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**ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES**

-- Note by Japan --

17-18 December 2014

*This document reproduces a written contribution from Japan submitted for Item VIII of the 122nd meeting of the OECD Competition Committee on 17-18 December 2014.*

*More documents related to this discussion can be found at [www.oecd.org/daf/competition/changes-in-competition-institutional-design.htm](http://www.oecd.org/daf/competition/changes-in-competition-institutional-design.htm)*

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## **JAPAN**

### **1. Introduction**

1. The Japan Fair Trade Commission (“JFTC”) has a long history of over 60 years since it was established in 1947 and is the fourth oldest competition authority in the world. The JFTC has been an independent administrative commission from the beginning, and has experienced several important institutional changes over the years, maintaining its independence.

2. This contribution paper explains an overview of the JFTC and its independence, followed by an outline of the recent institutional changes.

### **2. Overview of the JFTC**

3. In order to ensure that the market fully functions in a free economic society, it is necessary to constantly monitor whether the rules for fair and free competition are being observed. Thus, the JFTC (a council organisation consisting of a chairman and 4 commissioners) was established as the agency responsible for administering the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as the “Antimonopoly Act”).

4. The JFTC sets up the General Secretariat for handling the administration of its affairs. As of the end of fiscal year 2014, the maximum number of staff members working in the General Secretariat is 830. The JFTC has its own budget, and as of the end of fiscal year 2014 the total budget is 11,321 million yen (approximately 78 million euro) (Please refer to the Annex which shows the organisational chart of the JFTC.)

### **3. Independence of the JFTC**

#### ***3.1 Independence of performing its authority***

5. The JFTC is under the jurisdiction of the Prime Minister and it is structurally established as an external bureau of the Cabinet Office (CAO). However, the unique characteristic of the JFTC is that the agency performs its authority independently as an administrative commission without the direction or supervision from other agencies, because the Antimonopoly Act is a basic rule for economic activities that needs to be enforced continuously and consistently by a fair and neutral agency free from political influence. For this reason, Article 28 of the Antimonopoly Act stipulates that “the chairman and commissioners of the Fair Trade Commission shall perform their authority independently”. The chairman and commissioners shall be appointed by the Prime Minister with the consent of both Houses of the Diet among persons who have knowledge and experience in law or economics (Article 29) and, in principle, the chairman or a commissioner may not, against their will, be dismissed from office while they are in office (Article 31).

### **3.2 *Independence from regulatory authorities***

#### **3.2.1 *Changes in the JFTC's operating environment after the reform of the central ministries and agencies***

6. The JFTC was originally positioned as an external bureau of the General Administrative Agency of the Cabinet<sup>1</sup>. In 2001, the JFTC became an external agency of the then Ministry of Public Management, Home Affairs, Posts and Telecommunications (Ministry of Internal Affairs and Communications (MIC) since 2004)<sup>2</sup> in accordance with the reform of the central ministries and agencies. The JFTC was then transferred from an external agency of the MIC to that of the CAO in 2003. This transfer reflected the changes in the JFTC's operating environment, such as (i) more emphasis on the characteristics of the competition policy promoted by the JFTC as an administrative matter to be managed by the Prime Minister from the perspective of the entire government, which demonstrated the heightened importance of the competition policy; and (ii) potential conflicts of interests between the MIC (which supervises the postal business) and the JFTC (which monitors the market) prompted by the enactment of the Act on Correspondence Delivery by Private Business Operators as part of the postal service reform, which created the possibility of competition between Japan Post and private business operators.

#### **3.2.2 *Relationships with regulatory agencies***

##### **3.2.2.1 Enforcement of the Antimonopoly Act in regulated sectors**

7. Sector regulatory agencies which supervise specific industry sector can exercise exclusively its regulatory authorities, while the JFTC can exercise its authority set forth in the Antimonopoly Act independently of the regulatory agencies.

8. For example, the JFTC can apply the Antimonopoly Act to a violative act of an entrepreneur or trade association, even if the act was induced through the direction or guidance of a regulatory authority, and can take legal action, etc. against the entrepreneur or trade association.

##### **3.2.2.2 Conducting survey and submitting viewpoints to agencies' policy**

9. The JFTC is given the authority to conduct survey on competition policy issues and to submit viewpoints to ministries and agencies in charge of regulations for the purpose of promoting competition in regulated sectors.<sup>3</sup>

## **4. Recent institutional changes relating to the JFTC**

### **4.1 *Transfer of the Act against Unjustifiable Premiums and Misleading Representations (2009)***

#### **4.1.1 *Establishment of the Consumer Affairs Agency of Japan***

10. With increased globalisation, technological sophistication and social diversity, it has become difficult to address complex consumer issues, and there have been problematic situations that could not be

<sup>1</sup> Predecessor of the current CAO that existed before the reform of the central ministries and agencies.

<sup>2</sup> Regulatory authority in charge of supervising telecommunications business, postal business, etc.

<sup>3</sup> Article 58, Paragraph 8 of the Act for Establishment of the Cabinet Office stipulates that "When a commission or the director-general of an agency finds it necessary for achieving mutual co-ordination with administrative organs concerning policies to accomplish the duties of the commission or agency, it may request the submission of necessary materials and an explanation from the heads of the relevant administrative organs upon clarifying the need for these materials. The commission or the director-general of an agency may also state his/her opinion concerning the policies of the relevant administrative organs."

solved by the existing administrative mechanism, such as the emergence of a number of cases involving more than one ministry or agency<sup>4</sup>. In response to such situations, discussions have been held on the establishment of a new organisation that would function as a central tower of administration of consumer affairs, carrying out smooth co-ordination among ministries and agencies, and dealing with issues that encompass multiple areas of jurisdiction held by ministries and agencies.

11. In 2008, the “Basic Plan for Promotion of Consumer Policy” was approved by the Cabinet. In that year, the government submitted a bill containing related legislative proposals to the Diet. The bill was passed and enacted in 2009, and the Consumer Affairs Agency (CAA) of Japan was established to be responsible for implementing the unified administration of consumers’ affairs. As a result, the Act against Unjustifiable Premiums and Misleading Representations (hereinafter referred to as “the Premiums and Representations Act”)<sup>5</sup>, an act that regulates false labelling, excessive advertising, and other misleading representations in connection with goods and services that used to be under the jurisdiction of the JFTC, was transferred to the jurisdiction of the CAA. Besides, Japanese Agricultural Standard law under the jurisdiction of Ministry of Agriculture, Forestry and Fisheries, Food Sanitation Act under the jurisdiction by Ministry of Health Labour and Welfare, and Consumer Products Safety Act, Product Liability Act, Act on Specified Commercial Transactions, etc. under the jurisdiction of Ministry of Economy, Trade and Industry were in whole or in part transferred to the jurisdiction of the CAA or turned to be administered by both CAA and the other ministry.

*4.1.2 Authority and duties of the JFTC in connection with the Premiums and Representations Act after the jurisdiction of the Act was transferred*

12. Even after the jurisdiction of the Premiums and Representations Act was transferred in 2009, the authority for investigations, including on-site inspections and collection of reports, continues to be delegated to the JFTC by the Premiums and Representations Act and the Cabinet orders. The JFTC’s regional offices, etc. accept information regarding suspected violations of the Act and conduct investigations, etc. in connection with suspected cases of violations, in collaboration with the CAA.

13. In addition, the JFTC’s regional offices, etc. respond to requests for consultations made by prefectural governments<sup>6</sup>, entrepreneurs, etc. concerning the issues relating to the Premiums and Representations Act. In providing consultations, they respond to questions after making inquiries to the CAA if necessary.

14. In addition, the JFTC strives to exchange opinions and information with the CAA and relevant organs of prefectural and other governments, for example, through the participation of the staff of the

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<sup>4</sup> There were cases of accidental ingestion where people choked as a result of eating mouthful sized ‘mini-cup’ jelly products that contain ‘konnyaku’ (a kind of yam cake with jelly-like texture which is harder to swallow than ordinary jelly) because of the size, shape or hardness. The application of Food Sanitation Act (under the jurisdiction of Ministry of Health Labour and Welfare at the time) to food issues was limited to those with chemical or biological problems. On the other hand, Consumer Products Safety Act (under the jurisdiction of Ministry of Economy, Trade and Industry) applicable to issues with physical problem was not applied to food issues. Consequently, the defect jelly food that contains ‘konnyaku’ could not be regulated appropriately in the gap between the two acts.

<sup>5</sup> The Premiums and Representations Act is a law that stipulates, among other things, tight regulations on the misrepresentation of the quality, content, prices, etc. of goods and services, and limits the maximum value of a premium, etc. to prevent the excessive offering of premiums, etc., thereby protecting the interests of general consumers.

<sup>6</sup> A prefectural governor and the governmental administrative organ may issue an instruction to conduct an investigation of a violation of the Premiums and Representations Act and to suspend against the violation. After the enactment of the revised Premiums and Representations Act (December 1, 2014), prefectural governors will be empowered to order, not instruct, the injunction, etc. of the violation.

JFTC regional offices in conferences related to the Premium and Representative Act held regionally, such as liaison conferences with prefectural governments, upon consultation with the CAA.

## **4.2 Revision of the Antimonopoly Act including abolition of the JFTC's hearing procedure<sup>7</sup>**

### *4.2.1 Background to the amendment*

15. It has been pointed out, mainly by the business people, that JFTC's hearing procedure for administrative appeals lacks the appearance of fairness as the entity taking administrative measures also determines whether such measures are appropriate. In response to such criticism, it was decided that the JFTC's hearing procedure should be abolished, and appeals against the JFTC's administrative measures should be brought before the court. Moreover, pre-order proceedings for the JFTC's administrative measures will be further enhanced and made more transparent. The revised Antimonopoly Act was enacted on December 7, 2013, and promulgated on December 13, 2013.<sup>8</sup>

### *4.2.2 Outline of the revision of the Act<sup>9</sup>*

1. To abolish the JFTC's hearing procedure for administrative appeals, and abolish the provision which stipulates that the jurisdiction over the first instance of an appeal suit pertaining to decisions of the JFTC shall lie in the Tokyo High Court.
2. To ensure the expertise of the court by making an appeal suit pertaining to cease and desist orders, etc. for violations of the Antimonopoly Act subject to the exclusive jurisdiction of the Tokyo District Court, in which a panel comprising three or five judges will hear the case.
3. To develop provisions, from the perspective of enhancing due process, regarding the procedures for hearing prior to issuing a cease and desist order etc., including, among other things, the provisions concerning the following:
  - presiding officer of procedure for hearing
  - explanation of the content etc. of the expected cease and desist order
  - inspection and/or copy of evidence that establishes facts found by the JFTC.

### *4.2.3 Significance of the amendment*

16. For more than 60 years since the enactment of Antimonopoly Act in 1947, JFTC's hearing procedure has been functioning as the first instance for appeals in case of violations. With this amendment, the first instance functions will be transferred to a court for the first time.

17. While it is essential for the JFTC to maintain public confidence to its investigations and decisions, it is hoped that the abolition of the hearing procedure minimises the criticism about the appearance of fairness. Therefore, it is an extremely significant amendment and will promote the development of environment for fair competition in the Japanese market.

<sup>7</sup> Please refer to **DAF/COMP/WP3/WD(2010)9 ANNEX 1** for details about the JFTC's hearing procedure.

<sup>8</sup> This Act shall come into force on the date specified by a Cabinet Order within a period not exceeding one year and six months from the date of promulgation.

<sup>9</sup> Please refer to the following for more details.

[http://www.jftc.go.jp/en/pressreleases/yearly-2013/Dec/individual131209\\_files/Attachment01.pdf](http://www.jftc.go.jp/en/pressreleases/yearly-2013/Dec/individual131209_files/Attachment01.pdf)

JFTC - Organizational Chart (as of October, 2014)

