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**Independent Sector Regulators – Note by Japan**

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More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/independent-sector-regulators.htm>

Please contact Mr Chris PIKE if you have any questions about this document

[Email: [Chris.Pike@oecd.org](mailto:Chris.Pike@oecd.org)]

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## Japan

### 1. Introduction

1. Japan has been continuously carrying out electricity systems reform up until now, where the Japan Fair Trade Commission (JFTC) has played a crucial role from the viewpoint of competition policy over these 40 years, issuing several reports raising various issues and pointing out a number of anticompetitive problems, and also recommending solutions to enhance competition in this sector. In order to respond to such raised anticompetitive issues, in 2015, Electricity Market Surveillance Commission<sup>1</sup> (hereinafter referred to as “EGC”) was newly established as an independent sector regulator supervising the electricity sectors to deal with problems in the sector, in coordination with the JFTC.

2. In this contribution paper, we will introduce one of the JFTC’s reports, “Proposals for the Electricity Market from Competition Policy” in section 2, the role of the EGC in section 3, and then recent initiatives conducted by the JFTC and its coordination with the sector regulators to further improve competitive environment in the electricity market in section 4.

### 2. Report on the “Proposals for the Electricity Market from Competition Policy”<sup>2, 3</sup>

3. Since 1982, the JFTC has implemented cross-sectional surveys, analyses and proposals of governmental regulatory systems for various public service sectors including the electricity business sector, responding to the needs of the regulatory changes. For the electricity business sector, the JFTC has published several policy proposals which have affected regulatory reforms to enhance competition in the electricity market.

4. Among others, one of our most successful attainments is the JFTC’s report in 2012, “Proposals for the Electricity Market from Competition Policy”, which was prepared in response to the Cabinet decision of “Policy on Regulatory and Institutional Reform in the Energy Sector (adopted on April 3, 2012).” The report put forward various proposals based on the result of the survey on the state of the electricity market, and was published on September 21, 2012. The following are some of major points mentioned in it:

#### 2.1. Changes in the electricity market

5. Although a decade has passed since the partial deregulation of the electricity retail market, the market share of the New Power Suppliers<sup>4</sup> still remains single-digit and there

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<sup>1</sup> Transformed into “Electricity and Gas Market Surveillance Commission” in April 2016

<sup>2</sup> The full version of the report: <http://www.jftc.go.jp/en/pressreleases/yearly-2012/sep/individual-000499.files/FullText.pdf>

<sup>3</sup> Also presented at the discussion on Structural Separation at WP2 of OECD in December 2014

<sup>4</sup> “New Power Suppliers” are those that submitted a notification to the Ministry of Economy Trade and Industry (METI) about their businesses that supply electricity to “Specific-Scale Demand” users in the deregulated sector.

has been just one case where the General Electricity Utilities (GEUs)<sup>5</sup> supplied electricity to users outside of their respective service areas, which maintains near monopolies by the GEUs in their respective service areas.

## 2.2. The JFTC's proposals from the viewpoints of competition policy

### 2.2.1. *Unbundling of the GEUs' transmission and distribution units*

6. As the GEUs vertically integrated their units of retail and generation/wholesale with their electricity transmission and distribution units whose networks are commonly used by all of the suppliers including New Power Suppliers, it is inevitable for the GEUs to have an incentive to treat competitors unfavourably both in the retail sector and in the generation/wholesale sector. In order to ensure the accessibility, neutrality and non-discrimination principles under such circumstances, it is necessary to make GEUs unbundle their networks of transmission and distribution from their retail units and generation/wholesale units.

### 2.2.2. *Liberalization of the retail sector*

7. Under the current state in which the regulated and deregulated sectors coexist in the market, the GEUs have an advantage of setting prices on which equally efficient competitors in the deregulated sector cannot compete, by making use of profits secured under the fully distributed cost method in the regulated sector. As this hampers effective competition in the deregulated sector, a full liberalization of the market is desirable from the standpoint of competition policy.

## 2.3. Expert Committee on the Electricity Systems Reform

8. The JFTC made a presentation on this report in the Expert Committee on the Electricity Systems Reform, which was established by the Ministry of Economy, Trade and Industry (METI) to discuss issues related to the electricity systems reform, and in which the JFTC participated as an observer. Consequently, the above-mentioned proposals made by the JFTC were reflected in the report issued by the Expert Committee.

## 3. Electricity and Gas Market Surveillance Commission

9. Based on the report issued by the Expert Committee on the Electricity Systems Reform in February 2013, the Cabinet adopted its decision, the "Policy on Electricity Systems Reform" in April 2013, which contained various policies and a roadmap related to electricity systems reform, including the establishment of a new independent sector regulator, the EGC, which supervises the electricity sector, as well as the full liberalization of entries into the electricity retail business. The establishment of the EGC and the full liberalization of the electricity retail sector were eventually realized based on the Act on the Partial Revision of the Electricity Business Act, etc. (Act No. 47 of 2015, hereinafter

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<sup>5</sup>"General Electricity Utilities", are those who were granted permissions from the Minister of Economy, Trade and Industry based on the Electricity Business Act before revised in April 2016 to engage in businesses that supply electricity in response to general demand, which refers to Japan's 10 dominant electric power companies.

referred to as the “3rd Step Revision of Act”). The background of the establishment, the role and the organization of the EGC are as follows<sup>6</sup>:

### 3.1. Background of the establishment

10. In conjunction with the implementation of electricity system reform based on the 3rd Step Revision of Act, the EGC was established on September 1, 2015 as a regulatory organization with independence from other government institutions and high level of expertise under the Minister of Economy, Trade and Industry, in order to strengthen functions such as surveillance and enforcement to ensure proper electricity trades. Since April 1, 2016, roles relating to gas business and heat supply business have been added.

11. The EGC is composed of a chairman and four commissioners. They are appointed by the Minister of Economy, Trade and Industry from experts with professional knowledge and experience in law, economics, finance or engineering, with the ability to make fair and neutral decisions in relation to their duties, and are required to exercise their authorities independently.

### 3.2. Role

#### 3.2.1. *Strict and fair surveillance*

12. The EGC conducts strict and fair surveillance by means of audits, collection of reports, on-site inspections and so on to secure the interests of electricity and gas consumers and to ensure sound competition between existing utilities and new entrants. In the event of an inappropriate activity by a utility, the EGC will make a recommendation to the utility and, in addition, may recommend the Minister of Economy, Trade and Industry to issue an order to the utility for the business improvement.

#### *Examples of activities to be put under surveillance*

Activities in relation to ensuring sound competition between the GEUs and new entrants

- Activities of a major utility to offer significantly low retail prices against new entrants
- Activities of a major utility to limit the bid volume or to set the high bid prices without justifiable grounds when making a selling bid to Japan Electric Power Exchange
- Activities of a GEU to prioritize its own power plants or production facilities over the facilities of new entrants regarding the connection to the network
- Activities of a GEU to convey information about new entrants obtained through the network related business to its own sales department

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<sup>6</sup> Based on the “Annual Report of Electricity and Gas Market Surveillance Commission” ([https://www.emsc.meti.go.jp/english/committee/pdf/annual\\_report\\_2017.pdf](https://www.emsc.meti.go.jp/english/committee/pdf/annual_report_2017.pdf)) published in November 2017

### Activities in relation to securing interests of consumers

- Activities of a utility to charge an extraordinary amount of cancellation fees in response to a proposal for contract termination by a consumer
- Activities of a utility to solicit a contract by providing consumers with insufficient or false information on prices, contract terms and cancellation fees

#### *3.2.2. Comments, Recommendations and proposals*

13. The EGC submits comments, recommendations and proposals to the Minister of Economy, Trade and Industry regarding development of new rules that are necessary to ensure fair trade and promote sound competition in the market.

### **3.3. Organization**

14. The EGC has its own exclusive Secretariat consists of the Policy Planning and Coordination Division, the Market Surveillance Division, the Wholesale Market Surveillance Office (reorganized to the Market Policy Planning Office on September 1, 2017), the Network Surveillance Division and the Network Policy Planning Office.

15. In this regard, the JFTC has seconded one of its staff with an ample experience of case handlings to take the position of Director of the Market Surveillance Division as a part of staff exchange program.

16. The Regional Bureaus of the METI also have a Market Surveillance Office. In addition, there are three expert meetings under the EGC: the Expert Meeting on Policy Design, the Expert Meeting on Fee Examination and the Expert Meeting on Tender for Thermal Power Source. The Working Group on the Cost Sharing System for Power Transmission and Distribution was also established under the Expert Meeting on Policy Design.

17. The EGC monitors activities by the GEUs which impede sound development of the electricity market based on the Electricity Business Act, whereas the JFTC supervises anticompetitive conducts based on the Antimonopoly Act, and the close coordination between the two agencies is essential to create fair and free business environment in the electricity market.

## **4. Further initiatives taken by the JFTC to create a more competitive electricity market**

18. Following the full retail liberalization in April 2016, the JFTC has been continuously engaged in activities improving competitive environment in the electricity market, working side by side with the EGC, fostered by a JFTC official seconded to the EGC.

19. At the fourth meeting of the study panel on competitive electricity and gas markets under the EGC held on February 20 in 2018, the JFTC presented its views concerning the condition and the problems of the wholesale electricity market in terms of competition policy, as well as its efforts in the retail electricity market. Some of the important points of the presentation are as follows:

#### 4.1. Wholesale sector

20. The JFTC presented an overview of the current state of the wholesale sector, stating that the so-called baseload power source such as nuclear power and coal fired power are mostly owned by the GEUs and that it may be obstructing a fair and effective competition in the retail sector expected to be attained by the full liberalization, as procurement costs of New Power Suppliers are structurally higher compared to those of GEUs. Furthermore, the JFTC pointed out the establishment of the baseload power source market may improve the accessibility of New Power Suppliers to baseload power sources, to secure an equal footing between NPSs and GEUs.

#### 4.2. Retail sector

21. The JFTC and the METI jointly established the Guidelines for Proper Electric Power Trade in December 1999, clarifying the conducts in the fully liberated retail sector which may violate the Antimonopoly Act such as unjust low pricing to specific customers and unjust high pricing to previous customers that become its customers again after turning to other providers.

22. In March 2016, the JFTC established an exclusive consultation office, within the Public Utility Task Force of the Investigation Bureau, for receiving information regarding anticompetitive activities in the electricity sector.

23. In June 2017 the JFTC issued a warning against Hokkaido Electric Power Company which applied favorable rates to new customers, whereas it uniformly charged high prices to the previous customers that became its customers again after turning to other retailers.

### 5. Conclusion

24. As a consequence of our continuous efforts of advocacy to create more competitive environment in the electricity market, there have been several achievements like the realization of the unbundling of the GEUs' transmission and distribution units, and the full liberalization of the retail sector, all of which are expected to secure interests of consumers and ensure a sound competition between market players. For further promotion of competition in the electricity market, the coordination between the JFTC and the EGC will be the key to advance it.