Recent Developments in Japanese Competition Policy
-Prospect and Reality -

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Note: The views expressed in this paper is strictly my own, and not those of the Fair Trade Commission of Japan.

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1. Introduction

I am very much honored to have a chance to talk at the International Antitrust Forum and explain major developments in the area of Japanese competition policy.

In the midst of the socio-economic transformation in a global scale, the Japanese economy faced huge problems due to complex structural elements, not merely from cyclical changes of the economy. In order to overcome such huge economic problems and to make it possible to re-establish our economy ready for steady development by creating an appropriate economic structure for the 21st century, Prime Minister Koizumi has been struggling with bold structural reform program under the slogan of "No growth without structural reform."[1]

Enhancement of competition policy is the core of Koizumi structural reform. Competition is the vital part of economic strategy aiming at the sustainable recovery of Japanese economy through structural reforms. A program integrating competition policy and regulatory reform constitutes an essential and indispensable component of the structural reform. Needless to say, it is the JFTC that is responsible for promoting competition policy.

In order to enhance the effectiveness of enforcement mechanism under the Anti-monopoly Act, the JFTC started its project to amend the Act by convening the Anti-monopoly Act Study Group in Oct. 2003. A recommendation by the Study Group was submitted to the JFTC one year later,[2] and the JFTC announced its amendment proposals based on the recommendation in Dec. 2003.[3] Thereafter, it caused hearted debates and arguments, not only within the government offices, but also among business community and politicians. After these hearted debates and arguments, the Japanese Cabinet approved a bill to amend the Anti-monopoly Act that incorporated various important and significant measures to enhance the effectiveness of the enforcement of the Anti-monopoly Act and the bill was submitted to the Diet on Oct. 15th, 2004.[4]

Today, firstly, I would like to explore the recent development in our cartel regulation area, by also referring such issue as why structural reform must include the program to tighten the sanctions against cartels and bid-riggings, what kind of arguments were observed in Japan on the JFTC proposals to tighten the enforcement mechanism of the Anti-monopoly Act, what is the contents of the bill to amend the Anti-monopoly Act. In order to make it more understandable for American audiences, I will try to describe the reason why this development in Japanese cartel regulation is so important, not only from the viewpoint of Japan but also from that of international antitrust community.

Then, I would like to give you our thoughts on monopolization, abuse of dominant

positions etc. in Japan, another important discussion point at this conference. Enforcement efforts in this area by the JFTC is important to promote new entry to newly deregulated sectors, in particular.

2. Necessity of Anti-monopoly Act Reform in Japan

(1) Enforcement Activities of the Anti-monopoly Act

The most important duty of any competition authority is rigorous enforcement of competition laws against cartel activities. Strict enforcement and prompt elimination of cartels and bid-riggings, in particular, serve to foster competitive process, to encourage new entry and innovation, to vitalize the economy. The benefit of effective competition law enforcement to consumers in general is obvious. Moreover, strict and predictable enforcement of the Anti-monopoly Act could be highly effective in opening and transforming the Japanese market into one where the same rules of competition apply as in the United States and European Union.

The JFTC has been rendering so many decisions against violators of the Anti-monopoly Act (see Annex 1). Between FY 1994 and FY 2003, the JFTC took formal actions with a total of 279 cases, averaging 28 cases per year, showing a steady progress in enforcement of our law. Most of them are related to cartels and bid-riggings. This figure pertains to the number of cases handled by the JFTC. In terms of the number of firms so ordered, the JFTC took formal actions against 405 firms during FY 2003. In FY 2002, the number was 805, and in FY 2001, the number was 928. Total amount of surcharges is ¥4.33 billion as for FY 2002, ¥3.87 billion as for FY 2003. It is notable that those actions were taken against so many firms, notwithstanding the fact that Japan does not have a leniency program. Not only do we handle a large number of cases, but also we have frequently taken formal actions against major corporations that are well-known and active throughout the world.

A sudden jump of cases is observed that go to the administrative hearing stage at the JFTC, namely those cases where a recommendation was not accepted or where the initiation of hearing proceeding was requested by the respondent of surcharge order. More than 150 cases are now pending at the administrative hearing stage, this is 5 times increase within 5 years (see Annex 1). The suit to revoke the JFTC decision that goes to the Tokyo High Court has also increased. Recently, around 4 cases are pending at the end of each year (see Annex 1).

Other than the enforcement activities by the JFTC, municipal governments such as prefectures and cities started to file damage suits against collusive participants to recover their damages caused by bid-rigging, after the JFTC issued decisions finding bid-rigging operations as to their procurement contracts. So far as the JFTC knows, municipal governments filed 19 suits, as of Oct. 2004, to recover damages caused by bid-riggings

relying on Article 25 of the Anti-monopoly Act or related provisions of the Civil Codes. In the past, we could only observe a few taxpayers' suits filed on behalf of municipal governments for the redress of their losses caused by bid-riggings. These taxpayer's suits were filed by a group of residents because municipal governments were reluctant to do so in the past.

Recently, not only national government agencies, many municipal governments also started to incorporate in their procurement contracts a compensation provision in order to recoup their damages in case bid-riggings were revealed. Most of them have a provision to compensate 10% of contracted amount.[5] Suspension of collusive participants from designated bidding is also a standard practice for the procuring agencies once the JFTC found bid-rigging activities. The suspension period was extended from more than one month & less than 9 months to more than 3 months & less than 12 months.[6]

In May, 2000, private suits for injunctions were introduced in the Anti-monopoly Act so far as unfair trade practices are concerned (violations of Section 19).[7] These cases can be filed in the district courts, and once such cases are filed, the district court must inform the JFTC of such filings. The district court may seek the JFTC views on the case. Since this newly created injunction action became available for injured person in April, 2001, there have been 30 cases filed (as of Nov. 2004).[8] This number looks fairly large in such a country as Japan. Besides, the JFTC has a policy to respond to the plaintiffs' requests for materials that are in the possession of the JFTC to be used in the court proceeding.[9] Such measure will improve plaintiffs' ability to recover damages.

As the number of cases increases which go to the court, the ruling by the court increases naturally. The accumulation of legal precedents in these manners will lend greater clarity to the interpretation of the Anti-monopoly Act, and will in the longer run have a positive impact for the firm establishment of the Anti-monopoly Act. Anyway, lack of case laws as to key provisions of the Anti-monopoly Act was one of the important factors that weakened the influence of the JFTC.

(2) Problems the JFTC faces under the present system

Above-mentioned measures against cartels and bid-riggings in Japan may look sufficient to deter those illegal activities. The firms who are involved in bid-riggings of public works are subject to 6% surcharge orders (3% in case of small businesses), suspension from designated biddings, and 10 % of compensatory payment to the contracting agencies. This should be sufficient to deter those illegal conducts.

The JFTC was for the first time authorized to have teeth to bite against cartel activities in 1977, namely surcharge powers, but it proved to be not sharp enough to deter cartel activities. In 1991, the surcharge powers are strengthened from 2% to 6% so far as big firms are concerned. Annex 4 shows that the number of respondent firms that were

subjected the JFTC surcharge orders in the past more than two times. There were even firms that were subjected the JFTC surcharge orders four times within 10 years. What does it imply? Of course, it implies that sanctions against cartels and bid-riggings in Japan are not severe enough to deter those illegal conducts. I believe that for an effective anti-cartel policy, the enforcement agency must have very sharp teeth to bite. As a watchdog of a market, the JFTC must have sharp teeth to bite, in particular against cartel activities. I believe repeated violation problem frequently seen in Japan can only be explained by the lack of sharp teeth to bite on the part of the JFTC and/or the low probabilities of being caught by the JFTC.

Based on this recognition, the JFTC has started its project to increase the rate of surcharges and to introduce a leniency program, among others, in Oct. of 2002 by convening the Antimonopoly Act Study Group. When the Study Group recommendation was announced in Oct. 2003[10], public comments submitted by various influential business associations were quite negative. I guess that international antitrust community was deeply disappointed by knowing such negative responses by Japanese business organizations. Therefore, I feel it is my responsibility to explain to the audiences why Japanese business organizations did raise objections to the JFTC proposals to enhance the effectiveness of anti-cartel policy in Japan. In order to answer to this question, I need to go back to our history briefly.

(3) Harmonization culture v. Competition culture

When Japan's Anti-monopoly Act was enacted in 1947, our society believed in harmonious cooperation among businesses over competition. The Anti-monopoly Act was one of the things that were forced to accept as an occupation policy from the viewpoint of Japanese business community.[11]

During high-growth period, it was natural for the industrial policy consideration to be given priority over competition policy.[12] So long as Japanese business community believes that the economic success of Japan was brought about by successful industrial policy by MITI or other competent ministry and by having close relationship between the government and business, there was no room in Japan for "competition culture" to grow.

"Harmonization culture" has dominated business community for many years, definitely during 1960's and probably up to the end of 1970's. The result was considerable retrogression in terms of both systems and implementation of competition policy and we call this period of the JFTC history ironically as the "Dark Ages of the Antimonopoly Act."

The Japanese government had been adopting views that cartels could sometimes be useful tools of industrial policy.[13] Japan used to have very extensive systems of cartel exemptions from the applications of Anti-monopoly Act. As of the end of FY1969, the total number of cartels authorized under the various exemption laws reached to 1,079.[14]

Definitely, those were the period when "Harmonization culture" had dominated Japanese business thinking.

The Japanese government explicitly has abandoned so-called "Convoy system" in mid-1990's, and drastic reform measures have been implemented in many sectors of our economy.[15] It required to experience serious economic downturn in 1990's for Japanese business community at large to start to appreciate competition policy and regulatory reform. "Harmonization culture" that dominated Japanese business thinking needed to experience culture shock in order to concede to the new one, "competition culture." Needless to say, any culture requires a long time to change, and Japanese business community is in the midst of such cultural changes.

Since the start of drastic policy changes in 1990's towards regulatory reform, more than a decade has passed. Is "competition culture" dominating Japanese business community nowadays? I feel safe to say that understanding and appreciation of competition policy in Japan is highest forever in our history. But, I must also say that it is not yet come to the stage where competition culture prevails among business community.

During the last two to three years or so, I have been involved in the task to convince our business community about the necessity of Anti-monopoly Act reform. We use such slogans at the JFTC as "No growth without competition," or "No innovation without competition" in order to convince our business community the importance of competition policy initiatives in Japan.[16] Many business people seemed to agree to the JFTC slogan "No growth without competition" in view of the huge economic problems. However, when I am talking to various business people, mostly ranking officials of business organizations, about importance of enhancing competition policy in Japan, I can feel that the audiences are not fully convinced to my arguments.

I can also understand why the audiences are not fully convinced to my arguments. I think most of them have a strong belief that Japanese economy could grow up to the second largest in the world because of business culture to favor harmonization among business community as a whole. During high growth period, big firms and small firms could grow equally, and local firms as well as urban firms could grow equally. Isn't it because of the harmonization culture?

During 1990's, the dominance of "Harmonization culture" seems to be weakened, but influence of "Harmonization culture" is not yet overcome. In some domestic sector, influence of "Harmonization culture" is still very strong. Besides, the past memory of success of Japanese economy prevents business people from accepting the new culture, "competition culture." Almost all of them understand that our economy faced huge structural problems and prescription that used to be effective in the past could not be any more. Almost all of them accept that the Japanese economy needs structural reform based on market principle. To myself, this should be the same to accept that competition policy

needs to be enhanced up to the international standard so that the Japanese market can perform well.

But I must say, unfortunately, that there exists certain wall between appropriate understanding of structural problems of our economy and acceptance of competition culture. This is the factor that seems to cause much difficulty for the JFTC to move forwards to strengthen the Anti-monopoly Act.

(4) Efficiency v. Stability

After all, the business methods and government policies that face now reform needs are the very same ones that supported Japan through its period of high economic growth and delivered it to the rank of the world's second largest. This belief and confidence in the 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.

Increasing productivities or efficiencies of the economy is vital for economic growth. Increase in productivities can be achieved through enhancement of competition policy and regulatory reform. However, there are trade-off relationships between increasing efficiency and maintaining stability of the society. As efficiency increases, stability of the society decreases. Many people seem to worry about increased instability of the Japanese society as a result of increase in efficiency of our economy through enhancement of competition policy and regulatory reform. Something good would be lost in the Japanese society, many people seem to worry.[17]

Japanese people definitely prefer stability of the society. This preference appears in many Japanese characteristics of business such as life long employment system, long term transaction relationships with suppliers or purchasers, cross-share holding among big firms, main bank system, etc.[18] Those systems seemed to contribute enhancing stability of the society, and have worked favorably during high-growth period of Japanese economy. Although these systems are basically the post World War II development, it has lasted many years so that it seemed to be built into the Japanese economy deeply.

Stable relationships with suppliers, purchasers, bank, security brokers etc. have been important when supply is in shortage in general, and when transaction cost is relatively high. Extra cost might be associated to change suppliers etc, because anyway major market players have established such a stable relationship with somebody else, it is natural that any change in existing business relationship requires extra cost.

However, economic reality changed already, and these systems do not work as it

used to. Two changes seem particularly important in this regard. Major economy of the world market is already heading towards increasing efficiency through regulatory reform and enhancement of competition policy. Also it is obvious phenomenon that world trade is already carried out on a global scale, and competition increases as more countries join to the free trade world. Transaction cost has been greatly decreased due to IT technologies, diminishing the merit of the stable business relationship.

Most Japanese business people understand that old virtue never works in favor for them anymore. The economy based on the principle of stability would face fundamental difficulty in coping with such a huge change in world economy. Accepting such economic reality is one thing, but to change their business behavior is another.

This is a matter of balance between these two virtues, namely efficiency and stability. The Japanese balance need not be the same with U.S. balance, of course, but important thing is to understand that the balance that Japanese people accepted as the best in the past is not workable anymore. Japan must find new balance of the two virtues giving more emphasis on efficiency, otherwise, no economic re-birth of Japan is possible.

3. Anti-monopoly Act reform project started

More than 55 years have passed since the enactment of the Anti-monopoly Act, the conditions of the Japanese economy have undergone tremendous changes. A quarter of a century has passed since the significant strengthening of the Anti-monopoly Act was carried out in 1977.[19] The time has come to review the enforcement system as a whole from the perspective of whether the present enforcement system is functioning properly, and whether the Japanese anti-monopoly framework stands on par with international standards.

(1) The Start of the Anti-monopoly Act reform project

The JFTC convened the Study Group on Reviewing the Anti-monopoly Act since October 2002 and the Study Group delivered its recommendation in October 2003.[20] Based on this recommendation, the JFTC prepared a package of legislative revision proposals designed to strengthen the Anti-monopoly Act, first as an outline in Dec. 2003 and second as more detailed one in April 2004.[21] This is the legislative revision proposals that would lead to the largest revision of the Antimonopoly Act since 1977.

The essential features of revisions are the following four areas.[22]

Firstly, increase of the surcharge rate. In view of the repeated violation problems and comparison with other jurisdictions, the JFTC proposed to double the surcharge rate, namely from current 6% to 12%, and as for the repeated violators, the surcharge rate shall be 50% higher, namely from current 6 % to 18%. On the other hand, it is proposed that, when the same firms was accused and convicted as criminal violators, one half equivalent

of the fine imposed on the firms shall be deducted from their respective surcharges.

Secondly, introduction of a leniency program to the surcharge system.

Thirdly, introduction of search warrant power similar to the tax authority or security exchange authority in Japan in order to facilitate the JFTC criminal accusations to the Prosecutor-General. The exclusive jurisdiction of the Tokyo High Court as to criminal anti-monopoly matters is abolished so that criminal anti-monopoly cases can be filed to any local court.[23]

The fourth is the change of remedial system under the Anti-monopoly Act, and under the new system, the JFTC will issue a remedial order and/or a surcharge order after affording the respondents prior notice and a chance of rebuttal including submission of evidences. On appeal to the remedial order and/or surcharge order, the case moves to the administrative hearing stage at the JFTC. Under the current system,[24] once the JFTC finds a violation, a recommendation to cease and desist is issued to the respondent without affording any prior notice, then, when the recommendation is not accepted by the respondent, a complaint is issued to him so that the case moves to the administrative hearing stage. When the recommended order is accepted by the respondent, the JFTC will issue a decision based on the acceptance.

The problem of the current system lies in its inflexibility, namely, the respondent has only a choice to accept or reject the recommended cease and desist order. No rooms for negotiation or settlement were afforded for the respondents. The legal nature of the above-mentioned recommendation is, according to our legal theory, so-called administrative guidance based on law. It is merely a suggestion to comply or a request to comply by the government agency, therefore, the respondent should be completely free to accept or reject the recommendation. Due to such nature of a recommendation, no prior notice or a chance of rebuttal is afforded to the respondents. The recommendation system was adopted in 1953 when the Anti-monopoly Act was not functioning properly in Japan. Change of a recommendation system is one of the important steps for the modernization of the JFTC procedure.

(2) What can be seen from public comments

First public comments were invited as to the Study Group proposals on Nov. 2003. Second public comments were invited as to the JFTC legislative proposals on April 4, 2004. First public comments counted 112, and second public comments counted 74.[25] Those numbers are very large in Japan reflecting huge interest on this issue.

Main organizations that submitted respective comments are listing their comments at their homepages.[26] I think those comments are good examples to illustrate what I have described about, namely thinking and attitudes of various business organizations towards competition policy.

Those organizations that submitted supporting comments to the JFTC legislative proposals are; Keizai Doyukai, Japan Bar Association, various consumer organizations, Japan Federation of Labor Organizations (Rengo). Business organizations other than Keizai Doyukai submitted, more or less, critical or negative comments against the JFTC legislative proposals.

Japanese Chamber of Commerce submitted the following opinion;[27]

"From competition point-of-view, competition policy (Anti-monopoly Act) is called for to exert its function, when market structure is non-competitive, anti-competitive conducts are prevailing, as a result, price is arbitrarily raised compared to the competitive market (inflation is brought about), in other words, when market performance is bad…..

Nowadays in Japan, due to change of internal and external economic circumstances, market is unprecedentedly competitive. It is clear that our economic stagnation (low economic growth) was brought about, not because anti-competitive conducts were prevailing. In spite of the facts that the JFTC personnel were increased drastically, legal measures taken remained at about 22 cartel cases per year in the past 14 years up to FY 2002. There is no increase compared to the previous period. It means, in our opinion, that either the JFTC efforts to handle cases are insufficient or real situation has shown no change…

In order to achieve re-birth of Japanese economy, we believe, that proper management of macro-economic policy, dynamic and pro-competitive measures supported by protection of intellectual property rights, are called for. What is called for is not the strengthening of the Anti-monopoly Act such as the increase of surcharge rate proposed by the JFTC…

The role that should be played by the competition policy is the speedy and effective enforcement of the Anti-monopoly Act against unfair trade practices such as sales below cost or an abuse of a dominant bargaining position that are causing hardships to the small and medium-sized businesses, because excessive and improper competition has been prevailing that ignores profitability, and deflation and hollowing of the Japanese economy has been going on."

(3) Legal issues on the surcharge system

Hotly debated revision proposals by the JFTC are two folds: Increase of the surcharge rate, and introduction of a leniency program.

In order to explain the legal issues to increase the rate of surcharges, the unique nature of the surcharge system of Japan needs to be explained. In 1977 when the surcharge system was first introduced to enhance the deterrent effects of the JFTC remedial measures, there were very fundamental legal issues, namely what should be the relationship between surcharges and criminal penalty for a corporate entity.[28] The surcharge system was

established as of a non-discretionary nature, therefore, even as to the convicted firms, the JFTC must order to pay the same amount of surcharges, regardless of the amount of fines imposed on the respondent firm. This system was justified because surcharges only deprive of the supposed cartel profits from the Anti-monopoly Act violators. As such, it is thought that surcharges can co-exist with criminal penalty, as well as civil damages under our Constitution.[29]

The initial surcharge system was started in a very modest way from hindsight's, namely supposed cartel profits were set at one half of the average current profit rate for corporations that was 2 % for manufacturing firms (one half of 4%). This is based on the idea that cartel profits would be equal to one half of the average current profit rate for corporations. In 1991, the rate was increased from 2 % to 6% of the turnovers during cartel periods.[30] The rate of surcharges was set at 6% because long term average of operating profit rate for big firms was around 6% during the preceding decade. By this amendment, the supposed cartel profits were set equaling to the average operating profit rate for corporations.

The essential idea of the JFTC proposal is to make the surcharge system that would deprive of the cartel participants more than supposed cartel profits. So long as surcharges continue to deprive of supposed cartel profits only, it means that cartel participants need to abandon the supposed cartel profits once they were caught. Lower the risk of being caught, higher the expected profits from the cartel activities. This seems to be the situation seen in sectors where repeated violations are observed.

It is clear that, theoretically speaking, long term average profit rate cannot represent cartel profits properly. It is difficult to assume that cartel participants are satisfied with obtaining just average profits that are available for any firms. However, in the past, no other data was available. The JFTC conducted a study last year as to actual cases handled by itself where price data could be obtained during the cartel period and after the end of the cartel activities. This study showed the facts that as to more than 90% of cases, cartel profits exceeded 8 %, on simple average, it amounts to 16.5% (see Annex 3). Based on such data, the JFTC proposed that the surcharge rate should be doubled.

The reason for the JFTC proposal to charge higher surcharge rate for repeated violators is based on our concern that repeated violation cases are seen very frequently in Japan (see Annex 4). It seems that Japan has so many repeated violation cases because of weak sanction against cartel activities. There are views, however, saying that repeated violation problem may be found in Japan, not simply because of weak sanctions against cartel activities, but rather the procurement rules on public works should be blamed for or government official's involvement into bid-rigging should be blamed for.[31] However, I believe that these arguments could not offer any justification for delaying to toughen the surcharge powers of the JFTC.

There are also views in Japan that doubling the current surcharge rate is not sufficient enough as a sanction against cartels in view of international standard. However, I think that there are legal limit to increase the surcharge rate up to the international standard so long as surcharges must co-exist with criminal fines against a corporation.

Criminal accusation of Anti-monopoly cases remains to be a difficult job for the JFTC. Burden of proof is one thing but not everything. Japan relies on a double punishment theory to punish a corporation, namely only individuals' criminal conducts can be punished, and a corporation can be punished in addition to those criminals because of their responsibility to hire such criminals as employees.[32] Criminal conducts can be committed only by individuals, therefore, in order to prove a commission of criminal violation by a corporation, criminal conducts by individuals must first be proven. The difficulty of proving such individual criminal conducts increase as staffs and officials change their positions and functions within the corporate structure frequently. Therefore, the situation would not change drastically even after the JFTC is authorized to have a compulsory power of investigation as proposed in the amendment bill.

I believe triple-jump type development was necessary for anti-cartel policy in Japan. First-jump (hop jump) was achieved in 1977 when surcharge system was introduced. This was a big jump for anti-cartel policy in Japan. In 1991, as a step-jump, the surcharge system was modified to make it possible to recoup the amount equaling to the average operating profit rate for big corporations. Now Japan is attempting a third-jump, the most important jump for anti-cartel policy in Japan. It is a jump to make it possible to regard a cartel as something of serious nature that deserves heavy sanctions. Without a third jump, triple-jump cannot be completed.

(4) Issues related to the introduction of a leniency program

In a society favoring harmonious cooperation, a leniency program is regarded apparently against "Harmonization culture". Also, it looks objectionable because the program can be regarded as a kind of plea-bargaining that has been rejected as an evil idea in Japan. An influential economic organization insisted that a leniency program should be examined in conjunction with the introduction of plea-bargaining system in Japan that would surely take years to argue.[33]

There is a legal issue too, because the surcharge system does not allow any discretion on the part of the JFTC, why the JFTC should be able to treat cartel participants leniently in spite of the clear fact that the informant also obtained cartel profits.

During the past year or so, the JFTC tried to explain the nature of a leniency program and emphasized that a leniency program is completely different from a plea-bargaining. Fortunately, nowadays, most people accept that a leniency program is different from a plea-bargaining. Also, necessity of a leniency program is well established

by showing that the benefits outweigh the losses, namely society as a whole can gain more than the loss of surcharges payable by the leniency applicants. It is also true that even such applicants cannot escape their legal responsibility under our single damage system.[34]

The JFTC proposal on leniency is to afford 100% immunity for the first informant, 50% reduction to the second informant, and 30% reduction to the third informant so long as they provide necessary information before the start of the JFTC investigation. If necessary information is provided after the start of the JFTC investigation, 30% reduction is equally available up to the third informant.

The JFTC proposal also contains the early quit reduction system. If a firm quits from a cartel before the start of the JFTC investigation, the lower rate of surcharges, namely 8% in case of big firms, is applied. This is based on the idea that a firm should be afforded an incentive to quit from a ring even when the firm does not apply for a leniency, or even when the firm is not qualified to apply for a leniency because three firms in the ring have already applied for a leniency to the JFTC. The idea might contain a slight risk to discourage an application for a leniency by affording 2% reduction of surcharges to those who quit from cartels and bid-riggings before the start of the JFTC investigation.

However, 2% reduction might not be big enough to make the firm hesitate to apply for a full leniency of 10%, first of all, and early termination of cartels and bid-riggings might have positive effects anyway. Under the system, it is also required for a firm to quit from a ring more than one month before the start of investigation by the JFTC. The idea is to prevent a firm to wait for the JFTC to start its investigation after the application of a leniency by other member of the ring, then, quit from the ring so as to enjoy the lower rate of surcharges. Therefore, if the JFTC could start its investigation on a case within one month of the first leniency application, no firm other than leniency applicants can enjoy advantage of early quit from the ring. When a member of a ring quit from it, it will surely invite a chain reaction of suspicion by the other members. In addition, I can see no major problem to afford an incentive to quit from a ring even when the firm is not qualified to apply for a leniency because three firms in the ring already applied for a leniency.

The debates on a leniency had a cultural aspect. Is the concept of a leniency acceptable for Japanese businesses? Isn't it against business ethics firmly established in Japan? Which is more important, a harmony in business community or the elimination of cartel activities? I believe, therefore, introduction of a leniency program may have significant importance for establishing "competition culture" in Japan.

(5) A bill to amend the Anti-monopoly Act

The amendment of the Anti-monopoly Act based on the JFTC proposals would have an important impact on the Japanese economy and society. The JFTC experience tells

that regulatory reform and enhancement of competition policy shall be implemented hand-in-hand. Structural Reform cannot be complete without competition policy enhancement. Not only that, the JFTC proposals might have a significant weight to dictate the future course of Japanese competition policy.

As I have emphasized, the amendment of the Anti-monopoly Act is something vital for the structural reform of the Japanese economy. The process for gaining necessary supports to the JFTC legislative proposals in itself has been very important, because it means that people must decide whether or not to support an economic reform program based on market principle. It might also enhance a chance to change the business culture of Japan. Unless as wide business community as possible supports the JFTC proposals, any amendment of the Anti-monopoly Act might lose its power, namely the power to change the Japanese business culture to more market-oriented one.

The JFTC tried to submit a bill to the ordinary session starting Jan. and ending 16th of June, 2004. The JFTC proposals were discussed at the Anti-monopoly Act Research Committee of the Liberal Democratic Party (LDP Research Committee) as well as at the related Committee of the Komeito Party. The business organizations except Keizai Doyukai expressed their oppositions at these meetings to submit a bill based on the JFTC proposals.

After lengthy deliberation at the LDP Research Committee which took place during December 2003 to April 2004, it could not reach a consensus whether or not the LDP shall give go-sign to the submission of a bill based on the JFTC proposals. On May 14th, the Committee decided that the matter should continue to be under discussion at the Committee. Based on this LDP decision, the JFTC abandoned to submit a bill to the ordinary session of the Diet.

Next target for submitting a bill was the extraordinary session of Diet that was convened on October 12th, 2004. After heated discussion at the Committee and an effort by ranking officials to reach a consensus among LDP members during Sep. to early Oct. 2004, the Committee decided on Oct. 5th to give go-sign to the submission of a bill to amend the Anti-monopoly Act by slightly amending the JFTC proposals on the rate of surcharges.[35] The surcharge rate was set at 10 % for big firms and 4% for small businesses, both are lower that the JFTC proposals. In addition, the JFTC proposal to extend the maximum period of surcharge payment from three years to four years was rejected.

A bill to amend the Antimonopoly Act was approved by the Cabinet and submitted to the Diet on 15th of October (see Annex 2). However, the Democratic Party, a leading opposition party, prepared its own bill to amend the Anti-monopoly Act, and the Economy and Industry Committee of the House of Representative that has been deliberating those bills could not vote on the bills during the session that ended on Dec.

3rd, 2004. Because government bill and the Democratic Party bill both contain a leniency program for the surcharge system, the debates whether Japan should have a leniency program were almost over, and the remaining issue seems to be the details of a leniency program. Both bills will be deliberated during the ordinary session of the Diet that will start around the end of Jan. 2005.

(6) Remaining issues

A leniency program is vital for international cooperation to fight against cartels. This is a conviction based on our experience on vitamin cartels investigation [36] as well as graphite electrodes cartels investigation.[37] It proved to be a difficult task for the JFTC to conduct an investigation on a case after the other competition authority announced its measures on the case and involvement of Japanese firms became public knowledge. Without a leniency program, the JFTC could not obtain the materials submitted to the other competition authority such as U.S.DOJ or EC Commission. Also, it became clear based on this experience that starting investigation simultaneously with the other competition authority, not after the disposition of a case by the other competition authority, is very important.

The JFTC started an investigation on modifier cartel case by cooperating with other competition authorities such as U.S.DOJ, Canadian authority and EU Commission. The JFTC relies on a dawn raid to collect evidences from suspected firms, in this regards, it is imperative for the JFTC to start a dawn raid before any action is taken by other competition authorities, such as service of search warrant or any notice to the suspected firms. Because of time difference between Japan and Europe, or Japan and U.S.A., adjustment of time to start investigation activities by those competition authorities was necessitated. This was the first occasion for the JFTC to coordinate investigation activities with other competition authorities, but it proved to be very successful. In Dec.11, 2003, the JFTC issued a recommendation against three Japanese firms finding price-fixing cartel among them (see Annex 6). The two of the respondent firms rejected the recommendation and the case is under administrative hearing procedure now.

For a leniency program to work effectively, the surcharges must be high enough to encourage involved firms to apply for the program. Because the rate of surcharges is reduced from the JFTC proposals, it may be wondered whether the program could work effectively in Japan. Of course, we must see what will happen after the amended Anti-monopoly Act is effected. However, it seems to me that 10% surcharges could be significant enough incentive for cartels and bid-riggings participants to apply for a leniency when the ring covers a fairly large market, besides, 15% surcharges that is applicable to a repeated violator would provide a significant incentive to apply for the program. Fortunately or unfortunately, we have so many firms including big ones who are subjected

to the surcharge orders within the past ten years.[38]

The details of the leniency program will be stipulated by the JFTC Regulation on Investigations. We must examine such issues as how to decide who could be the first informant, or what kinds of information shall be provided in order to qualify for a leniency.

Another important aspect that influences the effectiveness of a leniency program is whether Japanese firms strengthen its Anti-monopoly Act compliance program. As I have explained, since the publication of the Study Group report in Oct. 2003, in particular after the announcement of the JFTC amendment proposals in April 2004, very heated debates and arguments were observed in Japan. Regardless of the opinions pro and con to the JFTC proposals, it became clear through these debates that competition policy enhancement is a key for the re-birth of the Japanese economy and, therefore, the Anti-monopoly Act needs to be strengthened in one way or another. I sincerely hope that big firms would tighten their Anti-monopoly Act compliance program once the bill to amend the Anti-monopoly Act is passed by the Diet during the next ordinary session.

(7) Judicial solution of business disputes are increasing in Japan

In this connection, I want to draw your attention to the facts that Japanese business community seems to start to look at court system as one of the proper place to resolve their business disputes. Needless to say, Japanese business community did not expect much from court system until recently and only moved to use it when they are ready to risk their long term business relationships with the respondent firms. Now you can observe many incidences of law suits filed by big firms to resolve the issues that were resolved outside the court in the past.

In the area of patent and other IPR, the cases filed to the court increased so much, special High Court that handles only IPR related cases was established within the Tokyo High Court. More and more Japanese firms file patent and other IPR infringement suits in order to resolve their disputes on IPR. Increase of cases that go to the administrative hearing stage at the JFTC seems to reflect the same trends. Anyway, legal market for competition matters is expanding very rapidly, so rapid that it is becoming one of promising markets for lawyers in Japan.

In April, 2004, law schools started to offer two year course for the graduates of law faculty of universities, and three year course for the rest of graduates of universities. Within few years, about 3,000 lawyers per year are expected to join to the Japanese Bar, as graduates of those law schools take bar exams. The Japanese law firm used to be small in terms of number of lawyers. It was rare to have more than 50 lawyers belonging to a law firm, none of them had more than 100 before FY 2000. Since around FY 2000, big merger wave took place among Japanese law firms, and now we have 4 law firms with more than 150 lawyers. Largest one has 179 lawyers. [39] Certainly, the economy of scale and scope

works in the legal service market too. I believe this trend for concentration in lawyers market has something to do with what I described above, namely increased importance of judicial solution of business disputes in Japan.

To ensure a prompt and effective action, it is absolutely essential for the JFTC to enhance its investigative capabilities. For this purpose, the JFTC started to employ private practitioners, economists, and accountants to serve as its staffs. This also represents a major change in the Japanese employment system. The government agencies used to recruit graduates of schools who passed the national examination for civil servants at various levels, and those people are expected to work for the agency up to the time of retirement. Necessary capability can be acquired through on-the-job training. The JFTC is no exception to such Japanese custom. If one works in the same field for a long time, expertise necessary to carry out the task could be acquired, even in such a special field as competition law enforcement. However, as an agency expected to have high expertise in law and economics, any lack of professional staffs at the JFTC such as lawyers and economists might lower its credibility. One particular feature of the Japanese system is that government lawyers (those who passed the legal division examination for civil servants) are not members of the Japanese Bar. The start of law school might change the situation in the future, but it might take a long time to see what will happen in Japan.

4. JFTC enforcement activities in the private monopolization area

Now, let me move to my second topics, namely enforcement of the Anti-monopoly Act in the area of monopolization and an abuse of dominant positions.

In order to ensure market entry into the newly deregulated sectors, it is very important for the JFTC to watch carefully whether incumbent firm does not exercise its market power to exclude new entrants or discourage their competitive conducts. Needless to say, cartel activities to obstruct any attempt to enter into a market, or similar activities by trade association must be watched carefully.

For this purpose, the JFTC is increasing its enforcement activities in this area using the related provisions in the Anti-monopoly Act, namely, monopolization provision and unfair trade practices provisions.

The former part of Article 3 prohibits private monopolization that applies any acts to exclude or control business activities of other entrepreneurs thereby causing a substantial restraint of competition in any particular field of trade. This provision covers both unilateral conduct by the respondent and a conduct by combination or conspiracy with other entrepreneurs, and does not limit the manner of exclusion or control. However, the JFTC did not use this provision frequently in the past, because unfair trade practices power offers more convenient basis to stop problematic conducts. In case of unfair trade practice, the JFTC needs to show tendency to impede fair competition, whereas in case of private

monopolization, a substantial restraint of competition in any particular field of trade must be shown in order to stop problematic conducts. [40]

The Article 19 prohibits unfair trade practices and those practices are designated by way of notification.[41] Designated unfair trade practices that are applicable to any acts to exclude or obstruct new entry are; exclusive dealing (article 11), dealing with unduly restrictive terms (article 13), and interference with a competitor's transaction (article 15), among others.

Hereinafter, I will try to explain the enforcement activities by the JFTC in the area of intellectual property rights (IPR) as well as public utility and information technology (IT) area, because these two are the priority areas to watch carefully whether or not a market power is used to exclude new entrants or discourage their competitive conducts (see Annex 5).

(1) Enforcement activities of IPR related cases

Article 21 of the Antimonopoly Act provides that "the provisions of this Act shall not apply to such acts recognizable as the exercise of rights under the copyright law, patent law, utility model law, design law or trademark law." According to the interpretation expressed in the IPR Guidelines issued in 1999,[42] abusive conducts cannot be exempted from the application of the Anti-monopoly Act even if such conducts may have an appearance as an exercise of IPR. Such conducts can no longer be deemed "acts recognizable as the exercise of rights" and the Antimonopoly Act could be applied.

The JFTC will pay full regards to the exercise of IPR, and we have no concern to the situation where someone was excluded from entering a market because he was refused to get a license of a vital IPR. Nor we have concern to a situation where someone monopolizes a certain market because of a vital IPR. This kind of monopoly is necessary to give a full reward to IPR. However, we have a concern to a situation where monopoly position based on IPR is used in other market such as upstream market or downstream market.

The JFTC issued a " Grand Design for Competition Policy — Ensuring Effectiveness as Guardians of Market" in April 2003 (see Annex 5), and listed, as one of its priority areas, effective actions against anti-competitive and abusive exercise of IPR.

In the area of IPR, the need to take prompt and effective enforcement actions is obvious. Speedy disposition is required to eliminate actions which stand as barriers to market entry. The time required to investigate a case is certainly affected by the number of investigators allocated for the case, as well as the complexity of the case. For this purpose, a task-force is useful to ensure prompt responses in those priority areas. The JFTC set up an IT and public utilities task force, and an IPR task force within its Investigation Bureau.

(2) Microsoft case

In July 2004, the JFTC issued a recommendation against Microsoft Corporation ("Microsoft") alleging that "Non-Assertion Provision (NAP)" in its OS licensing agreement fell under one of the unfair trade practice prohibition.[43] Microsoft, when licensing Windows OS to personal computer (PC) manufacturers, has concluded a standardized agreement with PC manufacturers containing provisions that restrict a licensee covenant to sue, bring, prosecute, assist or participate in any judicial, administrative or other proceedings of any kind against Microsoft, its subsidiaries, or other licensees for infringement of the licensee's patents. This provision is called NAP.

Microsoft licenses its OS to PC manufacturers through two different channels: one by directly negotiating licensing terms and conditions with Microsoft (Direct Channel) or by purchasing the compact discs, from the distributors of Microsoft (Distributor Channel). Many PC manufacturers in Japan preferred Direct Channel to Distributor Channel because of costs and end-users' inconvenience (OEMs" refers to PC manufacturers who are granted license of Windows OS through Direct Channel.).

The OEMs have manufactured almost all of PCs installing Windows OS in Japan. The licensing agreement through Distributor Channel did not contain NAP.

Since Microsoft started to license Windows 95 in 1995, its market share has dramatically increased. In 2003, its market share reached around 95 percent. Microsoft, since around 1993, has licensed Windows OS by entering licensing agreements with OEMs which contained NAP.

In 1998, Microsoft started to license Windows 98 which contained Windows Media Player, that had audio and visual function applicable to digitized forms of music and pictures. Since then, Microsoft has been expanding and strengthening those AV functions of Windows OS. Some OEMs have been active in developing technologies of AV function of their own.

In December of 2000, Microsoft presented OEMs the draft licensing agreement containing NAP. Some OEMs, which owned patents in the area of technologies related to AV function, objected to NAP, but Microsoft did not respond to. The OEMs had no choice but to enter into licensing agreement containing NAP in view of the time limit.

Around February 20, 2004, Microsoft announced to eliminate NAP from its next draft licensing agreement that will become effective from August 1, 2004 to July 31, 2005. However, according to the stipulation, NAP would survive even after the termination or expiration of the licensing agreement that became effective on or before July 31, 2004, NAP in such licensing agreement still remains effective after August 1, 2004.

The JFTC found that OEMs were precluded from suing against Microsoft or other PC manufacturers for infringement of OEMs' patents. Especially, OEMs, which own patents in the area of technologies related to AV function, even though such OEMs' patents are infringed by Windows OS, are restrained from exercising such patents against Microsoft and/or other PC manufacturers. This may cause these OEMs to lose their incentives to invent and develop the technology related to AV function, resulting in

tendency to impede fair competition in the area of technology related to AV function in Japan.

Because Microsoft did not accept the recommendation, the case is under the administrative hearing procedure at the JFTC now.

(3) Karaoke music licensing case

The JFTC issued a recommendation against the Daiichikosho Co., Ltd. on Oct. 31, 2003, alleging undue interference with competitor's transaction (Article 15 of Unfair Trade Practices).[44] Daiichikosho had a dominant position in the field of karaoke machine, but new entrant, XING Inc., started online karaoke service that might have potential threat for Daiichikosho's karaoke machine in the area of entertainment and dining establishments, etc. that were important customer of its service. According to the recommendation, Daiichikosho has instructed Nippon Crown Co., Ltd., and Tokuma Japan Communications Co., Ltd., (Daiichikosho had equity holdings on both firms) not to permit XING Inc. any license on copyrights of their managed music, and circulated notices to its customers (client wholesalers, entertainment and dining establishments, etc.) saying that XING online karaoke machine would not play some of the managed music.

"Managed music" refers to music that was recorded in a commercial record for distribution in Japan prior to the enactment of the Copyright Act (Law No. 48 of 1970, enacted on January 1, 1971). Due to the grand-father clause, the managed music copyrights (recording rights, etc.) could exclusively be granted to a recording company by songwriters or composers, therefore, so long as those recording companies refuse to license, karaoke machine can not play those managed music. And, importantly, those managed music included many of Japanese popular music called "enka" that used to be vital for karaoke machines installed at restaurant, snuck and bar. By way of refusing to license copyright of those managed music, Daiichikosho could, allegedly, indirectly induce customers of XING online karaoke machine to switch to Daiichikosho, because without those popular Japanese music, karaoke machine would lose its popularity.

"Online karaoke machine" refers to a machine that can play karaoke music, etc., that has been previously stored in it as well as newly transmitted karaoke music, etc. via public telephone lines, etc.

This case is also under administrative hearing procedure at the JFTC now.

On Sept. 14th, 2004, the JFTC rendered a recommendation against the Usen Corp. and Nippon Network Vision Corp. finding act of private monopolization.[45] Nippon Network Vision Corp was an agent of Usen Corp. This is a typical predatory pricing case. The two respondent companies conducted a campaign by targeting the customers of CANSYSTEM Co., Ltd., their only competitor in the field of music broadcasting to shops, stores, hotels and other forms of accommodation. The monthly fee of less than 3,675 yen that was offered to those customers of CANSYSTEM who agreed to switch over their

contracts to the respondents' or offered a free service for three months under the same condition.

On June 30th, 2004, the JFTC applied for an injunction order to the Tokyo High Court to stop the alleged conducts based on the Article 67 of the Anti-monopoly Act.[46] This motion was withdrawn by the JFTC because the alleged conducts were stopped voluntarily by the respondents.

(3) Enforcement activities in the area of public utilities

In the telecommunication area, the Ministry of Internal Affairs and Communications has been exercising jurisdiction over dominant carriers such as Nippon Telegraph and Telephone East Corp. However, the JFTC also watches carefully this area after various deregulation measures were adopted in the telecommunication sector.

On December 2, 2003, JFTC rendered a recommendation to the Nippon Telegraph and Telephone East Corp. (NTT East) finding acts of private monopolization.[47] According to the recommendation, the JFTC found the fact as follows:

NTT East possesses high speed fiber-optic networks over eastern Japan, and offers optical broadband communication services (so-called FTTH internet access service) to users, and at the same time, it rents unused optical fibers to other telecommunication carriers. It is difficult for other telecommunication carriers to offer an FTTH internet access service without access to the fiber-optic networks owned by NTT East, because it is hard for them to build new fiber networks of their own. NTT East rents each unused optical fiber to other telecommunication carriers at 5,074 yen per month. NTT East itself offers an FTTH internet access service called "B-FLET'S" to each household users.

When a telecommunication carrier started its FTTH internet access service in March 2002, NTT East countered this movement by providing a cheaper FTTH internet access services for users. Because NTT East wanted to avoid such problem as to set a service fee that is cheaper than the access charge set for each unused optical fiber, it started a service using an optical fiber by creating the system in which each optical fiber can be split into 32 so as to serve as many users as possible. In this way, NTT East introduced a cheaper version of "B-FLET'S" named "New Family Type" and started such service to household users in June 2002. The fee was 5,800 yen per month and it was notified to the Minister of Internal Affairs and Telecommunications. But in reality, NTT East did not change the system because initially so large demand was not expected among household users, therefore, continued to offer internet access services by way of direct cable connecting method as before. A competitor lowered its fees in December 2002 and NTT East countered by lowering its user fees too.

In March 2003, NTT East notified to the Minister of Internal Affairs and

Telecommunications new fee for New Family Type (4,500 yen per month). According to the recommendation, NTT East intended to prevent the fee of an unused optical fiber from dropping because, if lowered, it will invite other telecommunication carriers to enter into the market and to start competitive services. This action resulted in the situation where fee for the New Family Type fee (4,500 yen per month) was lower than the access charge to other telecommunication carriers that was 5,074 yen per month, and telecommunication carriers without its own fiber networks were prevented to enter into the market. By this way, NTT East allegedly prevented other telecommunication carriers from starting an FTTH internet access service to household users.

This case is also under the administrative hearing procedure at the JFTC now.

6. In Conclusion

The JFTC is attempting the third jump try to complete its triple-jump play in its anti-cartel policy. However, this jump means a very big jump from the traditional business thinking, it seems natural to have a very negative reaction from the business communities in Japan. However, without the third jump, our triple-jump play could not be completed.

The reactions of business organizations towards the Anti-monopoly Act amendment also offered a good chance to see whether Japan would start to accept "competition culture" or prefer to stay in the world of "harmonization culture", which became apparently outmoded in view of drastic changes of the surroundings of the world economy.

Serious debates and discussions on the contents of the Anti-monopoly Act amendment seen in recent months in Japan already contributed to enhance the importance of competition policy in the pursuits of structural reform of the Japanese economy, even before the completion of the third jump attempt by the JFTC.

Footnotes

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

2 See http://www2.jftc.go.jp/e-page/reports/survey/2003/031028sgroupama.pdf.

3 See http://www2.jftc.go.jp/e-page/pressrelease/2004/april/040401summaryamareview.pdf

4 See Annex 2.

5 10% is the most common percentage of compensation clause. See Report on actual conditions of procurement contracts by the municipal governments, JFTC, dated on Sept. 8, 2004 at p. 20. http://www.jftc.go.jp/e-page/pressrelease/04.september/04090803.pdf.

6 A Model contracts prepared by the Central Governments etc. Coordination Association on Procurement Contracts on Public Works. See id at p. 16.

7 Article 24 of the Anti-monopoly Act.

8 However, no case can be seen yet where the plaintiff obtained a winning judgment.

9 The JFTC Statement on the Provision of Materials etc. with respect to Suits for Damages caused by the Anti-monopoly Act Violation

dated on May 17th, 1991.
10 See supra note 2.
11 See, H. Iyori & A. Uesugi, The Antimonopoly Laws and Policies of Japan, Federal Legal Publications Inc. (1994) at pp.2-15.
12 Id. at pp. 30-40.
13 Id. at pp. 353-363. Also see A. Uesugi, Japan's Cartel System and Its Impact on International Trade, 27 Special Issue Harv. Int'l L.J. 389 (1986).
14 Id. at pp. 228-229.
15 E.g., The Three Year Plan for Promoting Deregulation, Japanese Cabinet Decision in March, 1995.
16 K. Takeshima, Toward the New Design of Competition Policy in Japan, address before the American Bar Association Section of International Law and Practice and Section of Antitrust (Sep. 18, 2003)
http://www2.jftc.go.jp/e-page/policyupdates/speeches/takeshimaaba.pdf.
17 See Y. Miwa, Kiseikanwa wa akumu desuka (In deregulation a nightmare?) Toyo Keizai Sinposha (1997).
18 See H. Iyori & A. Uesugi, supra. note 11, at pp.319-351.
19 Id. at pp. 52-53.
20 See supra note 2.
21 See supra note 3.
22 See Annex 2. See also http://www2.jftc.go.jp/e-page/pressrelease/2004October/041014.html.
23 Article 85(3) of the Anti-monopoly Act.
24 Article 48(1) and (2) of the Anti-monopoly Act.
25 See the JFTC press release on Aug. 4, 2004, http://www.jftc.go.jp /e-page/pressrelease/04.august/040804-1.pdf.
26 See e.g. http://www.keidanren.or.jp/japanese/policy/2004/056.html
27 See http://www.jcci.or.jp/nissyo/iken/040625dokkinhou.htm
28 Main issue was double jeopardy aspect under our Constitution.
29 Its constitutionality was approved by the Tokyo High Court. See States v. Mitsui Toatsu Chemical Co. Ltd. and 22 others, 46 2gou Tou Keishu 108 (Tokyo High Court, 1997).
30 Law No. 42 of 1991.
31 See comments by Keidanren and JCCI, supra notes. 26 and 27.
32 Article 95(1) and (2) of the Anti-monopoly Act.
33 Japan Keidanren, A view on the review of enforcement mechanism under the Anti-monopoly Act dated on Sept. 16th, 2003.
http://www.keidanren.or.jp/japanese/policy/2003/088.html.
34 Article 25 of the Anti-monopoly Act and Article 709 etc. of the Civil Codes.
35 Research Committee on Anti-monopoly Act, LDP, An agreement on the Revisions of the Anti-monopoly Act dated on Oct. 5th, 2004.
36 See http://www2.jftc.go.jp/e-page/pressreleases/2001/2oo10405vitamin.pdf.
37 See JFTC press release dated on March 18th, 1999.
38 During FY 1994 and FY 2003, around 6,500 firms are subjected to the JFTC decisions. Because of the JFTC practice to issue decisions according to sub-market in case of bid-riggings, there are many duplications in this figure.
39 Nihon Keizai Shinbun dated on Sept. 1st, 2004.
40 See H. Iyori & A. Uesugi, supra. note 11, at pp.100-103.

41 General Designation, Notification No.15 of 1982. See H. Iyori & A. Uesugi, supra. note 11, at pp. 104-107, 118-124, .

42 Guidelines on Patent and Know-how Licensing Agreements dated on July 30th, 1999.

43 See http://www2.jftc.go.jp/e-page/pressreleases/2004/july/040713.pdf.

44 See http://www2.jftc.go.jp/e-page/pressreleases/2003/october/031031karaoke.htm.
45 See http://www2.jftc.go.jp/e-page/pressreleases/2004/september/040914usen.html.
46 See H. Iyori & A. Uesugi, supra. note 11, at p. 223. The JFTC rarely used the power to file a motion of injunction. Last motion was filed on March 25, 1975.
47 See http://www2.jftc.go.jp/e-page/pressreleases/2003/december/031204ntt.pdf.