

Exemption from the Antimonopoly Act

- 1. The JFTC has been vigorously implementing competition policy in Japan, with emphasis on the active creation of a more competitive business environment. In doing so, it is becoming increasingly important to address properly those issues of state anticompetitive regulations and other kinds of state-imposed or facilitated restraints of competition. One of the state regulatory systems that have an anticompetitive influence on markets is exemption from the application of our Antimonopoly Act.**
- 2. Exemption from the Antimonopoly Act should be limited as much as possible. In order to promote our economy's departure from its dependence on cartels towards free and fair competition, we have been endeavoring to eliminate or narrow such exemptions in the past. In particular;**
 - 1) In the 1980s, open market and international harmonization became major policy issues in Japan which had then recorded huge trade surplus. The Japanese Government, with the initiative by the JFTC, conducted an all-out review on the exemptions from the Antimonopoly Act, in accordance with the recommendation issued in 1988 by an advisory council to the Prime Minister on administrative reform.**
 - 2) Also, in the latter half of the 1990s, when our economy was kept stagnated after the burst of the bubbled economy, in addition to a series of cabinet decisions, legislative measures were taken in 1997 and 1999. The bills aiming at abolishing exemptions from the Antimonopoly Act to the extent possible passed the Diet, with a view to revitalizing business activities by enhancing efficiency and international competitiveness through promotion of competition.**

- 3. As a result of those measures, the Antimonopoly Act exemptions are now significantly restricted to certain areas (such as insurance business, joint domestic shipping operations, joint bus operations, apart from shipping conference and IATA Agreement). Most of the cartels that remain exempted are rather common on other developed countries. As of the beginning of this year(2006), the number of cartels exempted from the Antimonopoly Act is down to as low as 24, while there were an all-time high of 1079 exempted cartels in 1966, and 506 exemptions in 1979.**

Forms of involvement of Competition Authorities in the legislative process

- 1. In Japan, (as in the US and Germany,) in principle, the JFTC has no statutory or formal right to participate in the process of legislation of competition relevance. However, in practice, (again as in the US and Germany,) the JFTC is to be invited by the concerned Ministries or Agencies in charge of sector-specific regulations to express our views or make comments on proposed legislation concerning competition. In our nation, in general, when a bill is determined by the cabinet decision for submission to the Diet, the customary practice is for relevant government Ministries and agencies to carry out the necessary consultation and coordination in advance. At this prior consultation and coordination stage, the JFTC has an opportunity to make an intensive discussion with the sector regulators from the viewpoint of ensuring effective competition. From time to time an original bill drafted by regulatory agencies is revised in favor of competition, based on such discussion. Let me give you one recent example.**
- 2. 1) This is the case concerning regulations for promoting the measures to cope with global warming. In Japan, effective April this year, the regulation will be introduced that those undertakings engaged in a certain scale of business activities, such as large scale factories, need to calculate the volumes of their emissions of greenhouse gas and publish them after reporting to the Government. The issue here has been how to determine so-called emission coefficients which are used to calculate the volumes of carbon dioxide the undertakings emit by using electricity.**

2) How to determine such coefficients are vital to competition in the electricity market since, by the introduction of this regulation for coping with global warming, customers in the market will consider those coefficients as one of the key factors when deciding from which suppliers they buy electricity. This issue is particularly important in light of competition under the current market situation where the total share of

the new entrants still remain quite limited even though six years have already passed since the electricity market was partially liberalized in 2000.

3) The original proposal made by the Ministry of Environment, a concerned regulatory agency in this case, was that the emission coefficient be determined for each of the two groups of the incumbent electricity suppliers, who used to operate in the respective regions as monopolies before partial liberalization of the electricity market, and the new entrants. The Environmental Ministry proposed that the averaged figure of each of the two groups was to be used as an coefficient for the relevant supplier in accordance with to which group they belong. In terms of average, the coefficient of the incumbent suppliers would be lower that of the new entrants because they have nuclear power plants. The proposed coefficient for the new entrants group was twice as large as that of the incumbent group. However, if we look at the suppliers individually, the actual emission coefficients of some of the new entrants are lower than those of some incumbents. Therefore, the JFTC has argued that the coefficients of those two groups should be set identical for avoiding any distorting effect on competition in the market , if the actual figures can not be used due to the constraints of the availability of data at least for the time being.

4) Though our argument encountered strong resistance from the incumbents and other groups, the Ministry of Environment has finally agreed upon our counterproposal on the use of identical emission coefficient for both of the two groups.

Cooperative relationship between Competition Authorities and Sector Regulators

- 1. In addition to the prior consultation in the legislative process which I just mentioned, as a kind of competition advocacy, the JFTC has been actively conducting various researches and surveys concerning regulated sectors by setting up study groups involving academics and professions, and publishing its reports containing policy recommendation from the viewpoint of enhancing a competition policy.**

(Ex) • Improvement in the surroundings for promotion of competition in the electricity sector (June, 2002)
• Competition policy in the natural gas sector (December, 1999)
• Regulatory reform and competition policy in the telecommunications business field (November, 2002)

- 2. 1) Also, the JFTC has published several guidelines, in cooperation with sector regulators, concerning consistent implementations of the Antimonopoly Act and sector-specific regulation laws, to promote effective competition in relevant sectors where regulatory reforms were advancing.**

2) In the recent past a series of regulatory reforms have been conducted in Japan, as in other countries, to aim at promoting competition in regulated sectors through (gradual) liberalization. In order to ensure effective competition in those sectors, apart from eliminating anticompetitive activities through the enforcement of competition law, it is critical to implement sector-specific regulatory laws which have an important role to play for making the market environments more conducive to competition. In this context, joint guidelines developed by the JFTC and the regulators are a useful tool to avoid inconsistency or duplication, and enhance synergy of the implementations of the competition and sector laws, with a view to promoting competition and enhancing transparency and predictability for the market players.

3) These guidelines are developed and revised as necessary, fully taking into account actual practices in the market, the cases and the concerns which have been brought to the JFTC or the regulators, as well as advancements of regulatory reforms. Those works of developing guidelines provide an opportunity of constant or regular communications or exchanges of views between the JFTC and sector regulators, which is instrumental, I believe, in enhancing competition mind on the side of regulators.

- (Ex)**
- Guidelines concerning appropriate electric power dealings (by JFTC and Ministry Economy, Trade and Industry, December 1999; revised in July 2002 and in May 2005)**
 - Guidelines concerning appropriate natural gas dealings (by JFTC and METI, March,2000; revised in August 2004)**
 - Guidelines for promotion of competition policy in the telecommunications business field (by JFTC and Ministry of Public Management, Home Affairs, Post and Telecommunications, November, 2001; revised December 2002 and in June 2004)**

3. Those activities of the JFTC have been endorsed by the cabinet on every occasion. For recent example, the cabinet decision on “the Three-Year Program for Promoting Regulatory Reform and Privatization” in March 2005 states that ;

The JFTC will continue to conduct surveys on the status of competition in such sectors as electricity, gas, telecommunications and transportation, from the viewpoint of promoting competition when policy recommendations are deemed to be necessary, and will actively make proposals when there is room for improvement. For these regulated sectors, the regulatory authorities and the JFTC will consider a mechanism under which they can work together on the establishment and review of systems concerning competition, and will make related guidelines as necessary.

Regulatory Impact Analysis

- 1. For further strengthening the collaborative relationship between the competition authorities and sector regulators in favor of promoting competition, I would like to strongly support the idea of including competition assessment in the framework of Regulatory Impact Analysis(RIA).**
- 2. Actually, in Japan, the RIA was introduced on a trial basis in 2004, and various part of the Japanese Government started to conduct the RIA on new and revised regulations when they were proposed. However, since the RIA is quite a new approach to the Ministries concerned in Japan, the outcomes of the analyses conducted so far have mainly been rather qualitative explanation of the costs and benefits of the proposed regulations and no specific competitive effects have been referred to.**
- 3. I understand that the OECD has now launched a detailed study on the inclusion of competition assessment in the RIA by capitalizing on the advanced practices on this respect in several countries including the EC. I am very much interested in learning from the OECD's work in order for Japan to develop the best way of assessing competition effects in the framework of the RIA.**