



**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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ROUNDTABLE ON MONOPSONY AND BUYER POWER

-- Note by Japan --

This note is submitted by Japan to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 21-23 October 2008.

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1. Introduction

1. This contribution paper describes the JFTC's viewpoints and efforts concerning how the power exercised by a buyer against a seller impacts competition. In the following sections, we would like to introduce a summary of the special program on "Abuse of Superior Bargaining Position" held during the 7th Annual Conference of the International Competition Network ("ICN") in Kyoto. We would also like to introduce the JFTC's viewpoints concerning the abuse of dominant bargaining positions of large-scale retailers as well as the results of fact-finding surveys and recent JFTC cases, which are related to the theme of this roundtable.

2. Special Program on "Abuse of Superior Bargaining Position" during the ICN Annual Conference in Kyoto

2. The ICN Kyoto Annual Conference (April 14-16, 2008) was hosted by the JFTC and the topic of the special program during the conference was "Abuse of Superior Bargaining Position". For the program, a questionnaire was sent to ICN member jurisdictions and a report was developed based on the responses to the questionnaire. During the ICN Kyoto Annual Conference, a panel discussion was also held. The summaries of the report and the panel discussion are as follows.

2.1 Report on Abuse of Superior Bargaining position

3. In markets where both larger firms and smaller firms operate, an issue of the abuse of superior bargaining position ("ASBP"), as opposed to the more familiar abuse of dominance/monopolization issues, appears to have recently arisen in business to business relations in several jurisdictions, particularly, but not limited to, in the retail sector in the wake of the emergence of large-scale retailers like hypermarkets. ASBP typically includes, but is not limited to, a situation in which a party makes use of its superior bargaining position relative to another party with whom it maintains a continuous business relationship to take any act such as to unjustly, in light of normal business practices, cause the other party to provide money, services or other economic benefits.

4. The report is based on the responses of ICN members regarding ASBP. The report includes an overview of the status of regulation, reasons for and against specific provisions, criteria for assessing superior bargaining position, abusive conduct, enforcement and so on.

5. Of the 32 jurisdictions that responded to the survey, seven jurisdictions (the "Specific Provisions Group": Austria, France, Germany, Italy, Japan, Korea and Slovak Republic) reported specific legal provisions. Twenty-four jurisdictions indicated that their laws and regulations do not contain any specific prohibition. Thirteen jurisdictions (Austria, Brazil, Canada, Chile, Croatia, European Union, Indonesia, Italy, Jamaica, Norway, Russia, Serbia, and Taiwan) indicated the applicability of their general unilateral conduct competition provisions, such as abuse of dominance. Nine jurisdictions (Belgium, Brazil, Chile, Croatia, Czech Republic, Italy, New Zealand, Norway and Pakistan) indicated the applicability of non-competition provisions.

6. The reasons the Specific Provisions Group has adopted specific provisions include 1) to protect the foundation of free competition, 2) to eliminate negative effects on competition and 3) to protect against the exploitation of trade partners. On the other hand, the reasons for not adopting specific provisions include 1) reluctance to interfere with the contractual freedom between private parties, 2) concern that the concept of ASBP would introduce confusion and/or uncertainty into the market, 3) contract disputes involve private harm and case-by-case circumstances that are effectively dealt with through private enforcement and 4) the application of the abuse of dominance provision is sufficient to assure competition.

7. The criteria used by the Specific Provisions Group in order to assess superior bargaining position includes the probability of finding an alternative trade partner, degree of trade dependence on the firm by the other, supply and demand forces of the product or service and the difference in the scale of business between the parties. Regarding abusive conduct, the group enumerated conducts such as unjust requests for the provision of labor, unjust requests for contributions, unjust coercive sales, refusal to purchase and so on.

8. Only Germany required that effects on competition be demonstrated in order to prove ASBP. The type and nature of sanctions varied among jurisdictions from cease and desist orders to fines. Two jurisdictions take into account positive aspects of countervailing power. One jurisdiction identified the close relationship between ASBP and “abuse of dominance/monopolization” while five jurisdictions indicated no direct relationship between them.

9. Among the seven jurisdictions in the Specific Provisions Group, three jurisdictions stated that competition agencies are authorized to handle or enforce specific provisions on ASBP. Among the group, four jurisdictions have enforced the special provision actively.

10. Most jurisdictions in the Specific Provisions Group allow private cases to challenge ASBP-type conduct.

2.2 Outline of the panel discussion during the ICN Kyoto Annual Conference

11. During the panel discussion held on the second day, Mr. Frederic Jenny, Chairman of the OECD Competition Committee and who also chaired the panel, explained the two hypothetical cases the panel would discuss. Case 1 involved Retailer D, which accounted for 10% of a retail market and engaged in a “series of coercive activities” with respect to its four suppliers. Case 2 involved Bank M, which, with a 40% share, was the top firm in the banking market. A company relied on the bank’s support and was getting financing elsewhere. Bank M would only provide a loan on favorable terms if the company purchased from the bank non-investment grade bonds. The panelists then engaged in a lively and interactive discussion of the hypothetical cases and ASBP more generally.

12. Tadashi Shiraishi, Professor, University of Tokyo, Graduate School of Law and Politics, Japan, provided his opinion that the JFTC would respond to the situations in the hypothetical cases by issuing cease and desist orders. He added his views that pursuant to JFTC guidelines, a superior bargaining position can be identified when victims do not have alternatives, and under Japanese law, a large market share is not a requirement for a superior bargaining position.

13. Francis Amand, Deputy Director General, DGCCRF, France, explained that France has a two-fold system to address what he referred to as abuse of dependency. He described Article 442-6 of the Commercial Code, which includes a list of unfair discriminations, as broader and more comprehensive than the competition law, Article 420. He also noted a degree of convergence exists between the provisions. Mr. Amand thought that the first hypothetical might raise an issue under Article 442.6, but would not under Article 420 because of the retailer’s low market share. With respect to the bank hypothetical, Mr. Amand believed that the competition law, Article 420, might be applied given a possible anticompetitive effect on the market, but noted that the effect might not be significant due to the size of the firms. Instead, Article 442 might be a better provision to address the situation, and it would be applicable due to coercion by the bank.

14. Vladimir Kachalin, Advisor to the Head, Federal Antimonopoly Service, Russia, described ASBP as being a “vertical exploitive practice spreading downstream and upstream.” He observed that the hypothetical cases were quite similar to actual cases addressed in Russia pursuant to Article 11 of the Law

on Protection of Competition. That law prohibits activity that has or may have the effect of harming consumers or competition.

15. Deborah Battell, Acting General Manager, New Zealand Commerce Commission, did not believe that New Zealand law would reach the conduct involved in the hypothetical cases. She explained that under the common law, the threshold for unconscionable conduct is very high, and the courts would be unlikely to interfere in the contracts involved. Under the Commerce Act, the inquiry would be whether the conduct involved constitutes an abuse of market power. The firm in the first hypothetical would need a higher market share protected by high entry barriers. New Zealand authorities view their role as protecting the competitive process, rather than small suppliers.

16. William Kovacic, Chairman, USFTC, indicated that in the United States there might be a number of ways to address the situations in the hypothetical cases, but with the possible exception of tying in hypothetical 2 (which would be difficult to prove on those facts), such legal recourse would come virtually entirely from outside the competition law realm. Mr. Kovacic also raised a practical concern with a competition authority handling matters that are fundamentally contract disputes: the large number of such disputes could overwhelm the agency.

17. Syamsul Maarif, Chairman, Commission for the Supervision of Business Competition (KPPU), Republic of Indonesia, described general provisions of his country's competition law that address unilateral conduct by dominant players, as well as recently issued non-competition law that prohibits hindrance of small suppliers.

18. A number of audience members expressed a wide range of views regarding ASBPs and the extent, if at all, to which they are or should be related to protecting competition. A government economist from the Chilean delegation indicated that while she agrees an agency's enforcement goal is to protect competition, rather than competitors, permitting ASBPs can create an asymmetry of bargaining position that can cause small competitors to exit the market. Kazuhiko Takeshima, Chairman, the JFTC, emphasized the importance of fairness, adding that when fairness is excluded, it means protecting the big players. He indicated his view that competition law should protect the rights of the players on a level playing field as well as consumers. Paul Csiszár from the European Commission recognized the need to ensure equality of opportunities, but believed competition law should apply only in those situations where there was a link to an abuse of market power.

19. Mr. Jenny began his wrap up of the special program on ASBP by restating that the weakness of contractual relationships could have some real effects on the competitiveness and the effectiveness of markets. Touching on the various complications, he remarked that it is very hard to distinguish between the efficiency aspect of these problems and other less familiar aspects, such as questions of social justice. He pointed to another key finding: the clear complementarity between contract law, commercial law and competition law. Therefore, competition law must be seen in the wider context of the legal order of each country and that perhaps there are justifications for having diversity in the scope and style of competition laws because of the diversity of legal systems.

3. Specific viewpoints on the issue of Buyer Power under the AMA

20. As mentioned in the ICN discussion, countries differ on how to assess the impacts on competition caused by buyer power, which a buyer exercises against a seller, from the viewpoint of competition law. If exercising such a power falls under an unfair trade practice (Article 19 of the AMA) as an abuse of dominant bargaining position, then it is regulated by the JFTC.

3.1 *The provisions of the AMA*

21. Article 19 of the AMA stipulates, “No entrepreneur shall employ unfair trade practices.” The term “Unfair Trade Practices” includes those acts prescribed in each Item of Paragraph 9 of Article 2 of the AMA which tend to impede fair competition and are designated by the JFTC.

22. In Item 5, Paragraph 9 of Article 2 of the AMA, “Dealing with another party by unjust use of one’s bargaining position” is stipulated. Based on this stipulation, the designation of “Abuse of Dominant Bargaining Position” is prescribed on Paragraph 14 of the “Designation of Unfair Trade Practices” (Fair Trade Commission Public Notice No.15, 1982) (hereinafter referred to as “General Designation”).

23. There are two types of JFTC notifications concerning unfair trade practices. One is the “General Designation” which is applied to all categories of businesses in principle. And the other is the “special designation” which is applied to a specific category of businesses. For the case of buyers corresponding to “large-scale retailers”, the JFTC established a special designation named "Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers" (Fair Trade Commission Public Notice No.11, 2005) (hereinafter referred to as “The Large-Scale Retailers Notification”). If buyers engage in transactions with sellers by unjustly making use of one’s dominant bargaining position, and therefore meet the definition of the “Large-Scale Retailers”, such act is regulated by “The Large-Scale Retailers Notification”. An abuse of dominant bargaining position which is not stipulated in “The Large-Scale Retailers Notification” is regulated under the General Designation of unfair trade practices.

3.2 *Abuse of Dominant Bargaining Position in Paragraph 14 of Unfair Trade Practices designated by the JFTC*

3.2.1 *General Designation Paragraph 14*

24. Five types of abuse of dominant bargaining position are prescribed in the General Designation Paragraph 14. Actions prescribed in this paragraph are prohibited.

(Abuse of Dominant Bargaining Position)

(14) Taking any act specified in one of the following items, unjustly in light of the normal business practices by making use of one's dominant bargaining position over the other party:

- (i) Causing the said party in regular transactions to purchase goods or services other than the one pertaining to the said transaction;
- (ii) Causing the said party in regular transactions to provide for oneself money, services or other economic benefits;
- (iii) Establishing or changing trade terms in a way disadvantageous to the said party;
- (iv) In addition to any act coming under the preceding three items, imposing a disadvantage on the said party regarding terms or execution of transaction; or
- (v) Causing a corporation which is one's transacting party to follow one's instruction in advance, or to get one's approval, regarding the appointment of officers of the said corporation (meaning those as defined by paragraph 3 of Article 2 of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade. (The same shall apply hereinafter)).

3.2.2 *The Large-Scale Retailers Notification*

25. The JFTC established a special designation designed for large-scale retailers as “The Large-Scale Retailers Notification” and developed the "Guidelines Concerning Designation of Specific Unfair Trade

Practices by Large-Scale Retailers Relating to the Trade with Suppliers" (JFTC Secretary General Notification No.9, 2005).

26. The Guidelines explain the aim to regulate transactions between retailers and suppliers as follows:

“This conduct by large-scale retailers prevents suppliers from freely and independently making decisions on trading, creates disbenefits for suppliers that cannot be calculated in advance and places them in disadvantageous positions in competition with other suppliers. In contrast, benefiting from this unjust conduct, large-scale retailers obtain a competitive edge over other retailers. This conduct is detrimental to competition among suppliers and also to competition among retailers. In addition, the conduct is at odds with rational management based on cost awareness, as it hinders market players from setting reasonable trade conditions. This leads to the conclusion that fair trade based on the market mechanism is inhibited, that market efficiency is degraded and that consumers are hampered from reaping the benefits of an efficient market. “

27. The viewpoints of “The Large-Scale Retailers Notification” are as follows:

Definition of the large-scale retailers

28. The term “large-scale retailer” means an entrepreneur that engages in the retail sale of goods that are used by general consumers on a daily basis, including an entrepreneur that can generally exert its buying power against suppliers. A retailer’s sales and the range of the store floor spaces are used as guides to the definition. The franchiser, which is deemed to provide franchisees with a specific trademark and at the same time control, instruct and assist them in the sale of their goods in a uniform manner to the effect that the franchiser and the franchisees engage in sales to consumers under a specific trademark in an integrated manner, also corresponds to a “large-scale retailer”.

Definition of the suppliers

29. The term “supplier” means an entrepreneur that supplies a large-scale retailer or its franchisees with goods for their own sales or for sales on consignment, excluding any entrepreneur whose bargaining position is not inferior to that of the large-scale retailer in question.

30. Whether “bargaining position is recognized as not being inferior to that of the large-scale retailer” is determined in the application to specific cases by considering the following conditions comprehensively: (1) a supplier’s sales, (2) level of business dependency on the large-scale retailer, (3) importance of the status of the large-scale retailer as a customer of the supplier (the large-scale retailer’s status on the market including market shares, ranking in sales and advantages of a brand, growth potential in the future, the amount of trade with the large-scale retailers, and the possibility of a change to other suppliers), and (4) demand-supply relation of the goods handled by the supplier and so on.

"Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers" (Abridgment)

Remarks

- (1) For the purposes of this Notification, the term “large-scale retailer” means an entrepreneur that engages in the retail sale of goods that are used by general consumers on a daily basis, including any retailer engaged in a designated chain business (which refers to the designated chain business provided in paragraph 1, Article 11 of the Act Concerning the Promotion of

Small and Medium Retail Business (Act No. 101 of 1973); the same shall apply hereinafter), and which falls under any of the following items:

- (i) An entrepreneur with sales of 10 billion yen or more in its last completed fiscal year. If the business is a designated chain business, the sales earned by the franchisees of the designated chain business shall be taken into account.
- (ii) An entrepreneur owning a store that falls under either of the following descriptions:
 - (a) A store with a floor space (meaning the floor area for the retail store; the same shall apply hereinafter) of three thousand square meters (3,000 m²) or more within the limits of the Tokyo metropolitan area (special wards only) and designated cities prescribed in paragraph 1, Article 252-19 of the Local Governmental Act (Act No. 67 of 1947).
 - (b) A store with floor space of one thousand five hundred square meters (1,500 m²) or more within the limits of cities other than those falling under (a), towns and villages.
- (2) For the purposes of this Notification, the term “Franchisee” means a franchisee participating in a designated chain business operated by a large-scale retailer.
- (3) For the purposes of this Notification, the term “Supplier” means an entrepreneur that supplies a large-scale retailer or its franchisees with goods for their own sales or for sales on consignment, excluding any entrepreneur whose bargaining position is not inferior to that of the large-scale retailer in question.

Prohibited Acts

31. The following acts are prohibited:

- (1) Unjust return of goods

A large-scale retailer returns goods in all or in part, which the retailer itself or its franchisees (hereinafter referred to as “the retailer, etc.”) purchased from a supplier, to that supplier (including acts materially equivalent to the return of goods, for example changing the contract from a purchase contract to a consignment sales contract or replacing the goods with other goods; the same shall apply hereinafter), except in the following cases:

- (i) Return of goods to a supplier for a reason attributable to the supplier within a reasonable period from the day of receipt and limited to a quantity deemed appropriate given the reason,
- (ii) Return of goods to a supplier in accordance with fixed conditions for return based on an agreement with the supplier at the time of purchasing the goods (limited to cases in which it is a normal trade practice in general wholesale trade, excluding trade between large-scale retailers and suppliers, to return goods within a fixed period after the date of receipt and limited to a fixed quantity, or limited to a quantity in fixed proportion to the total quantity received and in which the conditions for the return of goods are set forth within the scope of the normal trade practice),
- (iii) Return of goods to a supplier with the supplier’s prior consent, provided that the large-scale retailer accepts the loss that would normally be incurred by the supplier arising from the return of goods already delivered, and
- (iv) Return of goods to a supplier at the request of the supplier, provided that the disposal of the returned goods leads to direct benefits for the supplier.

(2) Unjust price reduction

A large-scale retailer coerces a supplier into accepting a price reduction of the delivery price of goods purchased by the retailer, etc. after purchasing the goods from the supplier, except when the supplier accepts a reduction of the delivered price for any reason attributable to the supplier within a reasonable period from the date of receipt and to an extent deemed appropriate given the reason.

(3) Unjust consignment sales contract

A large-scale retailer coerces a supplier into accepting a consignment sales contract with the retailer, etc. under conditions that are excessively disadvantageous to the supplier in light of normal trade practices carried out in general transactions of consignment sales excluding trade between large-scale retailers and suppliers.

(4) Forcing suppliers to lower prices for bargain sales, etc.

A large-scale retailer sets delivery prices for particular goods that are excessively lower than the ordinary delivery prices of equivalent goods to the retailer, etc. for purposes such as bargain sales and forces a supplier to deliver the goods at the said prices.

(5) Refusal to receive specifically ordered goods

A large-scale retailer refuses delivery of all or part of specific goods for reasons not attributable to the supplier after having entered into a contract in which the large-scale retailer designated specific standards, designs, types, etc. of the goods to be delivered, except in cases in which it obtains the supplier's consent for the refusal and in which the large-scale retailer accepts the loss that would normally be incurred by the supplier as a result of the refusal.

(6) Coercion to purchase, etc.

A large-scale retailer coerces a supplier into purchasing any goods or services designated by the retailer, unless there is due cause.

(7) Unjust assignment of work to employees of suppliers, etc.

A large-scale retailer coerces a supplier into dispatching employees to assist with the ordinary operations of the retailer, etc., or the large-scale retailer coerces the supplier into paying the labor costs of employees hired by the retailer, etc. in lieu of coercing the supplier into dispatching employees, except in any of the following cases:

- (i) With the prior consent of the supplier, the large-scale retailer assigns dispatched employees solely to sales operations of those goods delivered by the supplier (or sales and inventory operations for those goods if the dispatched employees of the supplier are regularly stationed at a store of the large-scale retailer), and limited to the extent that enables effective use of sales techniques or other ability possessed by the dispatched employees that leads to direct benefits for the supplier.
- (ii) The large-scale retailer reaches a prior agreement with the supplier with respect to the dispatch terms and conditions, such as the types of duties assigned to dispatched

employees, working hours and the period of dispatch, and it pays the cost generally required for the dispatch of employees.

- (8) Unjust receipt of economic benefits, etc.

In addition to those acts set forth in the preceding paragraph (7), a large-scale retailer coerces a supplier into providing the retailer, etc. with economic benefits including money and services that the supplier clearly should not have to offer or that exceeds the limit recognized as reasonable in consideration of the benefits reaped by the supplier.

- (9) Unfavorable treatment in response to refusal of requests

A large-scale retailer gives unfavorable treatment including delayed payment for goods delivered, reduction in trade volume, suspension of trade with a supplier on the grounds that the supplier refuses any of the requests set forth in any of the preceding paragraphs.

- (10) Unfavorable treatment in response to notification to the Fair Trade Commission

A large-scale retailer gives unfavorable treatment including delayed payment for goods delivered, reduction in trade volume, suspension of trade with a supplier on the grounds that the supplier notified, or attempted to notify the Fair Trade Commission of the fact that the large-scale retailer conducted, continued to conduct or continues to conduct any of the acts described in one of the preceding paragraphs.

4. Actual Condition of a buyer power

32. The JFTC has conducted surveys to look at the actual situation of trade practices between large-scale retailers and their suppliers several times in the past. In 2006, with the aim of looking at the situation of trade between large-scale retailers and their suppliers after the enforcement of The Large-Scale Retailers Notification in 2005, the JFTC conducted questionnaire surveys and interviews and thereafter published a report on the fact-finding surveys.

33. Among the trade practices between large-scale retailers and their suppliers, the largest number of respondents specified as problematic acts “unreasonable requests for offering economic benefits”, followed by “unjustifiable return of goods” and “unreasonable requests for dispatching employees and others”.

34. However, the number of respondents answering that they received “unreasonable requests for offering economic benefits,” “unjustifiable return of goods” and “unreasonable requests for dispatching employees” respectively decreased to about one third of the level confirmed in the preceding survey, the results of which were published in February 2005, before the enforcement of The Large-Scale Retailers Notification. These results suggest that the measures taken, including the establishment of The Large-Scale Retailers Notification, were effective to some extent.

35. Those large-scale retailers aspiring to relatively low-price sales, such as home improvement retailers, drugstores, food-specialized supermarkets, discount stores, specialized mass retailers and general supermarkets, were found to have been particularly likely to engage in unjustifiable conducts.

5. Cases of Abuse of Dominant Bargaining Position by Large-Scale Retailers

5.1 *Case against Valor Co., Ltd. (Cease and desist order on 13 October 2006)*

- a) Valor Co., Ltd (hereinafter referred to as “Valor”) operates supermarkets that engage in the retail sale of food products as well as home centers that engage in the retail sale of housing-related goods and convenience goods, etc. Valor’s grocery supermarket sales in fiscal year 2005 were the largest in the grocery supermarket industry in the area including Gifu, Aichi and Mie prefecture. Also in the home improvement retailers industry in the same area, Valor’s home center sales were the third largest. Valor’s sales and the number of stores have increased annually in recent years.
- b) On the occasion of selling seasonal gift items, Valor coerced suppliers for the supermarkets¹ into purchasing gift items, its own gift certificates and beer coupons, taking advantage of the transaction with the suppliers.
- c) On the occasion of launching a new store and reopening a store after refurbishment, Valor coerced suppliers for the supermarkets and those for the home centers² to dispatch their employees for assigning them to displaying and restocking works for the sales of the party concerned.
- d) (i) On the occasion of launching a new store and reopening a store after refurbishment in the supermarket business, Valor coerced suppliers to provide monetary contributions with the aim of securing a gross margin for account settlement without sufficient prior explanation to the suppliers of the grounds for the calculation and use of the contributions, and coerced suppliers related to daily foods or groceries into offering the initial deliveries related to goods sold continuously for a certain period of time, free of charge.
(ii) On the occasion of launching a new store and reopening a store after refurbishment with a floor addition in the home center business, Valor coerced suppliers to provide monetary contributions with the aim of securing a gross margin for the account settlement without sufficient prior explanation to the suppliers of the grounds for the calculation and use of the contributions under the pretext of “advertising balloon support”.
- e) On the grounds that sales in August and December were expected to increase, Valor coerced suppliers for the supermarkets into offering monetary contributions as much as 1% of the amounts of their transactions in both months every year under the pretext of “1% return”.
- f) On the occasion of acquiring stores that were managed by another company and launching them as new ones in the home center business, Valor coerced suppliers into purchasing goods with the aim of disposing of the store’s inventories, taking advantage of the transaction with the suppliers.
- g) The JFTC found these acts to be in violation of Section 19 of the AMA, specifically falling under Paragraphs 6, 7 and 8 of Specific Unfair Trade Practices by Large- Scale Retailers Relating to the Trade with Suppliers and under Item 1, Paragraph 14 (Abuse of Dominant Bargaining Position) of Unfair Trade Practices, and issued a cease and desist order against Valor pursuant to the provisions of Paragraph 1 and 2, Article 20 of the AMA.

¹ “Suppliers for the supermarkets” mean suppliers that have continuous transactions of commodities, which Valor sells in its grocery supermarkets, with Valor in the area. A lot of their bargaining positions are inferior to Valor.

² “Suppliers for home center” mean suppliers that have continuous transactions of commodities, which Valor sells in its home centers, with Valor. A lot of their bargaining positions are inferior to Valor.

5.2 *Case against Nishimuta CO., Ltd (Cease and desist order on 27 March 2007)*

- a) Nishimuta Co., Ltd (hereinafter referred to as “Nishimuta”) is a company that engages in the retail sales of mainly housing-related goods. Nishimuta is the largest retailer selling housing-related goods, whose head office is located in the South Kyushu area. Nishimuta is also the largest retailer that develops so-called “supercenters” selling not only housing-related goods but also food products and clothing products in the same area. Its sales have increased annually in recent years.
- b)
 - i) Even when there is no reason attributable to the suppliers³, Nishimuta returned goods in all or in part that were suffering from a low turnover ratio to the suppliers and on which it decided not to make any discount sales on its own account.
 - ii) Even when there was no reason attributable to the suppliers, Nishimuta coerced the suppliers into accepting a price reduction of the delivery price of goods purchased by it by such amounts as were necessary to make up for the decreased profitability as a result of discount sales that it decided to make.
- c)
 - i) In a case where Nishimuta refurbished its shop and made discount sales on stocked merchandise for the purpose of disposal, Nishimuta coerced the suppliers of such merchandise to reduce Nishimuta’s invoiced price by an amount corresponding to one half of the discounted amount, even when there was no reason attributable to the suppliers.
 - ii) Nishimuta returned goods in all or in part that remained unsold despite discount sales made under i) above to the suppliers, even when there was no reason attributable to the suppliers.
- d) When refurbishing their stores, Nishimuta coerced their suppliers to dispatch employees to engage them in displaying or replenishing goods as part of its own business operations.
- e) The JFTC found these acts to be in violation of Article 19 of the AMA (under Paragraphs 1, 2 and 7 of Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers”). Accordingly, the JFTC issued a cease and desist order against Nishimuta, pursuant to the provisions of Paragraph 1, Article 20 of the AMA.

5.3 *Case against Yamada Denki Co., Ltd. (Cease and Desist Order on 30 June 2008)*

- a) Yamada Denki Co., Ltd. (hereinafter referred to as “Yamada Denki”) is a company that engages in retail sales of TV sets, refrigerators, PCs, digital cameras and family video game software, etc. Yamada Denki is the largest retailer selling home electric appliances in Japan, which has expanded the scale of its retail business by making other home electric appliance retailers its subsidiary companies, etc.
- b) Yamada Denki coerced the suppliers of TV sets, refrigerators, PCs, digital cameras and family video game software etc., which have continuous dealings with it and are in positions inferior to it, to dispatch their employees, etc. Yamada Denki had such employees display and restock goods and attend to customers, etc. at its newly opened or remodeled shops regardless of whether or not the goods were from such suppliers though it had not concluded any agreement on dispatching conditions with the suppliers and did not bear the cost usually required to have temporary staff dispatched.
- c) Yamada Denki coerced the suppliers of PCs and digital cameras at positions inferior to it to dispatch their employees, etc. without concluding any agreement on dispatching conditions with the suppliers and without bearing the cost usually required to have temporary staff

³ “Suppliers” in this case mean entrepreneurs that engaged in the retail sale of housing-related goods, food products or clothing products, continuing their transactions with Nishimuta, and whose bargaining position is inferior to Nishimuta.

dispatched. It had such dispatched employees initialize the settings of the goods used for display at the shops or returned from customers among those purchased from such suppliers so that it could sell them as "Discounted goods used for display."

- d) The JFTC found these acts to be in violation of Article 19 of the AMA (Paragraph 7 of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers). Accordingly, the JFTC issued a cease and desist order against Yamada Denki, pursuant to the provisions of Paragraph 1 and 2, Article 20 of the AMA.