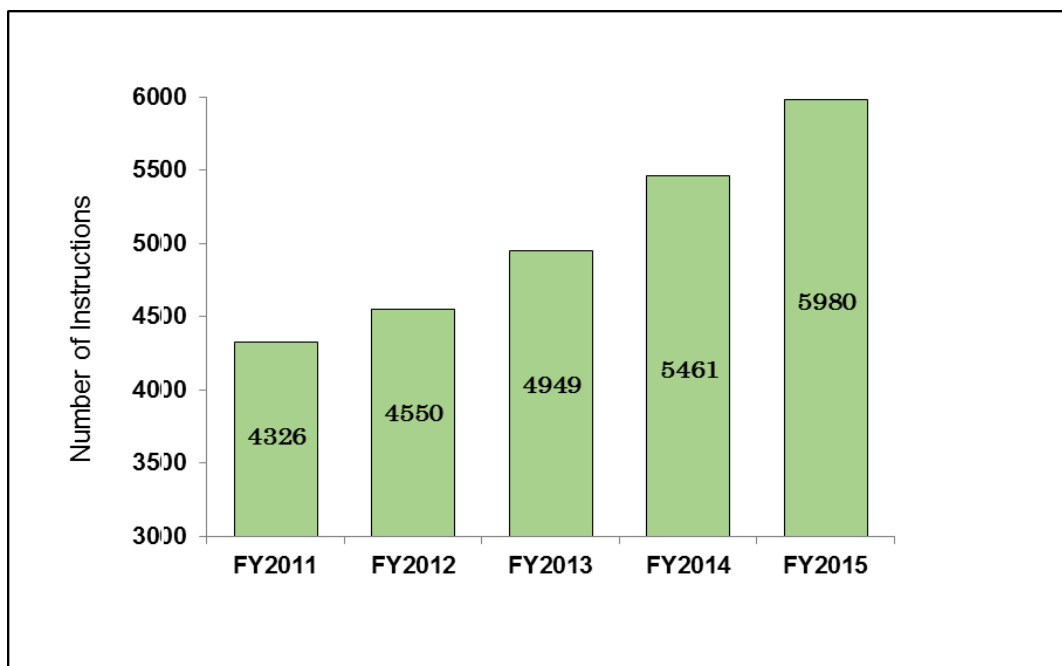
- Reduction of subcontracting payments by wholesalers and retailers of women's shoes
- Reduction of subcontracting payments and unreasonable return of products by retailers of sporting equipment and other goods
- Reduction of subcontracting payments by wholesalers for components of water supply and drainage
- Reduction of subcontracting payments by retailers of food products, daily items and other goods

**Figure 4. Number of Cases subject to disposition under the Subcontract Act**



(Note 1) While some of the JFTC recommendations are concerned with violations in relation to both manufacturing and service contracts, each of these cases is classified according to the primary violation.

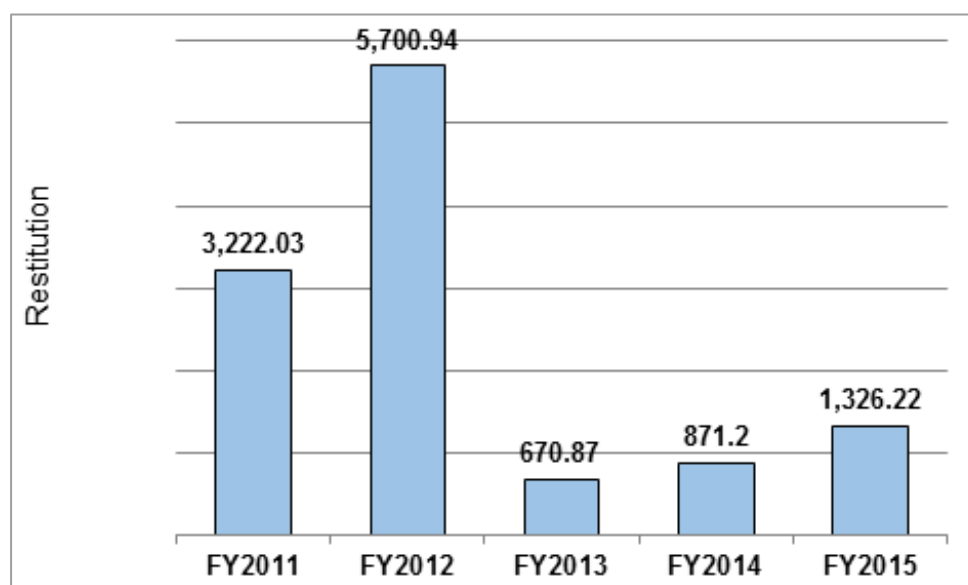
(Note 2) "Manufacturing contracts" here mean both "manufacturing contract" and "repair contract" defined in Article 2(1) and (2) of the Act respectively. "Service contracts" here mean both "information-based product creation contract" and "service contract" defined in Article 2(3) and (4) of the Act respectively. The same shall apply hereinafter.



26. The total value of restitution to recover unreasonable losses inflicted on subcontractors by manufacturers / service providers in FY2015 amounted to 1,326.22 million yen, that was subsequently reimbursed by 236 manufacturers / service providers to 7,760 subcontractors (Figure 5). Major points of such restitution are as follows: (1) cases of withholding payments to subcontractors in which the prime contractors eventually reimbursed the subcontractors in the sum of 770.50 million yen; (2) cases of tardy payments to subcontractors in which the prime contractors eventually paid to the subcontractors interest on overdue amounts to the value of 326.91 million yen in total; (3) cases of returns of goods in which the

prime contractors eventually took back goods valued at 178.96 million yen in total from the subcontractors and (4) cases of unfair request of economic benefits, provided benefits totaling 30,78 million yen were reimbursed by subcontracting enterprises.

**Figure 5. Restitution of Subcontract Proceeds**



27. The JFTC may issue recommendations to relevant enterprises to take measures to protect the interests of their subcontractors in order to encourage legal compliance. As announced on December 17th, 2008, however, the JFTC has determined that it is not necessary to issue such recommendations if those enterprises voluntarily notify the JFTC of their own violations before the start of the JFTC's investigation and commence remedial action at their own volition. This is because such voluntary action is conducive to eliminating the disadvantages suffered by subcontractors.

28. In FY2015, the JFTC received 52 voluntary notifications of violations and treated 45 cases of them in the same year, of which 2 cases were equivalent to be issued recommendations to for reasons such as a great disadvantage to the subcontractors.

29. With the aim of preventing tardy payments to subcontractors, unreasonable withholding of subcontract proceeds, unfair demands for price reductions, and other illegal conduct, the JFTC issued a written demand for full compliance with the Subcontract Act on November 13th, 2015, jointly signed by the JFTC Chairperson and the Minister of Economy, Trade and Industry. This demand was addressed to about 205,000 business operators potentially acting as prime contractors and about 650 business associations.

#### 2.2.4 Efforts related to consumption tax pass-on

30. The JFTC gathers information about practices of rejecting consumption tax pass-on, etc. (hereinafter referred to as "Pass-on Rejection") through various efforts and conducts investigations, including on-site inspections, based on such information. If, as a result of such investigations, business operators are determined to be in breach of their obligation to pass on consumption tax, the JFTC expeditiously provides necessary guidance to those business operators to eliminate the disadvantages arising from such Pass-on Rejection and seeks other improvements.

31. In FY2015, the JFTC carried out a comprehensive written survey of medium- and small-sized enterprises and small-scale business operators, etc. (about 2.9 million entities on the seller side) and a written survey of individual business operators (about 3.5 million individuals on the seller side) in co-operation with the Small and Medium Enterprise Agency. Another collaborative effort with the same agency was a written survey of large-sized retailers and other large enterprises, etc. (about 80,000 entities on the buyer side), in which the entities surveyed were legally obliged to respond. Based on these surveys, the JFTC issued recommendations in 13 cases and provided guidance in 349 cases in accordance with the Act Concerning Special Measures for Pass-on of Consumption Tax.

32. The JFTC launched enhanced consultation services for business operators, including setting up a one-stop centre to respond to queries and gather information about pass-on rejection, etc. from business operators. In FY2015, the JFTC responded to 543 requests for consultation. In addition to this, the JFTC organized regional outreach sessions to make consultation more accessible to business operators. In FY2015, the JFTC held 52 consultation sessions all over Japan.

33. Recognizing that business operators engaging in pass-on rejection may be unwilling to come forward, the JFTC gathered information not only through passive (receiving reports from informants) but also active means, namely, acquiring information through written surveys carried out jointly with the Small and Medium Enterprise Agency. To gather information about pass-on rejection and the actual state of transactions involving pass-on rejection in various industries, the JFTC conducted interview surveys of 4,344 business operators and 682 business associations' in FY2015.

34. In FY2015, the JFTC received 11 notifications of concerted practices for determining ways of pass-on of consumption tax. The JFTC also responded to requests for consultation from business operators or business associations as to how to prepare a notification to the JFTC and other issues.

35. To promote understanding of the Act Concerning Special Measures for Pass-on of Consumption Tax, the JFTC holds orientation meetings for business operators and business associations.

36. In FY2015, the JFTC held 51 orientation meetings of its own and dispatched personnel to serve as instructors at 27 orientation seminars organized by chambers of commerce and industry, commercial and industrial associations, and business associations.

### **2.3 *Improvement in examination of business combinations***

37. The AMA prohibits acquisition of shares, shareholdings, mergers, and other transactions that could substantially restrain competition in particular market segments. The JFTC endeavours to operate business combination regulations in an appropriate manner to ensure a competitive market structure in Japan.

38. In FY2015, as part of operations relating to business combination regulations under Articles 9 to 16 of the AMA, the JFTC granted approval in 3 cases of the getting and holding of voting interests by banks or insurance companies, received 104 reports concerning holding companies, etc., and received 295 notifications in connection with acquisitions of shares of certain companies, mergers, company splits, joint share transfers, assumption of business, etc., all of which were investigated where necessary.

39. The business combination projects reported to the JFTC in FY2015 include the following. The JFTC responded to these reports as appropriate and publicly announced the details.

### Box 2. Major business combinations reported in FY2015

- Acquisition of shares of Tokyo Kohtetsu Co., Ltd. by Osaka Steel Co., Ltd.

#### 1. Outline of this case

Regarding the acquisition of shares (hereinafter “the Acquisition”) of Tokyo Kohtetsu Co., Ltd. (hereinafter referred to as “Tokyo Kohtetsu”) by Osaka Steel Co., Ltd. (hereinafter referred to as “Osaka Steel”; hereinafter referred to as “the Parties” collectively with Tokyo Kohtetsu), the JFTC reviewed the details of the Acquisition after receiving a written notification from Osaka Steel in accordance with the provisions of the AMA, and concluded that the Acquisition would not substantially restrain competition in any particular field of trade.

#### 2. Outline of review results

The Parties were competing each other in the markets of small and medium general shaped steel, the JFTC concluded that the Acquisition would not substantially restrain competition in any particular field of trade. Furthermore, the JFTC conducted an economic analysis on this case, and took the result of the economic analysis into account in making its judgment.

#### 3. Assessment under the AMA (small and medium general shaped steel market)

- An effect of practical elimination of competition between the Parties is limited.
- There are multiple competitors.
- Kyoei Steel, minority shareholder of Nippon Steel & Sumitomo Metal Corporation, which is parent company of Osaka Steel, would be competitor to some extent.
- There are certain level of entry pressures and competitive pressures from related markets.
- There is no reason to believe that electric furnace manufacturers have already engaged in coordinated conduct.

#### 4. Conclusion

The JFTC concluded that the Acquisition would not substantially restrain competition in any particular field of trade.

- Establishment of joint selling company for containerboards etc. by Nippon Paper Industries Co., Ltd. and Tokushu Tokai Paper Co., Ltd.

#### 1. Outline of this case

Regarding the proposed transactions including Establishment of joint selling company for containerboards etc by Nippon Paper Industries Co., Ltd. (hereinafter referred to as “NPI”) and Tokushu Tokai Paper Co., Ltd. (hereinafter referred to as “TTP”) (hereinafter referred to as “the Transactions”), the JFTC reviewed the details of the Transactions after receiving a written notification from NPI and TTP in accordance with the provisions of the AMA, and concluded that the Transactions would not substantially restrain competition in any particular field of trade.

#### 2. Outline of review results

The JFTC concluded that the Transactions would not substantially restrain competition in any particular field of trade, including Unglazed shipping sacks kraft paper market, Unglazed grocery paper market and liners market.

#### 3. Assessment under the AMA

##### 1. Unglazed shipping sacks kraft paper market

There is a competitor which has the largest share of the market (more than 30%), as well as three other major competitors. Furthermore, the market share of the Parties has been decreasing.

##### 2. Unglazed grocery paper market

There are two major competitors, each of which holds more than 20% of the market, as well as another competitor with some market share. In addition, competitive pressure from related markets is deemed to be working to a certain degree. Furthermore, while the Unglazed grocery paper market has been shrinking, changes of each players’ market shares are relatively substantial.

##### 3. liners market

There are three major competitors, including a company which has more than 20% share of the market. Furthermore, in the liners market, there is a certain degree of competitive pressure from users and some competitors invested their facilities and successfully increased amount of their products.

#### 4. Conclusion

The JFTC concluded that the Transactions would not substantially restrain competition in any particular field of trade.

### **3. Surveys for Development of Competitive Environment**

#### **3.1 Release of “Guidelines for Public Supports for Revitalization in view of Competition Policy”**

40. In the Interim Report (released on December 19th, 2014) of the “Study Group on Competition Policy and Public Support for Revitalization”, it was stated that it would be appropriate for the JFTC to develop and release a cross-industrial sectorial guideline incorporating some factors of which supporting organizations should be aware in view of competition policy, when providing public support for revitalization. Following this reference, the Japan Fair Trade Commission has developed “Guidelines of the Concept of Public Support for Revitalization in view of Competition Policy” and has made it public on March 31st, 2016.

41. In view to minimize the impact of public support for revitalization on competition, the Guidelines state following three principles to be considered when providing public support for revitalization; (1) “Principle of subsidiarity”, public support for revitalization should be provided to complement the functions of private sectors only in cases where the business cannot be revitalized smoothly only through the efforts of the private sector and, accordingly, public support for business revitalization has to be provided by supporting organizations, (2) “Principle of minimum necessity”, when public support for revitalization is necessary to achieve various policy objectives, it should be provided on a scale and with a method that are the minimum necessary for revitalizing the business concerned, (3) “Principle of transparency”, in terms of taking account of the necessity for prompt disclosure and easy access to information, information on individual cases and should be disclosed as much as possible, so that the possible impacts of public support for revitalization on the market mechanism can be identified, and competitors of beneficiaries are able to submit their opinions regarding the possible impacts of public support for revitalization on competition. Also, the Guidelines clarify the effects of public support for revitalization on competition and matters to be considered in minimizing these effects, etc.

#### **3.2 Amendments of the “Guidelines for Proper Electric Power Trade”**

42. After the Great East Japan Earthquake (occurred in March of 2011) and the following accidents at the nuclear power plant, the Electricity System Reform was considered in order to secure stable electricity supply, restrain electricity charges, etc. and the “Policy on Electricity System Reform” was approved by the cabinet in April of 2013. Following this policy, the Electricity Business Act was revised in a three-phased manner from 2013 to 2015. As the second revising act, mainly including full liberalization of entry to electricity retail business, would be enforced in April of 2016, the JFTC amended the “Guidelines for Proper Electric Power Trade” in collaboration with the Ministry of Economy, Trade and Industry on March 7th of 2016.

43. From the perspective of the AMA, the JFTC newly provided points of view of the AMA; an unjust treatment in bundled services, an unjust treatment regarding a change of a contract, and an unjust treatment in electric power procurements by negotiated transaction and electric power exchanges.

#### **3.3 Amendments of the “Guidelines for Promotion of Competition in the Telecommunications Business Field”**

44. The JFTC made necessary amendment to the parts related to the AMA of the “Guidelines for Promotion of Competition in the Telecommunications Business Field” and published it correspondently with the amendment to the parts related to the Telecommunications Business Act on May 20th, 2016.

45. The JFTC added some concepts from the perspective of the AMA and more concretely prospected examples responding to individual cases about an unjust treatment in interconnection of

telecommunications facilities, an unjust treatment in bundled services, an unjust treatment in wholesale telecommunications service, etc.

### **3.4 Partial amendments of the “Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act”**

46. On the basis of the “Implementation Plan for Regulatory Reform” (June 30th, 2015 The Cabinet Decision)(hereinafter the “Plan”), which followed by the “the Third Report by the Council for Regulatory Reform – Toward a Japan Full of Diversity and Vitality” (June 16th, 2015), the JFTC has conducted a review on the criteria or requisite as to so-called safe harbour in the “Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act” (hereinafter the “Distribution Guidelines,” July 11th, 1991, Secretariat of the JFTC), which the JFTC was supposed to review in the Plan. After the JFTC’s review, the JFTC amended the Distribution Guidelines partially and published it on May 27th, 2016. The JFTC changed the standard of so-called safe harbour from “market share of less than 10% and whose position is the fourth or later” to “market share of 20% or less” (abolishing the standard of ranks of enterprises) in both of PART I and II by this amendment.

### **3.5 Partial amendment of “Guidelines for the Use of Intellectual Property under the Antimonopoly Act”**

47. Based on the fact that there are some cases where the Standard Essential Patent (Patents etc. which are essential to implement standards) holders are bringing an action for an injunction etc. to the users of the Standard Essential Patent inside and outside of Japan, the JFTC partially amended the “Guidelines for the Use of Intellectual Property under the Antimonopoly Act” (published on September 28th, 2007), and published on January 21st, 2016.

48. Specifically, the guidelines made following things clear among others. Refusal to license or bringing an action for injunction against a party who is willing to take a license by a FRAND -encumbered Standard Essential Patent holder etc. may fall under the exclusion of business activities of other entrepreneurs by making it difficult to research & develop, produce or sell the products adopting the standards. It then constitutes private monopolization if it substantially restrains competition in a particular field of trade on the products. Also, such acts are considered to be Unfair Trade Practices (Paragraph (2) and (14) of the General Designation) if they tend to impede fair competition, even if the acts do not substantially restrict competition in the product market and are not considered to be Private Monopolization.

### **3.6 Review of the System for Exemption from the AMA in the International Ocean Shipping Business**

49. To conclude an agreement concerning freight rates, fees, other transportation conditions, maritime routes or allocation of vessels is regarded as exempt from the AMA, conditioned upon advanced notification being submitted to the Minister of Land, Infrastructure, Transport and Tourism based on the Marine Transportation Act (Act No. 187 of 1949). As a result of the review by the Ministry of Land, Infrastructure, Transport and Tourism (hereinafter referred to as “the MLIT”) in 2010, it was decided that the MLIT would re-examine the system within fiscal year 2015. Based on the fact finding survey, the JFTC reviewed on whether the reasons for maintaining this system still exist, and publicized the report, “Review of the System for Exemption from the Antimonopoly Act in the International Ocean Shipping Business“, where the JFTC summarizes its review on the February 4th in 2016. Then, the JFTC had been having discussions with the MLIT since February.

50. On June 14th in 2016, based on the discussions with the JFTC, the MLIT publicized the result of its re-examination which says that the system for exemption from the AMA in the international ocean shipping business will be maintained for the time being, but the so-called conferences which bind rates or fees of their member shipping companies will be reviewed in the direction of abolition if the number of the conferences decrease and it is foreseeable that there will be no harm on the stable supply of international ocean shipping services. It also says that the other agreements by shipping companies than the conferences will be reviewed in consultation with the JFTC based on the situations of the systems for exemption from the competition laws in foreign countries, effects on the interests of shippers and situations of each type of agreements between shipping companies, if needed.

### **3.7 Efforts for competition assessment**

51. Since October 2007, the establishment, revision or abolition of regulations by a competent ministry or governmental agency is allowed, in principle, only after a prior assessment has been conducted. Such prior assessment must contain an analysis of the impacts of the regulations in question on competition (competition assessment). The prior assessment system started in April 2010 on a trial basis. Under the system, the relevant ministry or agency fills out a competition assessment checklist (hereinafter referred to as the “competition assessment checklist”) using a prescribed form to indicate and analyse the impacts of the regulations on competition. They then submit the completed checklist together with a competition assessment report to the Ministry of Internal Affairs and Communications (MIC). The MIC then forwards the competition assessment checklist to the JFTC.

52. In FY 2015, the JFTC received 88 competition assessment checklists from the MIC and conducted a full examination of each.

### **3.8 Efforts to prevent bid rigging**

53. Since co-operation on the part of purchasers is extremely important in the effort to completely eliminate bid rigging, the JFTC holds training seminars on the AMA and the Act on Elimination and Prevention of Involvement in Bid Rigging, etc. for procurement personnel at local governments, etc. In addition, the JFTC dispatches instructors to procurement personnel training seminars organized by the national or local governments and other organizations, provides them with related documents, and cooperates with those governments and organizations in other ways.

54. In FY2015, the JFTC held 28 training seminars all over Japan and dispatched lecturers to 289 training seminars hosted by the national government, local government, etc.

### **3.9 Efforts to improve compliance with the AMA**

55. The JFTC has surveyed activities carried out by enterprises for improving their compliance with the AMA, prepared suggestions for improvement, and published survey reports. The JFTC endeavours to disseminate these suggestions widely among enterprises in order to encourage their efforts to improve compliance with the AMA.

56. The JFTC summarized recommended measures deemed effective for improving compliance with foreign competition law and key points regarding such improvement in a report entitled, “Compliance Efforts of Japanese Companies for Foreign Competition Laws – Aiming at Compliance Efforts as Global Rules” on March 27th, 2015. In FY2015, the JFTC informed 12 economic organizations, etc. on this report by conducting lectures.



### **3.10 *Follow-up Survey on Gasoline Transaction***

57. The JFTC published “Survey Report on Gasoline Transaction” in July 2013. After that, we recognize some changes in competitive environment of the gasoline distribution market including a change of the method of determining wholesale prices from primary oil distributors to retailers. Therefore, the JFTC decided to conduct the follow-up survey so as to figure out the current condition of gasoline distribution and examine the ways to ensure fair trade competition in the gasoline distribution market and published “Follow-up Survey Report on Gasoline Transaction” on April 28th, 2016.

## **4. Reinforcement of Foundations for Operation of Competition Policies**

### **4.1 *Development of theoretical and empirical foundations for competition policies***

58. Since its inception in June 2003, the Competition Policy Research Centre (CPRC) has been acting to strengthen theoretical and empirical foundations for enforcement of the AMA and related regulations and for planning, policymaking and evaluation of competition policies.

59. In FY2015, the CPRC worked on three research topics and organized three public seminars and five workshops.

### **4.2 *Response to globalizing economy***

60. In recent years, an increasing number of cases have emerged involving violations of competition laws of multiple countries or territories or requiring concurrent investigations by competition regulators of multiple countries or territories. As this trend becomes more pronounced, the reinforcement of cross-border co-operation and coordination among competition regulators is becoming increasingly necessary. In light of these circumstances, the JFTC cooperates closely with foreign competition regulators to conduct joint enforcement activities in accordance with the relevant bilateral antimonopoly co-operation agreement, economic partnership agreement, or the like.

61. The JFTC is actively involved in multilateral frameworks such as the International Competition Network (ICN), the Organization for Economic Co-operation and Development (OECD), Asia-Pacific Economic Co-operation (APEC), the United Nations Conference on Trade and Development (UNCTAD), and others.

62. In light of accelerated moves to strengthen existing competition laws and regulations or introduce new competition legislation in developing countries, the JFTC deploys activities for technical assistance for competition regulators or other organizations in those countries such as dispatching JFTC staff and offering personnel training.

63. In addition, the JFTC aims to strengthen its international presence by disseminating Japan’s competition policies worldwide. To this end, the JFTC endeavours to enhance its public relations by providing English-language versions of its press releases and other public announcements on its website and dispatches speakers to seminars organized by overseas bar associations, etc.

#### **4.2.1 *Reinforce of co-operation with competition authorities***

64. The JFTC concluded the bilateral co-operation arrangement with Australian Competition and Consumer Commission. This was the first arrangement for the JFTC which provided sharing the information obtained during the investigation procedure. Also the JFTC concluded the memorandums on antimonopoly co-operation with the National Development and Reform Commission of the People's Republic of China and the Ministry of Commerce of the People's Republic of China.

#### *4.2.2 Participation to the multi-national conference*

65. In the International Competition Network (ICN), the JFTC has joined the member of Steering Group since the establishment of the ICN and has also taken part in Subgroup 1 co-chair of the Cartel Working Group since 2012. Moreover, the JFTC participates to the “Framework for the promotion of the sharing of non-confidential information” and the “Framework for merger review co-operation”, both of which the JFTC led to establish.

66. In the Organisation for Economic Co-operation and Development (OECD), the JFTC has participated in general meeting and working groups of Competition Committee. The JFTC contributed to the discussion by sharing JFTC’s past experiences and efforts in accordance with the topics, such as the issues on oligopoly markets and the market of liner shipping.

67. In addition, the JFTC co-hosted the East Asia Top Level Officials’ Meeting on Competition Policy and the East Asia Conference on Competition Law and Policy in Vietnam.

#### *4.2.3 Effort to Economic Partnership Agreement*

68. The JFTC co-operated to conclude the Trans-Pacific Strategic Economic Partnership Agreement (TPP) mainly focusing on the chapter of competition policy.

#### *4.2.4 Technical Assistance*

69. The JFTC has conducted technical assistance regarding competition policy by dispatching its officer to the Vietnam competition authority and holding training courses for the officers of competition authorities in Vietnam, Philippines, Indonesia, Mongolia, etc.

### **4.3 Raising public awareness of competition policies**

70. The JFTC has solicited opinions, requests and suggestions from members of the Antimonopoly Policy Co-operation Committee for the purpose of utilizing them in policy implementation and promoting better understanding of competition policies.

71. To ensure a timely response to socioeconomic changes and advance competition policies in an effective and appropriate manner, the JFTC organizes the Council on Antimonopoly Policy with the aim of promoting broad-based opinion exchange with experts and greater public understanding of competition policies. In FY2015, three council sessions were called.

72. Discussions between JFTC commissioners and locally based experts have been held in nine cities in Japan. The JFTC also arranged meetings between regional directors and other regional JFTC personnel and local experts all over Japan. Furthermore, presentations by JFTC commissioners, etc. were organized in 14 cities in Japan for members of bar associations, local businesspeople, etc.

73. In addition to the foregoing activities, the JFTC hosted “One Day JFTC” events in cities with no JFTC presence, aiming to promote familiarization with the Antimonopoly Act and other laws and offer more enhanced consultation services. It also held “Consumer Seminars” to provide an overview of the Antimonopoly Act and the JFTC’s activities to the general public.

74. The JFTC’s efforts also include activities for raising awareness of competition policies in the context of school-based education. The JFTC sends personnel junior high schools, high schools and universities (including junior colleges, etc.) in order to teach antimonopoly classes to help students learn about the roles of competition in economic activities (“Class Delivery Service”).

**Box 3. Major public awareness activities in FY2015**

- Gathered opinions from 150 members of the Antimonopoly Policy Co-operation Committee
- Held three sessions of the Council on Antimonopoly Policy
- Held meetings with locally based experts (Hakodate, Sendai, Maebashi, Nagoya, Wakayama, Matsue, Matsuyama, Kumamoto and Naha)
- Held meetings with other local experts (87 sessions)
- Gave presentations to members of bar associations, businesspeople, etc. (33 sessions)
- Held One Day JFTC events in regional cities (Hakodate, Fukushima, Yokohama, Gifu, Wakayama, Okayama, Kochi and Nagasaki)
- Held Consumer Seminars (57 sessions)
- Offered Class Delivery Services to provide antimonopoly classes (61 sessions at junior high schools; 27 at high schools; and 76 at tertiary institutions)

**5. Resources****5.1 Budget (FY2015 (2015.4~2016.3))**

75. The budget of the JFTC is as follows (unit: billion JPY, million USD (1USD=100.28JPY), %).

Fiscal Year (from April to March)	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Budget amount (JPY billion)	8.34	8.42	8.68	8.45	8.96	8.91	8.74	8.80	11.3	10.7
Budget amount (USD million)	83.1	83.9	86.6	84.2	89.4	88.9	87.2	87.8	112.9	107.1
Change over previous year (%)	2.5	0.9	3.2	Δ2.7	6.1	Δ0.5	Δ1.9	0.7	28.6	Δ5.1
General Expenditures Budget: change over previous year (%)	Δ1.9	1.3	0.7	9.4	3.3	1.2	Δ4.2	4.2	4.6	1.6

"1USD=100.28JPY" is the average rate between 2006-2015 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.

5.2 Number of officials (FY 2015(2015.4~2016.3))

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

Fiscal Year (from April to March)	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Number of officials	737	765	795	779	791	799	799	823	830	838
Enforcement against anti-competitive practices	383	409	429	442	451	452	445	444	445	447
Merger review enforcement	35	36	36	36	35	37	41	40	43	41
Advocacy efforts	36	34	35	35	36	35	33	33	33	33

(Note 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.

(Note 2) The number of officials engaged in merger review enforcement refers to the number of officials at the Mergers and Acquisitions Division.

(Note 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.

Figure 6. Budget and number of officials (FY 2006-2015)

