

The speech by Mr. Kazuhiko Takeshima, Chairman of the Japan Fair Trade Commission (sponsored by ABA Section of International Law and Practice and Section of Antitrust Law) was cancelled due to Hurricane Isabel, which attacked the DC area. However, the text of the following speech was distributed to the members of both Sections.

**TOWARD THE NEW DESIGN OF COMPETITION
POLICY IN JAPAN**

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BEFORE
AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW AND PRACTICE
AND
SECTION OF ANTITRUST LAW

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I. Introduction

Good evening, ladies and gentlemen. I am currently visiting Washington, D.C. to exchange views with the competition authorities of the United States Government. I am very honored that this visit has afforded me this opportunity to speak before the distinguished members of the American Bar Association, the Section of International Law and Practice, and the Section of Antitrust Law who play a vital role in this country. Many thanks to today's coordinator Mr. Tritell and today's commentators Mr. Cunningham and Mr. Rill. In my address tonight, I intend to outline and discuss various aspects of the competition policy that the JFTC is aiming to achieve.

As I have already mentioned, the purpose of my visit is to hold discussions with the competition authorities of the United States Government. This bilateral exchange has a considerable history to it. These meetings were started in 1977, and the sessions this year mark our 25th meeting. Not only have these discussions promoted the development of closer cooperative ties between the competition authorities of our two countries, but they have indeed made an important contribution to development of our overall bilateral relations. Over the years, the JFTC has learned much from the United States, one of the international leaders in competition policy which enacted the Sherman Act in 1890 and where people believe that "Competition is the cornerstone of our Nation's economic foundation." Acting on what we have learned, the JFTC has constantly endeavored to establish the principles of competition among the Japanese businesses.

In the midst of the socio-economic transformation in a global scale, the Japanese economy faces stagnation due to complex structural elements, not merely from cyclical changes of the economy. In order to overcome the current situation and to make it possible to realize rebirth and greater development of Japan by creating a structure befitting the 21st century, Prime Minister Koizumi has been struggling with bold structural reform under the slogan of "No growth without structural reform."⁽¹⁾

A program integrating competition policy and regulatory reform constitutes an essential and indispensable component of structural reform. Needless to say, it is the JFTC that is responsible for promoting competition policy. As you may know, in April of this year, the JFTC changed its status into an agency under the Cabinet Office from that under the Ministry of General Affairs.⁽²⁾ As the agency with principal responsibility in the area of competition policy, the more appropriate position of the JFTC within the government was that under the Cabinet Office which is headed by the prime minister and is in charge of planning and drafting proposals pertaining to key policies at Cabinet level. This change in itself symbolizes the firm establishment of competition policy as an important component of the government's economic policies. When Japan's Antimonopoly Act was enacted in 1947, our society believed in harmonious

cooperation among businesses over competition. There was also a period in which industrial policy was given priority over competition policy. The result was considerable retrogression in terms of both systems and implementation of competition policy and the arrival of what is popularly referred to as the “Dark Ages of the Antimonopoly Act.” But after the passage of long years, competition policy has now taken a premier position. While we still continue to hear such views as that bid-rigging may not always be bad, the fact is that Japan is steadily and surely changing. As I will describe later, I believe that we have indeed made considerable progress in this area. However, notwithstanding this progress, voices are heard from foreign countries criticizing the JFTC for not being thorough and rigorous enough in the enforcement of the Act.

In my opinion, one of the reasons for this criticism is that Japan has taken much time to implement necessary changes. I do not deny that Japan, in comparison to other countries, generally requires more time to change and re-orient itself. But there are reasons for this. One of the obstacles to rapid change in Japan is the social and cultural preference for acting through consensus. This exercises a strong influence on all our affairs. Another obstacle is our past memory of success. After all, the business methods and government policies that we are now trying to change are the very same ones that supported Japan through its period of accelerated economic growth and delivered us to the rank of the world's second largest economy. This belief and confidence in past formulas makes it difficult to opt for new policies and perspectives. There is no doubt that past experiences continue to exert a strong influence on the thinking of Japanese corporate executives today. The phenomenon of reform being obstructed by past success is a common phenomenon that can be seen anywhere. But in the case of Japan, the memory of success is so vivid and strong that it makes it much more difficult to surmount the obstacles to change.

Nevertheless, in Japan today, we observe broad support and awareness of the need to implement structural changes and to reinforce competition policy as a key component in the overall program for structural change. As such, I can say that we are steadily moving in the right direction. Thus, in recent years, the market mechanism has come to occupy a far more important role in Japan than in the past.

Another reason for foreign criticism may come from our failure to provide sufficient information on what we are actually doing. I am addressing you tonight as Chairman of the JFTC in the hope that I can help rectify this shortcoming. I intend to take this opportunity by showing that the JFTC has in fact achieved far more than these criticisms acknowledge and that Japan has come a long way toward creating a solid foundation in which competition policy has taken root. For this purpose, I will review the main approaches of the JFTC: the rigorous enforcement of the Antimonopoly Act and the initiatives by the JFTC in the process of regulatory reform. Finally, I will touch upon

some future challenges including the review of the Antimonopoly Act, which I place the highest priority for the current JFTC initiatives.

II. The Rigorous Enforcement of the Antimonopoly Act

I will begin by reviewing our efforts at rigorous enforcement of the Antimonopoly Act.

I believe the most important duty of any competition authority is the rigorous enforcement of competition laws. Strict enforcement and the elimination of violations serve to foster competitive businesses, vitalize the economy and work to benefit consumers. Moreover, we believe that the sure and predictable enforcement of the Antimonopoly Act could prove highly effective in opening and transforming the Japanese markets into those where the same rules of competition apply as in the American and European markets.

Allow me to give you some figures on enforcement by the JFTC in recent years. Between fiscal year 1991 and 2002, we took formal actions with a total of 350 cases, averaging 29 cases per year, showing a steady progress in enforcement. This figure pertains to the number of cases handled. In terms of the number of companies, we took actions against roughly 800 businesses during fiscal 2002 alone ⁽³⁾. It is notable that actions were taken against so many businesses, notwithstanding the fact that Japan does not have a leniency program. I believe it would be difficult to find competition authorities that are as active as we are in terms of enforcement. Not only do we handle a large number of cases, but also we have frequently taken actions against major corporations that are well-known and active throughout the world. This is another indicator of the important impact of the JFTC on the Japanese economy. Our activities are frequently and extensively reported by the media, and the business community has significantly bolstered its compliance efforts. There are few who would deny the importance of competition policy in general. As such, the JFTC has come to be feared and respected by corporations, and I believe this reputation is becoming firmly established in Japan.

On the other hand, in light of the increasing speed at which the Japanese economy is changing, we are aware of the need to further heighten the promptness and effectiveness of enforcement activities. The time required to investigate a case is certainly affected by the number of persons involved in the case, as well as the complexity of the case. We believe the key to the JFTC's success lies in the ability to efficiently allocate our limited staff to cases which correspond directly to the needs of the public and which have the greatest economic impact. In particular, due speed is required in stopping and eliminating actions which stand as barriers to market entry. We have established a task-force to ensure prompt responses in certain priority areas. Currently, we have identified information technologies, public services and utilities, and

intellectual property rights as priority areas. The task-force has been used to increase prompt action in these areas, and we look forward to applying the same approach to other areas in the future.

To ensure prompt and effective action, we understand that it is absolutely essential for us to upgrade our investigative capabilities. For this purpose, the JFTC started to employ experts from outside, particularly private practitioners, to serve on its staff.

This particular decision was based on the increasing number of hearings and suits involving the Antimonopoly Act. This itself is an indication that Japan is beginning to move in the direction of seeking judicial resolutions to business disputes and could be symbolic of the steady changes in our society that have occurred in Japan. Professor Reischauer in his book *The Japanese* wrote: "With litigation relatively infrequent, the role of the lawyer in Japan is much smaller than in the United States."⁽⁴⁾ This observation accurately described the situation in the field of competition law until quite recently. But matters are changing notably.

The number of hearings has increased very sharply since 1997 and now exceeds 100 cases per year, representing a ten-fold increase.⁽⁵⁾ We expect this figure to continue to rise. There has also been a rapid increase in the number of taxpayers suits filed for redress of losses suffered by local government bodies from bid-rigging. Moreover, in an increasing number of cases, local government bodies themselves, which were reluctant in the past, are now filing suits for compensation of damages against collusive participants in such tenders. Finally, we are seeing suits being filed for disclosure of information related to the Antimonopoly Act cases.

These developments have forced the JFTC to assign a large number of staff members to these matters. In this sense, the growth of litigation may put some burden on our ability to enforce the Act. However, it is my belief that this development should be interpreted positively. That is, judicial procedures have a series of significant advantages. For instance, the review of evidence in a hearing procedure followed by a ruling provides for greater transparency and fairness than the recommendation decisions.⁽⁶⁾ Furthermore, such rulings carry far greater weight in terms of the determination of the facts of the case. There are other important advantages as well. A growing number of suits are being filed with the Tokyo High Court for the annulment of the JFTC decisions, and cases that are referred to the courts as criminal cases are certain to be ruled on by the courts. The accumulation of legal precedence in these manners will lend greater clarity to the interpretations of the Antimonopoly Act and will in the long run have a positive impact on the firm establishment of the Antimonopoly Act. Today in Japan, we are seeing a rapid increase in the number of Antimonopoly Act related suits. This inevitably has contributed to the growth in the number of private

practitioners involved with the antimonopoly matters. Unfortunately, in Japan, we have nothing to compare with the American Bar Association Antitrust Law Section. Nevertheless, together with Intellectual Property Law, Antimonopoly Act constitutes a key component of business law in Japan today. In April 2004, a number of law schools, patterned after the American model, will be accepting students for the first time in Japan. ⁽⁷⁾ With the expected increase in the population of legal professionals, I am certain that lawyers working in the field of Antimonopoly Act will be creating their own organizations in the future.

With regard to our efforts to ensure prompt and effective enforcement, I would also like to refer to our involvement in consumer policies.

The aim of our competition policy is to “maintain fair and free competition.” As explicitly stated under Article 1 of the Antimonopoly Act, the ultimate purpose of competition policy is to ensure the benefit of consumers in general. ⁽⁸⁾ While the promotion of fair and free competition concerns companies and businesses, competition among various competing businesses boils down to the effort to be chosen by consumers. On the other hand, the objective of consumer policy is the creation and maintenance of an environment in which consumers can make appropriate choices from among businesses involved in competition. As such, I believe that a unified approach must be taken to competition policy and consumer policy. Given that the provision of accurate information to consumers plays a vital role in ensuring the effective operation of market functions, the JFTC makes an important contribution to consumer protection through its regulation of false or misleading representations.

In the area of regulations on representations, the revision of the Act Against Unjustifiable Premiums and Misleading Representations ⁽⁹⁾ was recently enacted by the Diet. The key provision of this revision allows prompt and effective action to be taken against representations claiming significant superiority in the absence of rational evidence. I understand that the same type of regulation exists in the United States where, by legal precedence, objective claims made without rational evidence have been found in violation of Article 5 of the Federal Trade Commission Act as unfair or misleading acts or practices. Prior to the revision, our administrative action in cases of misleading representations of the effectiveness or performance of a product or service was very time consuming and expensive. The burden of proof was placed on the JFTC which had to refer the product to testing and evaluation by independent organizations. This meant that, even when the supplier of a product or service did not have rational evidence to support its representations, considerable time would be necessary for finalizing and implementing cease and desist order. Consequently, there was always the risk that damage to consumers would continue to grow while this process was

taking its course. The JFTC is committed to fully utilizing the recent revisions in the Act to minimize the damage to consumers.

III. The Initiatives by the JFTC in the Process of Regulatory Reform

Let me move on to the review of our initiatives in the area of regulatory reform, which is the second topic I would like to talk with you today. Needless to say, the activities of the JFTC are focused on the enforcement of the Antimonopoly Act. However, enforcement can be rendered meaningless if government regulations obstruct competition. That is, the forces of competition cannot function fully if there is a lapse in either law enforcement or regulatory reform. We like to say at the JFTC that both enforcement of the Antimonopoly Act and promotion of regulatory reform constitute the left and right wheels of a car.

The JFTC began working on regulatory reform around 1980. In the beginning, our efforts were not appreciated at all by other government ministries. Moreover, it was not until 1990 and the publication of the final report of the Second Council on Administrative Reform that the government as a whole began working toward regulatory reform in a full-fledged way. From our perspective, the intervening ten years constituted a “lost decade” which lies at the root of many of the serious problems with the Japanese economy today. Furthermore, I must point out that even more time had to elapse before general support could be generated for an integrated approach to regulatory reform and competition policy, and for the realization that this approach required the effective reinforcement of competition policy. What I mean to say is that the Japanese process of deregulation might be initially supported simply out of the desire to be liberated from the nuisance of government regulations. The problem was that there was no basic commitment to using deregulation as a tool for activating the functions and operations of the market. So, this is where the root of the Japanese problem lied: for a competition authority, the importance of the integrated approach to regulatory reform and competition policy seemed obvious, but it was not obvious for others. The JFTC continued to advocate our position at every opportunity, but it was not until the Three-Year Program for the Promotion of Deregulation was formulated in 1995 ⁽¹⁰⁾ that the government adopted this general approach as its basic policy. In the case of Japan, the strengthening of competition policy was synonymous to the strengthening of the JFTC. In this sense, the inauguration of the Koizumi Cabinet marked the start of full-fledged approval and support for this course of action. We can say that the process of strengthening Japan’s competition policy was at long last started in earnest.

To promote regulatory reform, the JFTC is actively involved in various activities of competition advocacy. Under this program, we examine the existing regulations in a given field, investigate their impact on competition and issue concrete

recommendations for deregulation based on our findings. In the promotion of regulatory reform, we also collaborate with the responsible ministries and agencies of the government to develop a legal system that will support and promote greater fairness in competition. In newly deregulated areas such as telecommunications, electricity and gas sectors, we have issued guidelines which clearly define actions that violate the Antimonopoly Act in order to encourage new entry and to establish the competitive environment effectively. While these may not be high visibility initiatives, they nevertheless are steadily generating positive results. Therefore, the JFTC will continue to implement these initiatives as important components of its overall program.

IV. Future Challenges

Third and finally, turning to future issues and challenges facing the JFTC, let me discuss the utilization of economic analysis and the comprehensive review of the Antimonopoly Act. I believe that there is much for us to learn in these areas from the legal systems and operational procedures of foreign countries.

I will start with the utilization of economic analysis. In the United States, we find that economic analysis is extensively used by the competition authorities to review corporate mergers and acquisitions. The JFTC is following the U.S. example in this area and is endeavoring to heighten its economic analysis capabilities. Firstly, we are holding joint staff meetings with the U.S. competition authorities to absorb know-how in the area of corporate mergers and acquisitions. Secondly, we are hiring researchers and academics to bolster our capabilities. Such mid-career hiring was not common in Japan until recently.

I think that we can all agree that economic thinking and rationality is the bottom-line in competition policy. In the United States, economics has always been present in anti-trust administration, but even here there is a growing awareness of the importance of applying the principles and methodology of economics to this field. In January of this year, Chairman Muris of the Federal Trade Commission delivered a speech entitled “Improving the Economic Foundations of Competition Policy” in which he advocated the importance of developing a stronger economic foundation for competition policy. I am in complete agreement with this line of thinking.⁽¹¹⁾ In the case of Japan, however, the methodology of economics has not necessarily been fully applied to enforcement of the Antimonopoly Act or to the planning and drafting of competition policy. To correct this shortcoming, the JFTC established the Competition Policy Research Center in June of this year to provide the JFTC staff with opportunities to engage in joint research with economists and other specialists.⁽¹²⁾ The aim of such activities will be to promote theoretical studies of competition policy from the perspective of both economics and law, and to bolster the JFTC’s research capabilities. To commemorate the founding of this Research Center, we shall be hosting an international symposium

to be held in Tokyo in November. Scheduled participants include senior officials of both the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice, and Professor Bresnahan, formerly the Chief Economist of the Antitrust Division. These activities mark the start of a long-term commitment by the JFTC to actively integrating economic analysis into the enforcement of the Antimonopoly Act.

Among other challenges the JFTC is dealing with, I would like to stress the comprehensive review of the Antimonopoly Act.” As I have already mentioned, the basic objective here is to strengthen the enforcement tools of the Antimonopoly Act. Personally, I believe this to be the issue of highest priority for the JFTC today.

The effectiveness of laws hinges to a great degree on their force of deterrence. More than 50 years have passed since the enactment of the Antimonopoly Act, and the conditions of the Japanese economy have undergone tremendous changes during this time. Thus, I believe that the time has come to review the scope of enforcement systems as a whole mandated by the Antimonopoly Act. Such a review should be undertaken from the perspective of whether the present legal system is functioning properly, and how our legal system compares to those of other countries. Allow me to briefly mention some of the factors pointing to the need for such a review. First of all, there is the problem of repeated violations. That is, a significant number of businesses are repeating the same violation. For instance, although the formula for calculating surcharges was raised in 1991,⁽¹³⁾ since then, a certain company was violating the Antimonopoly Act on four different occasions. In recent years, violators in the United States and the European Union have been charged with very high fines or penalties. In comparison, I am afraid that our Antimonopoly Act lacks sufficient deterrence. Furthermore, the U.S. and EU have adopted leniency programs and have used them effectively against numerous international cartels. The OECD is recommending the introduction of such programs.⁽¹⁴⁾

Thought must also be given to the question of whether competition is functioning effectively in the areas of information technologies and public utilities where so-called “essential facilities” exist. That is, the time has also come to review whether current provisions related to monopolies and oligopolies are functioning effectively in the monopolistic and oligopolistic markets of today.

With these questions in mind, in October 2002, the JFTC established a Study Group consisting of experts and scholars to examine the following four important issues concerning enforcement systems of the Antimonopoly Act:

First: Review of current surcharge system from the perspective of enhancing effectiveness of the Act,

Second: Introduction of a leniency program,

Third: Review of investigative powers, including the introduction of the power to obtain search warrant, and

Fourth: Review of regulations related to monopolies and oligopolies.

The Study Group is expected to release its conclusions next month. At this point, it would be improper for me to speculate on their conclusions. However, I want to say that our foremost priority remains in the establishment of the enforcement of the Antimonopoly Act that would gain the acclaim of foreign countries.

The ongoing review of our enforcement systems would lead to the largest revision of the Antimonopoly Act since 1977. The decisions that are made would have an important impact on the Japanese economy and society. As I mentioned, the Study Group is scheduled to finalize its conclusions next month. However, before actually submitting a bill to the Diet for the revision of the Antimonopoly Act, it is necessary to gain the public's broad understanding and support. While the leniency program is now well established in the United States, I have heard that because of the novelty and uniqueness of this program, it took some time before the private bar and business community gained confidence in the program.⁽¹⁵⁾ As I mentioned at the outset, Japanese society attaches great importance to harmonious cooperation. In such an environment, considerable time will no doubt be needed to win the people over to a program which promises leniency to a corporation which betrays its conspirators to deliver incriminating evidence to the authorities. Be that as it may, we certainly must endeavor to win the public support. Personally, I am hoping that the bill for the revision of the Antimonopoly Act can be submitted to the Diet no later than March 2005. My term of office as Chairman of the JFTC is five years, of which one year has already passed. During the first half of the remaining four years, I will be concentrating all my energies on strengthening the Antimonopoly Act through the review of its enforcement systems. During the last two years of my term, I hope to focus on rigorous enforcement to ensure the firm establishment of the revised Antimonopoly Act.

V. Conclusion

I began my address today with the words, "Competition is the cornerstone of our Nation's economic foundation." This is a direct quote from the statement made by Assistant Attorney General Pate of the Antitrust Division before the Committee on the Judiciary of the U.S. House of Representatives on July 24th of this year.⁽¹⁶⁾ Indeed, these are words that very succinctly and accurately portray the mission that staff members of competition authorities must always bear in mind. The members of the JFTC cherish the same principles expressed in these words and are earnestly engaged in the task of rigorously enforcing the Antimonopoly Act with the commitment to realizing the vision that I have outlined here tonight. I look forward to spending the

remaining four years of my term at the forefront of this movement and in re-creating the JFTC into an organization acclaimed and appreciated both at home and abroad.

Given the continued growth in cross-border corporate activities resulting from economic globalization, there is a real need for competition authorities throughout the world to come together to develop closer cooperation. The JFTC is engaged in regular consultation and exchange of views with its American and European counterparts. Similar exchanges are being conducted by our investigators who handle antitrust cases and staff who review mergers and acquisitions cases. I am very happy to note that these initiatives are bearing valuable results. Following the signing of the Japan-U.S. Antimonopoly Cooperation Agreement with the United States in 1999, ⁽¹⁷⁾ Japan concluded a similar agreement with the European Community in July 2003 for establishing closer cooperation in enforcement of anti-monopoly laws. ⁽¹⁸⁾ The U.S. has already concluded such a cooperation agreement with the European Community and is implementing close cooperation in the area of enforcement. With the signing of the Japan-EC agreement, a three-way network linking the competition authorities of the trilateral economic spheres has been completed. Japan is now engaged in negotiations for the conclusion of a cooperation agreement on competition with Canada. Such cooperative ties are made possible because we share among us certain vital principles concerning competition policy. I believe this is a point on which there can be no doubt whatsoever. We look forward in the future to using such networks of cooperation to develop closer ties with the competition authorities of the United States, the European Community and Canada, and to play our part in the surveillance and elimination of international cartel activities that obstruct free trade and investment.

Thank you very much.

Endnotes

(1) “In the midst of the socio-economic transformation in a global scale, the Japanese economy faces stagnation due to complex structural elements, not merely from cyclical changes of the economy. The presence of “negative heritage” such as non-performing loans and fiscal deficits, and the continuation of a deflationary situation which has never been experienced in the post-war period have brought about a significantly negative impact on economic activity and the lives of the people. It is through advancing bold structural reform and creating a structure befitting the 21st century that we can overcome the current situation and make it possible to realize rebirth and greater development for Japan. We will remove the inefficient segments remaining in our economy and society, establish a foundation for taking up the challenges of innovating technology and launching new enterprises, and create an environment in which people can plan for their future feeling secure. We are steadily undertaking each one of these tasks encompassing such diverse areas. I will keep advancing on the course of no growth without reform.” (General Policy Speech by Prime Minister Junichiro Koizumi to the 156th Session of the Diet) (January 31, 2003).

(http://www.kantei.go.jp/foreign/koizumispeech/2003/01/31sisei_e.html)

(2) The formal name of the Ministry of General Affairs is the “Ministry of Public Management, Home Affairs, Posts and Telecommunications.”

(3) Table: The number of remedial measures (FY1991-FY2002)

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Formal Action	31	34	31	24	31	21	31	27	27	18	38	37
Recipients of actions	163	496	638	298	731	113	395	585	935	608	894	805

Sources: JFTC’s annual reports, etc.

“Formal Action” includes recommendations and surcharge payment orders without cease and desist orders.

(4) See Edwin O. Reischauer, *The Japanese*, 266 (1978).

(5) Table: The number of hearing procedures (FY1997-FY2003 (until the end of July))

	1997	1998	1999	2000	2001	2002	2003
Cases brought forward	8	10	34	43	22	61	83
Cases initiated	7	26	15	8	44	30	22
Cases completed	5	2	6	29	5	8	2
Cases in effect at the end of each FY	10	34	43	22	61	83	103

(6) Recommendation Decision: The JFTC may, when the person receiving the recommendation has accepted it, render a decision on the line of the said recommendation without resorting to the hearing procedures (Section 48 (4) of the Antimonopoly Act).

(7) As part of Judicial System Reform in Japan to improve both the quality and quantity of the nation's lawyers, prosecutors and judges so they can meet increasing demand in a wider range of fields, about 70 universities plan to establish law schools modeled on those in the United States in April 2004.

(8) [Section 1 of the Antimonopoly Act]

This Act, by prohibiting private monopolization, unreasonable restraint of trade and unfair trade practices, by preventing excessive concentration of economic power and by eliminating unreasonable restraint of production, sale, price, technology and the like, and all other unjust restriction of business activities through combinations, agreements and otherwise, aims to promote free and fair competition, to stimulate the creative initiative of entrepreneurs, to encourage business activities, to heighten the level of employment and people's real income, and thereby to promote the democratic and wholesome development of the national economy as well as to assure the interests of consumers in general.

(9) Act Against Unjustifiable Premiums and Misleading Representations (Act No. 134 of 1962)

(10) The "Three-Year Program for Promoting Deregulation" decided by the Cabinet in March, 1995

(11) Timothy J. Muris, Improving the Economic Foundations of Competition Policy, delivered in January 2003.

(<http://www.ftc.gov/speeches/muris/improveconfoundatio.htm>)

(12) On June 17, 2003, the JFTC launched the Competition Policy Research Center (hereinafter "CPRC") within its General Secretariat. The CPRC is not only effective for practicing policies as a short term, but also for strengthening the basic ideas on implementing the Antimonopoly Act, planning, evaluating the competition policies as a mid-long term. This is done by the collaboration between outside researchers and JFTC staff, thus it aims to create the functional and continuous collaborative platform.

(<http://www2.jftc.go.jp/e-page/press/2003/june/030611.htm>)

(13) Surcharges, introduced in 1977, constitute an administrative measure ordering the payment of a sum calculated by a certain formula to ensure the practical effectiveness of the anti-cartel regulations. Surcharges are imposed in the case that price cartels and bid-riggings as well as cartels that influence prices by restricting production and/or sales quantity are carried out. The surcharge order is issued to firms and members of trade associations which engaged in such cartels.

When the Antimonopoly Act was amended in 1991, the proportion of calculating surcharges in principle was raised from 1.5% to 6% of the sales amount of the concerned goods during the period of the cartel (maximum three years).

(14) OECD Report on Leniency Programmes to Fight Hard Core Cartels, adopted by the Competition Law and Policy Committee in February 2001, and published in May 2001. In paragraph 52, the report concludes that the "leniency process is useful as a tool for getting information. Leniency-induced confessions produce information that an agency could not get otherwise, at least not without great cost. And the process may have other advantages, beyond simply eliciting confessions."

(<http://www.oecd.org/dataoecd/49/16/2474442.pdf>)

(15) Scott D. Hammond, Director of Criminal Enforcement, Antitrust Division, Department of Justice, *Detecting and Deterring Cartel Activity through an Effective*

Leniency Program, delivered in November 2000.
(<http://www.usdoj.gov/atr/public/speeches/9928.htm>)

(16) R. Hewitt Pate, Assistant Attorney General, Antitrust Division, Department of Justice, Statement before the Committee on the Judiciary, United States House of Representatives, presented on July 24, 2003.
(<http://www.usdoj.gov/atr/public/testimony/201190.htm>)

(17) Agreement between the Government of Japan and the Government of the United States of America Concerning Cooperation on Anticompetitive Activities (concluded on October 18, 1999).

(18) Agreement between the Government of Japan and the European Community Concerning Cooperation on Anticompetitive Activities (concluded on July 10, 2003).