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**COMPETITION AND FINANCIAL MARKETS**

**Roundtable 3 on Real Economy: The Challenges for Competition Policy in Periods of Retrenchment**

**-- Note by Japan --**

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## CHALLENGES FOR COMPETITION POLICY IN A PERIOD OF RETRENCHMENT

### -- Contribution by Japan --

#### 1. Introduction

1. During the period of economic downturn triggered by the financial crisis, there is the possibility of growing pressure on competition policy to loosen enforcement to prioritize the economic recovery.

2. On the other hand, based on the experience of the Fair Trade Commission (JFTC) during the period of the last financial and economic crisis, while it may be possible to take short-term measures, such as speeding up merger investigations for failing or distressed companies that satisfy certain conditions, it is inadequate to allow an anticompetitive market structure that is inconsistent with the principle of competition law because it will cause serious negative harm to the economy in the medium and long term. It is necessary to steadily implement and enforce competition law by taking into consideration how the medium and long term effect on competition is affected by the structural change caused by the intensification and the concentration of industries as a result of the financial and economic crisis.

3. The following sections describe the financial crisis in Japan in the 1990s and policy responses to it and introduce competition policy developments during the same period.

#### 2. Responses to the financial and economic crisis in Japan

##### *2.1 The situation of the financial and economic crisis in the 1990s and the outline of the government policy response*

4. The financial crisis in the 1990s and the current financial crisis evolved in a similar fashion, as is explained as follows:

- Irresponsible lending had been widespread prior to both crises, on the assumption that real estate prices would continue to go up.
- The financial market turmoil was triggered by the decline in real estate prices.
- The adverse effect of the market turmoil spilled over to the real economy.
- The turmoil resulted in a system-wide financial crisis, thereby necessitating public intervention by governments and central banks.

5. In light of the above-mentioned points, this section introduces (1) the background which necessitated the injection of public funds into the financial institutions, and (2) the process of the development of such a funding scheme.

*2.1.1 After the bubble burst (first half of the 1990s): burden sharing by private financial institutions and its limits*

6. In the early 1990s, failing financial institutions were bailed out in the form of acquisitions or business transfers and by finding rescuing financial institutions on a case-by-case basis. During this period, as rescuing and other relevant financial institutions still had some financial strength to help other financial institutions, all the debts including the deposits of failing institutions were protected in every case by making them assumed by the rescuing financial institutions through the combination of (a) financial aid (up to the amount covered by the payoff system) from the Deposit Insurance Corporation (DIC) and (b) loss sharing by the relevant financial institutions.

7. However, in the mid 1990s, as the number of bank failures increased, it became difficult not only to find rescuing institutions but also to ask other relevant institutions for assistance. The Japanese government decided, as a limited measure for five years, to protect all the debts, including the deposits of the failing institutions, by increasing the amount of financial assistance from the DIC and requiring financial institutions to take on an additional insurance premium as a funding source (published in June 1995 and implemented in June 1996). At around the same time, the Resolution and Collection Bank (RCB) was established<sup>1</sup> as a permanent institution to assume the assets and the debts of the failing credit associations with the aim of facilitating their smooth resolutions.

*2.1.2 The progress of the financial crisis (second half of the 1990s): the spillover of the crisis to large financial institutions and the injection of public funds*

8. The successive failure of Sanyo Securities, Hokkaido Takushoku Bank and Yamaichi Securities in November 1997 provided momentum for policy measures taken in February 1998, such as (1) defining the role of the RCB as the general institution for bailing out (not only failing credit associations but also) all types of failing deposit-taking institutions, including banks, and preparing the framework of utilizing public funds to deal with the failure of deposit-taking institutions (the size of the fund started with 17 trillion JPY); (2) introducing a scheme for funding the shortage of capital of financial institutions by using public funds (the size of the fund started with 13 trillion JPY).

9. However, in the middle of 1998, the necessity of further improvement of the regulatory framework became clear as the financial trouble of the Long-Term Credit Bank emerged. Thus, in October 1998, (1) a system for maintaining the financial operation of the failed institutions to search for acquirers afterwards [Special Public Management (temporary nationalization), Financial Reorganization Administrators System, and Bridge Bank System] and (2) a system for purchasing non-performing loans from healthier financial institutions were established, and at the same time, (3) the scheme for financing the shortage of the capital of banks was improved and expanded (the size of the fund became 25 trillion JPY).

*2.1.3 The promotion of structural reform and the recovery from the economic slump (after 2000): the development of a permanent framework*

10. By utilizing the framework that had been improved step-by-step, failing financial institutions such as the Long-Term Credit Bank and the Nippon Credit Bank were temporarily acquired by the government. Furthermore, in 1999, large-scale capital injection from public funds (about 7.5 trillion JPY to the 15 large banks) was executed and the financial crisis gradually came to an end through the progress of

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<sup>1</sup> During the period between the announcement and the implementation of these measures, public funds up to JPY 685 billion were separately required to solve the trouble of housing loan companies, which became the first large-scale bailout through public funds and raised a big political issue.

restructuring large financial institutions as well as the disposal of non-performing loans based on the so-called the Program for Financial Revival.

11. Along with the calming down of the financial crisis, the measure of protecting full deposits was partially abolished (through lifting the freeze on the payoff for time and savings deposits), and after confirming the disappearance of anxiety over the financial system, the payoff system was fully implemented. (Payment and settlement deposits satisfying certain conditions are fully protected and other deposits are protected up to a maximum principal of 10 million JPY plus accrued interest thereon.)

12. At the same time, a system to deal with the failures of financial institutions was developed by making the measures introduced gradually during the 1990s (Financial Reorganization Administrators System and Bridge Bank System) permanent. In addition, based on the experience of tackling the anxiety over the financial system since the 1990s, the existing systems were restructured and the following three measures were institutionalized to address the systemic risk: (1) capital injections by public funds to the financial institutions that run short on capital, (2) protection of all debts including deposits by financial assistance exceeding the pay-out cost in the process of the bailing out of failing institutions, and (3) temporary nationalization by the authorization of Special Crisis Management.

13. These measures to address the systemic risk have institutionalized beforehand financial assistance from public funds based on a decision by the government under strict requirements<sup>2</sup>.

14. Under these permanent frameworks, public funds were used to recapitalize Resona Bank in June 2003 and Ashikaga Bank became temporary nationalized by the start of the Special Crisis Management program in November 2003, which contributed to dispel anxiety over the financial system and the recovery of the credibility of the market.

## **2.2 *Lessons learned from Japan's experience regarding financial sector regulations***

15. As explained above, Japan overcame its financial crisis by using as much as 100 trillion JPY, that is, about 20% of the GDP, to deal with the non-performing loans after the bubble burst.

16. The bitter experience of Japan in the 1990s suggests several useful lessons, as below.

17. The first lesson is that prompt and accurate recognition of losses is essential. In the early 1990s, Japan did not have effective frameworks in place for disclosure and provisioning with respect to non-performing loans. This gave financial firms incentives to postpone the disposal of their non-performing loans, and the country plunged into a negative spiral of credit crunch and deterioration of the real economy.

18. The second lesson is that toxic assets need to be taken off the balance sheet. This is crucial in order to break the negative spiral. If a financial firm were to undertake provisioning only and leave the assets on its balance sheet, it would be difficult to restore full market confidence as additional losses on those assets could be incurred later.

19. Third, undercapitalization of financial firms needs to be addressed quickly, by injecting public funds if necessary. Prompt and sufficient recapitalization is needed if a financial firm becomes

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<sup>2</sup> To be more precise, in order to implement exceptional measures to deal with the systemic risk, it is necessary for the Prime Minister to “deem that an extremely serious threat is posed to the maintenance of financial stability in Japan or a region where financial institutions are conducting operations”, following discussions by the Financial System Management Council. (The council is chaired by the Prime Minister and consists of the Chief Cabinet Secretary, the Minister for Financial Services, the Commissioner of the Financial Services Agency, the Minister of Finance, and the Governor of the Bank of Japan.)

undercapitalized as a result of the disposal of bad assets. In cases where a sufficient amount of capital cannot be raised on a market basis, recapitalization with public funds is effective as a final safety net.

20. Fourth, exceptional measures, such as a blanket guarantee of bank deposits and the temporary nationalization of troubled banks can be options in times of serious crises.

21. The fifth lesson is that short-term measures and a re-design of the regulatory framework in the medium-term need to be implemented simultaneously and in a balanced manner. If the policies lean too much toward crisis management, they could cause moral hazard or distort the system in the long run. On the other hand, the hasty implementation of medium-term measures could rather exacerbate the situation and make crisis management even more difficult.

### **3. Competition policy developments under the financial crisis from the 1990s onward**

22. As explained in 2 above, the burst of the economic bubble in the 1990s and the financial and economic crisis afterwards caused serious problems. To maintain the financial system, the Japanese government took exceptional measures, such as the injection of public funds, the full protection of bank deposits and the temporary nationalization of troubled banks.

23. On the other hand, from the perspective of competition policy, special measures, such as more lenient merger control for failed financial institutions, were not taken, nor was the enforcement standard of competition law applied to other distressed industries and firms relaxed when the financial crisis spilled over into the real economy and caused a long-term economic slump. Instead, during the same period, based on mid- and long-term perspectives, e.g. market liberalizations, regulatory reforms and structural reforms, competition policy as a whole tended to be strengthened.

#### ***3.1 Immediately after the economic bubble burst (in the early 1990s)***

24. In the early 1990s, the Japanese economy faced the burst of the bubble, while issues such as the gap between the nation's economic power and the public's actual feeling about their lives, the imbalance of external trade and Japan's market system became problems. Therefore, it became an important issue to seek continuous economic growth supported by domestic demand, to further open up Japan's market and to improve people's daily lives based on the perspective of giving higher priority to ordinary citizens and consumers. Against this background, expectations and demands grew for the role of competition policy, whose objects are to advance fair and free competition for domestic and foreign entrepreneurs, to improve competitive conditions so that each entrepreneur can do a lively business activity based on his/her independent decision-making and creative ingenuities and to ensure the sound development of Japan's economy and the interest of consumers.

##### ***3.1.1 Structural reform in the distribution sector***

25. From the perspective of further opening up Japan's market, the Structural Impediments Initiative (SII) talks between the U.S. and Japanese governments, which had commenced in 1989, gave rise to wide-ranging debates concerning Japan's distribution system, trade practices and so on, and had a major influence on the formation of competition policy at that time.

26. In parallel with these talks, the Japan Fair Trade Commission (JFTC) held meetings of the "Review Committee Concerning Distribution Systems and Business Practices, etc. and Competition Policy", and it examined the actual situation of Japan's distribution systems and business practices, evaluated them from the viewpoint of competition policy, and explored the direction of actions to be taken. The JFTC and the Review Committee put together its report in June 1990. And based on a proposal from

the Committee, the JFTC formulated and published the “Guidelines Concerning the Distribution Systems and Business Practices under the Antimonopoly Act” in July 1991.

27. The guidelines attempted to comprehensively and concretely clarify the contents of the regulations stipulated in the Antimonopoly Act (AMA) and the enforcement policy of the JFTC, covering every aspect of distribution systems and business practices, including production materials and capital goods, and based on the reality of business transactions prevailing in Japan. The guidelines were especially noteworthy because they aimed to prevent violations, improve the transparency of law enforcement and promote domestic and international understanding towards competition policy in Japan. In response to the publication of the guidelines and based on their content, Japanese industries voluntarily began to change their business practices to make them more agreeable to the guidelines.

28. In addition, the provisions of the AMA do not apply to resale price maintenance on “a commodity, which is designated by the JFTC” and “the work” under specific conditions (previously Article 24-2 and currently Paragraph 1 and 4 of Article 23). Based on the provisions, in 1989 the number of commodities designated by the JFTC was 26 under certain general non-prescription drugs and 14 under certain cosmetics with a retail price of less than 1,000 Japanese Yen. However, in order to meet the growing need to review the designated commodities from the viewpoint of regulatory reform, in April 1992, the JFTC announced that it would completely review and phase out the designation of commodities. According to this policy, the JFTC gradually limited the scope of the designated commodities, and as a result, there has been no commodity designated by the JFTC since April 1997.

### *3.1.2 Strengthening deterrence against violations of the AMA*

29. In the early 1990s, the JFTC took actions to introduce more effective deterrents to prevent violations<sup>3</sup>. In connection with these efforts, the amended AMA, including expansion of the surcharge rate, was approved in April 1991, and another amended AMA calling for heavier criminal penalties was approved in December 1992. As a result, the AMA amendments increased the surcharge rate (from 1.5% of sales to 6%) and increased the criminal penalties for a juridical person in the case of double punishment (fine for certain AMA violations up to 100 million yen).

30. By amplifying and strengthening investigative capacities against violations, the number of JFTC staff in the investigation department increased dramatically from 154 in FY 1990 to 220 in FY 1995 (an increase of 66 staff)<sup>4</sup>. This effort resulted in a dramatic increase in the number of legal measures against violations of the AMA; from an average 9.6 cases a year between FY 1986 and FY 1990 to an average 30.2 cases a year between FY 1991 and FY 1995.

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<sup>3</sup> In June 1990, the JFTC published the “Policy on Criminal Accusations Concerning the AMA violations” and adopted an active policy to apply criminal accusation to violations which a) constitute serious cases that are likely to have a widespread influence on the national economy, including price-fixing cartels and bid-riggings or b) involve firms or industries that are repeat offenders and for which the administrative measures of the JFTC are not considered to be sufficient to meet the aims of the AMA.

<sup>4</sup> The SII final report (June 1990) suggested as a measure against exclusive trade practices, etc that Japan should expand and strengthen the investigation capacities of the JFTC for rigorous enforcement. The Diet resolution accompanying the enactment of the 1991 amended AMA, which would increase the surcharge rate, also required implementing necessary measures to expand the organization and increase the JFTC staff (March 1991 in the Committee on Commerce and Industry, House of Representatives).

(Appendix) Trends in the number of legal measures (from FY 1986 to FY 1995)

FY		1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Legal measures	Recommendation	8	4	6	7	22	30	34	31	21	26
	Surcharge Payment order (Note)	0	0	1	0	0	1	0	0	3	5
	Total	8	4	7	7	22	31	34	31	24	31

Note : Orders Without Recommendation

### 3.2 Progress of the financial crisis (in the late 1990s)

31. While the financial crisis was aggravated as the problem of non-performing loans besetting financial institutions caused by the burst of the bubble worsened and made some financial institutions run into financial difficulties, the yen's appreciation exposed the price differential within and outside the country as well as urged enterprises to shift overseas, which resulted in the hollowing-out of industry and employment uncertainty. Under these circumstances, the need to reform the economic structure was stressed more for the purpose of further opening up Japan's market at home and abroad.

#### 3.2.1 Efforts for regulatory reform

32. The JFTC had long been conducting mid- and long-term reviews of the government's regulatory system from a perspective of competition policy. "The Deregulation Action Plan" decided by the Cabinet on March 31, 1995, stated that "the government shall actively promote competition policy along with deregulation to make the Japanese market more open by enhancing fair and free competition in the Japanese market". The Government of Japan places these efforts as the top priority. To make the Japanese economy and society internationally open and based on the principles of self-responsibility and market principles through fundamental structural reform and to change government administration from one that emphasizes ex-ante regulation to one that employs ex-post facto checks, the deregulation of entry or price regulation was promoted and implemented in sectors such as logistics and distribution, energy, telecommunications, financial services, passenger transportation, etc. after the action plan was launched.

33. To promote fair competition in the sectors where regulatory reform was implemented, the JFTC published, in cooperation with relevant ministries, guidelines concerning administration that take into consideration consistency between the AMA and the relevant business laws. The JFTC published the "Guidelines Concerning Appropriate Electric Power Dealings" in 1999 with the Ministry of Economy, Trade and Industry (METI), the "Guidelines Concerning Appropriate Natural Gas Dealings" in 2000 with the METI and the "Guidelines for Promotion of Competition Policy in the Telecommunications Business Field" in 2001 with the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT).

#### 3.2.2 Review of Exemptions

34. One of the significant achievements in competition policy of the late 1990s is the substantial progress made in reviewing exemption systems under the AMA. The JFTC considered positively the review of exemptions along with the promotion of deregulation by the government as a whole based on "the Deregulation Action Plan", "Revision of the Deregulation Action Plan" (Cabinet decision, March 1996) and "Three-Year Deregulation Plan" (Cabinet decision, March 1998), and requested the relevant ministries concerned to review the exemption systems. As a result, three legislations to revise the exemption system were taken in 1997, 1999 (abolishing the depression cartel system and the

rationalization cartel system) and 2000, which led to the reduction of the number of exemptions from 89 systems under 30 laws as of the end of March 1996, to 21 systems under 15 laws as of the end of March 2001 and up to the present.

### *3.2.3 Improvement of merger control regulations*

35. The JFTC has examined business combination (M&A) cases based on provisions in Chapter 4 of the AMA. Since the late 1990s, with the increase of large-scale business combinations due to rapid changes in the economic environment, such as the globalization of business activities, the JFTC proceeded with the improvement and the appropriate implementation of regulations on business combinations to secure a competitive market structure in the Japanese market.

The 1998 amendment of the AMA (Review of regulations on M&As outside of Japan, reduction of the scope of reporting and notification requirements)

36. To review the regulations on business combinations from the viewpoints of their purpose, reducing the burdens on companies, and ensuring the international harmonization of the system, the JFTC considered an amendment bill of the AMA through the establishment of the “Subcommittee for Review of Regulations on Business Combination”. The bill, which aimed to reduce the scope of reporting and notification requirements regarding mergers and stockholding and to improve examination procedures, was enacted on May 22, 1998, promulgated on May 29, 1998, and came into force on January 1, 1999. (Some parts of the enactment were put into force immediately upon promulgation.)

The publication of Merger Guidelines (1998)

37. Prior to the effectuation of the amended AMA on January 1, 1999, the JFTC had newly formulated and published the “Guidelines for Interpretation on the Stipulation that ‘The Effect May Be Substantially to Restrain Competition in a Particular Field of Trade’ Concerning M&As” in December 1998, in order to improve transparency and predictability regarding the implementation of regulations on business combinations such as stockholdings and mergers, etc.

## ***3.3 Promotion of Structural Reform (Koizumi’s Reforms since 2000)***

38. Since 2000, major changes have been taking place in the environment surrounding the economy and society, including the globalization of the economy and remarkable technological innovation. The Koizumi Cabinet advocating “economic structural reform” was established in 2001. In his general-policy speech on May 7, 2001, Japanese Prime Minister Junichiro Koizumi regarded “strengthening the structure of the JFTC, which should serve as the guardian of the market, thereby establishing competition policies appropriate for the 21st century” as an important pillar of economic structural reform for the revitalization of the Japanese economy. This speech led to further proactive development of competition policy.

### *3.3.1 Establishment of competition policy appropriate for the 21<sup>st</sup> century*

39. As noted above, the JFTC drew up the “Grand Design for Competition Policy for the 21<sup>st</sup> century – making it well functioning as the guardian of the market” in June 2001, which consisted of the following 3 points: “Law Enforcement consistent with the Trend of Structural Reform”, “Promotion of a Competitive Society based on Rules” and “Proactive Creation of Competitive Environments”. The JFTC held meetings convened under “The Committee Considering Competition Policy Appropriate for the 21st century” comprised of outside experts to consider the role of competition policy appropriate for the 21<sup>st</sup> century, as well as the organizations and functions needed to implement such a policy. The committee compiled the results of its examination as a recommendation on “The Role of Competition Policy and the Japan Fair Trade Commission for the 21st Century”, including the review of penalties, etc.



### 3.3.2 *Strengthening and Amendment of the AMA*

40. In light of the recommendation discussed above, etc, beginning in October 2002, the JFTC held a Study Group on the Antimonopoly Act consisting of academic experts, etc, regarding the review of the penalty system and regulations on monopolies and oligopolies, published the study group's report and continued with the study of the amendment bill of the AMA. The bill was passed in April 2005 and the amended AMA was put into force from January 2006 to break away from the structure of bid-rigging and conformist behavior and to establish a competition policy suitable for the 21st century. The main amendments were (a) revision of the surcharge system, (b) introduction of a leniency system, (c) introduction of compulsory measures for criminal investigations, and (d) revision of hearing procedures. The amended AMA is being implemented smoothly, and its expected effects are steadily being realized<sup>5</sup>.

### 3.3.3 *Strengthening and amplifying the capacity of the JFTC*

41. In light of the general speech by Japanese Prime Minister Koizumi, in which he said, "we will strengthen the structure of the JFTC, which should serve as the guardian of the market", the move towards strengthening the function of the JFTC was spurred. Trends in the number of officials in the General Secretariat of the JFTC are as follows. Despite trends for slimming down the administration under overall administrative and financial reform, the expansion of the capacity of the JFTC shows remarkable evidence of competition policy's standing among government policies.

#### (Appendix) Trends in the number of officials in the General Secretariat of the JFTC

FY	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Number of officials	558 (260)	564 (263)	571 (269)	607 (294)	643 (318)	672 (331)	706 (360)	737 (383)	765 (409)	795 (429)
Increased number	+6 (+6)	+6 (+3)	+7 (+6)	+36 (+25)	+36 (+24)	+29 (+13)	+34 (+29)	+31 (+23)	+28 (+26)	+30 (+20)

Note : The number in each parenthesis means staff of the investigation bureau.

### 3.3.4 *Measures under the efforts for industrial revitalization*

42. In order to revitalize the economic resources of the enterprises with excessive debts and to solve the issue of excessive supply structures, the Government of Japan adopted the "Basic Policy for Corporate and Industrial Revitalization" (December 19, 2002, Strategic Headquarters for Industrial Revival and Employment Measures) and decided to adopt all consistent policy measures with regard to corporate and industrial revitalization. This policy provides that the JFTC should adopt special guidelines for the cases that would be the objects of the Law on Special Measures for Industrial Revitalization and make efforts to accelerate the merger review on such cases with the cooperation of the concerned entrepreneurs.

43. Based on the fact that corporate and industrial revitalization was the current topic of importance, and that a quick response was required, on April 9, 2003, the JFTC published the "Guidelines for Merger Investigations on Cases concerning Corporate and Industrial Revitalization" in order to further accelerate its review, with the cooperation of the firms concerned, on mergers related to projects that will become the subject of the revised Law on Special Measures for Industrial Revitalization. Furthermore, the JFTC organized a special team within the relevant division in charge and made efforts to improve the capacity

<sup>5</sup> As to the leniency program, there have been 179 applications as of the end of March 2007. Cases upon which the JFTC took measures include those based on self-reporting information sources. In addition, regarding criminal cases, the JFTC has filed criminal accusations with the Prosecutor General in 4 cases as a result of investigations conducted by the newly established Criminal Investigation Department.

for faster review of cases concerning projects that would become the subject of the revised Law on Special Measures for Industrial Revitalization. As a result, for example, while the average number of days required for Phase I review on ordinary cases in FY 2004 was 22.3, the average number of days for Phase I review on the cases that were the object of the revised Law on Special Measures for Industrial Revitalization was 17.3

#### **4. What competition policy should be like during difficult economic times based on Japan's past experience**

44. In facing a financial and economic crisis, the pressures to relax the enforcement of competition law tend to grow stronger. However, it is necessary to avoid wherever possible such policy measures that have the likelihood to change the market structure into an anti-competitive one in the long-term. The General Guidelines for Positive Adjustment Policy (PAP)<sup>6</sup> approved by the OECD Council in June 1978 has suggested principles of structural adjustments as follows: (1) adjustments should rely on the market mechanism as much as possible; and where government finds it necessary to intervene in industries (2) actions should be temporary and phased-out; (3) incentives for improved management practices should be provided by ensuring sufficient domestic and international competition; (4) costs should be made as evident as possible, etc..

45. The Positive Adjustment Policy affected policy responses to the past economic crisis in Japan. During the structural depression after the oil crises, the so-called Structurally Depressed Industry laws, that is, the Law on Temporary Measures for Stabilization of Specified Depressed Industries (1978), the Law on Temporary Measures for the Structural Improvement of Specified Industries (1983) and the Law on Temporary Measures to Facilitate Industrial Structural Adjustment (1987) were drafted. In the process of the legislation of these acts, there was, at first, a strong tendency of requiring government intervention from the viewpoint of industrial policy, such as considering or implementing instructed cartels by the government and exemptions to the AMA. However, because of the JFTC's actions and the influence of so-called "Positive Adjustment Policy" approved by the OECD, these laws ended up substantially taking into consideration competition policy, which is shown by the following facts: (1) the JFTC's agreement was required even if cartels instructed by the relevant Ministers were allowed; (2) in the later legislation of the above laws, in order to implement business alliances within the framework of the AMA, a coordination scheme was drawn up between the relevant minister and the JFTC regarding the relevant minister's approval of the alliances; (3) cartels instructed by the relevant ministers were not allowed in the 1987 law.

46. Besides, during the economic and financial crisis of the 1990s after the economic bubble burst, as explained in 3 above, the institution of the competition authority and the enforcement of competition law were strengthened in Japan. Under the serious financial and economic crisis, while measures were taken to make the review period shorter for certain business combinations that had little possibility of raising competitive concerns among the cases to which the Law on Special Measures for Industrial Revitalization, whose objective is to respond to the issue of excessive debt and the issue of excessive supply structures, was applicable, no special measures were taken for particular industries and enforcement standards of the AMA were not relaxed. On the other hand, the number of exempted cartels to the AMA was substantially reduced during that period and the function of the AMA, as well as the role of the JFTC, were strengthened.

47. Therefore, taking anticompetitive measures as a way to counter a financial and economic crisis should be avoided as far as possible because there is a possibility that such measures may negatively affect the economy in the mid- and long- term, even if they are taken only for a short period. In fact, the

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<sup>6</sup> Annex II to the Communiqué of 1978, Meeting of the OECD Council at Ministerial Level in June 1978 Communiqué.

promotion of competition from the perspective of the mid- and long- term can lead to positive effects on economic growth<sup>7</sup>. It is believed that cutting waste in the economy and increasing efficiency through competition can enhance productivity and contribute to economic growth.

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<sup>7</sup> The Structural Reform Evaluation Report published by the Cabinet Office in 2006 analyzed the connection between the progress of regulatory reform and the productivity growth rate over 7 years from 1995 to 2002, including the age of the 1990s financial and economic crisis. This report concluded that the correlation between progress in regulatory reform and productivity growth is statistically significant. The progress of regulatory reform, such as entry/exist control, is closely related to a competitive environment of the market. It would be suggested that improving regulatory reform has the possibility to lead to increasing productivity.