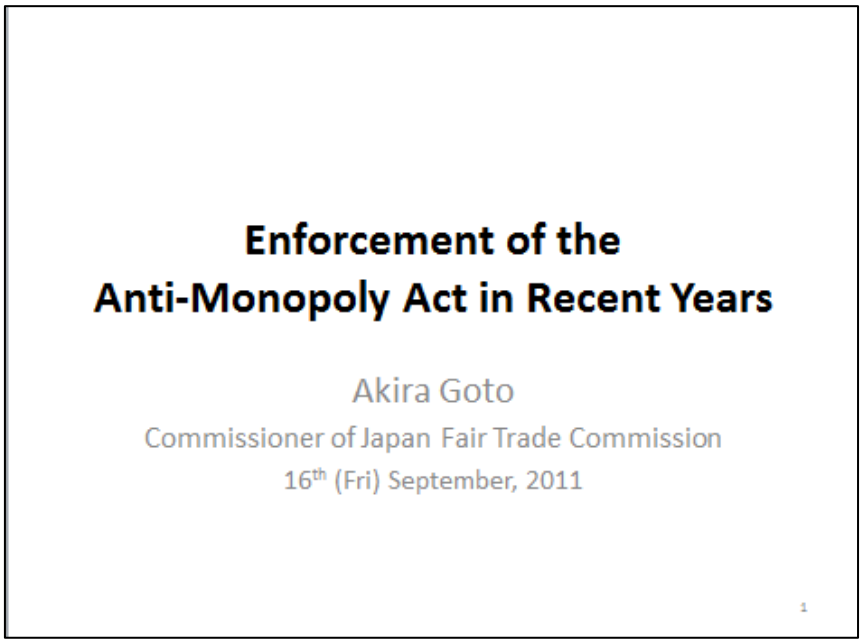
Asia Competition Association 2011

（Session1 Enforcers Roundtable：Recent developments of their respective competition regimes）

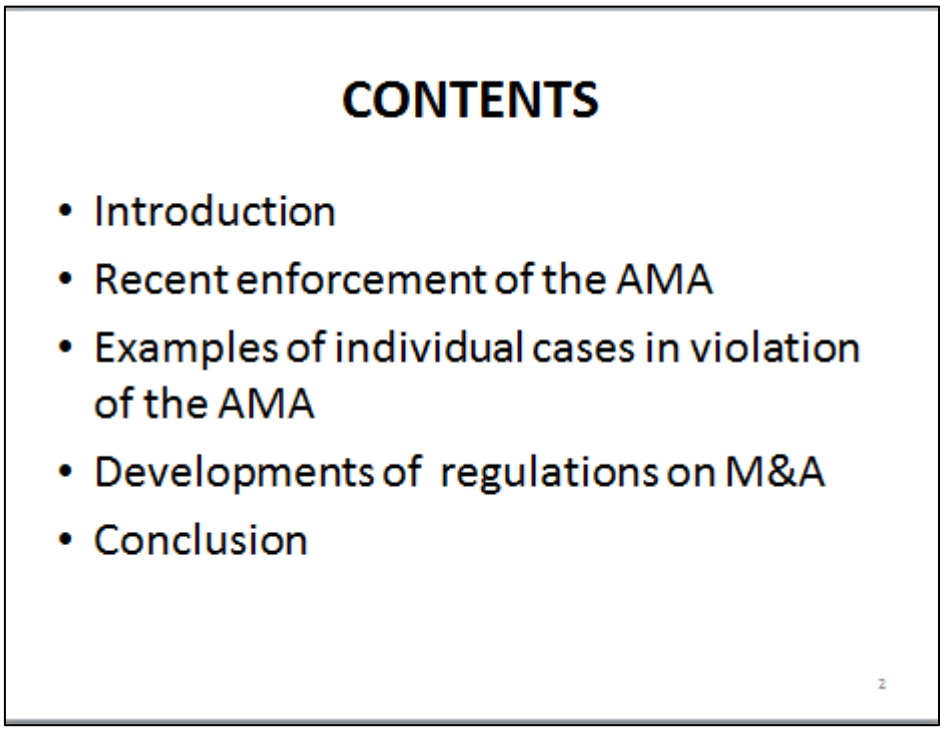


Good morning everyone.　My name is Akira Goto. I am a commissioner of the Japan Fair trade Commission.

I first would like to thank the Asia Competition Association for inviting me to this interesting and important meeting. It is my great pleasure and privilege to participate in this meeting.

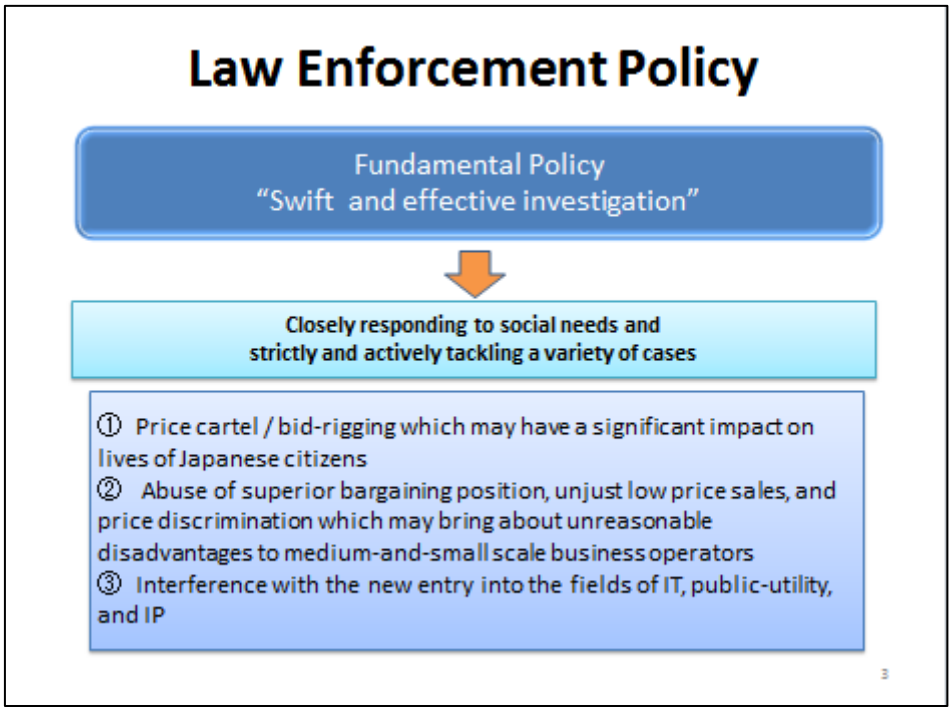
I have learned that the purpose of the Asian Competition Association is to strengthen and promote “competition culture” in Asia through cross-border discussions on

competition laws and policies. I believe this is very important for the promotion of the welfare of Asian consumers and I am happy to contribute to this exercise.



The task given to me this morning is to talk about recent developments of competition policy and enforcement in Japan.

I will first try to provide you with a general view of the JFTC's recent enforcement of the Anti-Monopoly Act. Then, I will focus on a couple of important cases. Lastly, I will talk about merger regulations and recent changes.



First, let's look at enforcement. We, at the JFTC, took on a number of cases that we believe involve pressing issues for competition policy.

Namely, these are,

i) Price cartel and bid-rigging which have significant implications for Japanese citizens;

ii) Abuse of superior bargaining position, unjust low- price sales, and price discrimination that may bring about unjust disadvantages to small- and medium sized businesses; and

iii) Impeding new entry into the fields of information

technology, public-utility, and intellectual property

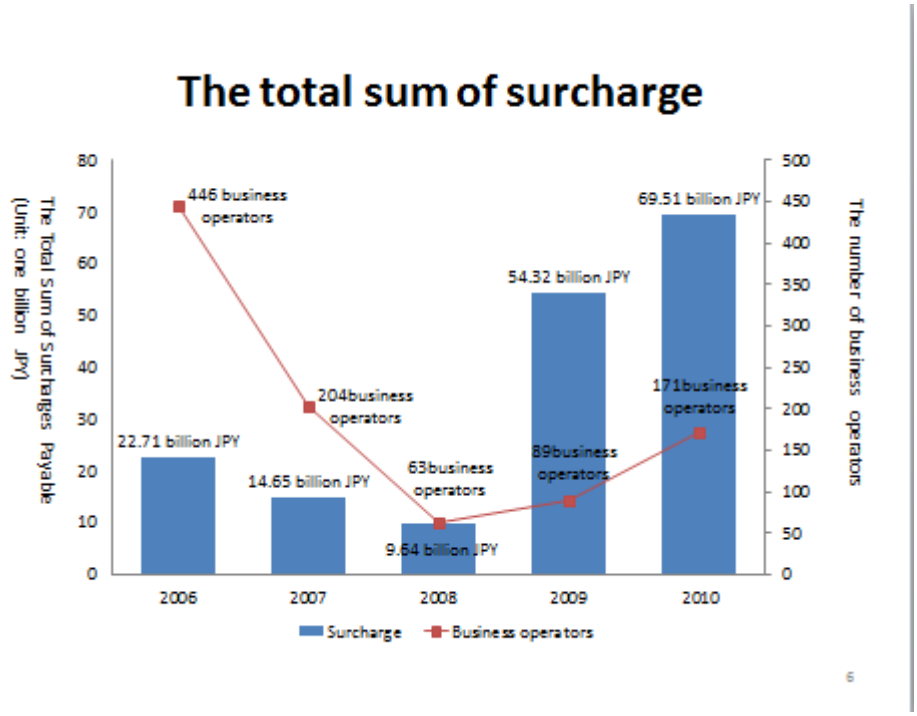
A cease-and-desist order is an administrative sanction issued by the JFTC against business operators in violation of the AMA. This chart shows the change in the number of cease-and-desist orders over the past five years. There were 24 violations in 2009, and 20 in 2010.

The number of cease-and-desist order

(With respect to each type of violation)

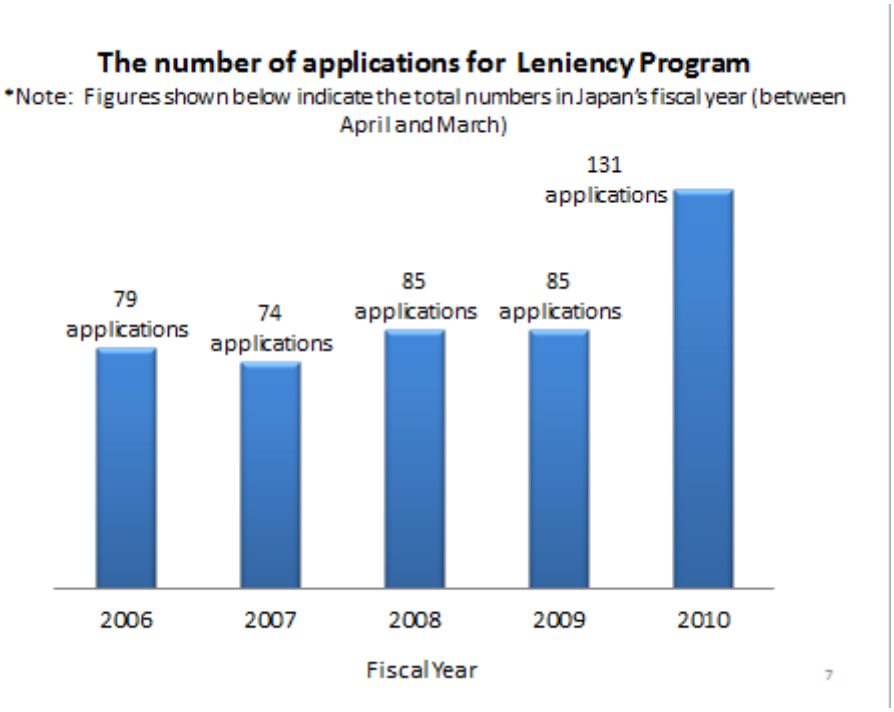
Calendar Year	2006	2007	2008	2009	2010
Bid-rigging	3	12	9	9	12
Price cartel, etc. (excluding bid-rigging)	3	3	8	9	6
Unfair trade practice	3	4	4	5	2
Private monopolization	0	0	0	1	0
Constraints, etc., on functions/activities of members by trade associations	0	1	0	0	0
Total	9	20	21	24	20

As the slide shows, nearly 80% of the cases involve bid-rigging and price cartel. Needless to say, these two conducts directly restrict competition and considered to be hard-core violations of competition law in any country. I believe these figures demonstrate our determination to stop such conduct.



A surcharge is imposed on an entity that conducts certain types of violations such as cartels and bid-rigging. Recently there has been a drastic increase of surcharges, as this chart shows. The JFTC issued surcharge payment orders against 89 entities in 2009. The total amount of surcharges was 55 billion yen or about 600 million U.S. dollars. In the year 2010, 171 entities were issued surcharge payment orders at a total of 70 billion yen, or about 800 million U.S. dollars. According to the Global Competition Review, the figures shown are the highest in the world as the figures of pecuniary sanction imposed by national competition

authorities, except European Union. This recent surcharge increase is at least partly due to the AMA revisions that increased the surcharge rates. The risk of forming cartels or conducting bid-rigging has therefore become so significant in Japan that we hope it prevents companies from engaging in such activities.



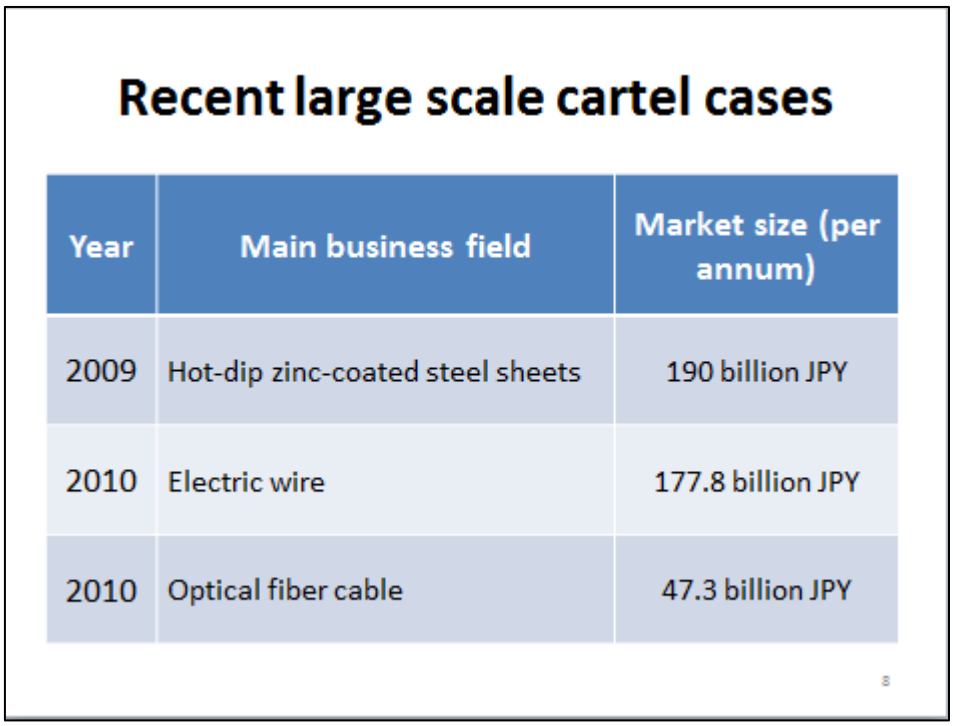
Now I would like to explain our Leniency Program.

The leniency program started in January 2006. This chart shows the number of applications for this program over the past five years. There were 85 applications in 2009, and 131 in 2010. This program now plays a major role in detecting cartel and bid-rigging cases.

Now, let me turn to the recent important cases.

Let’s first take a look at cartel cases.

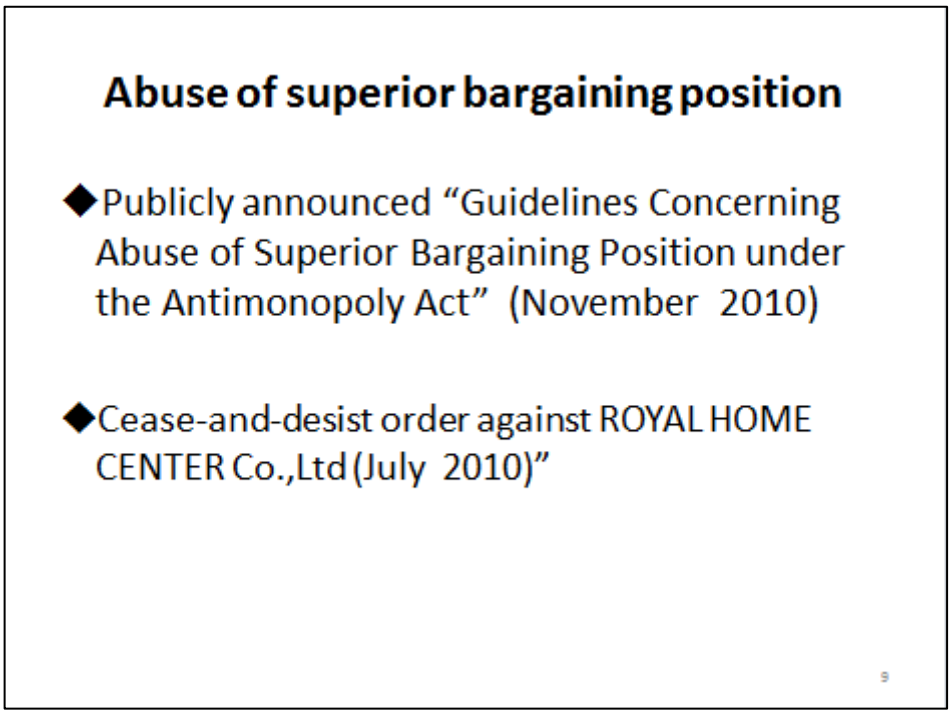
Since introducing the leniency program, we have been successful in litigating large-scale price-cartel cases.



This table shows examples of large-scale price-cartel cases in which the JFTC recently took legal measures. For the first case, the JFTC issued a cease-and-desist order against violators in August 2009. The violators had formed a sales price cartel for certain types of hot-dip zinc-coated steel sheets for which market size reached 190 billion yen. For

the second case, the JFTC issued a cease-and-desist order against the violators in November 2010. These violators formed a sales price cartel for electric wire. The market size of this product reached 177.8 billion yen. In addition to these cases, in May 2010 the JFTC issued a cease-and-desist order against a cartel case for optical fiber cable. The market size of this product reached 47.3 billion yen.

These are cases with large markets and products widely used in industrial activities. Therefore buyers and ultimately consumers greatly suffer from these cartels. We believe that one of our most important duties is to stop this kind of behavior.



Next, I’d like to mention unilateral conduct cases.

Among cases, regulations on a type of conduct concerning “abuse of superior bargaining position” are unique to Japan, though somewhat similar regulations exist in other countries as well. We discussed this topic at the ICN meeting in Kyoto in 2008. Typically, this conduct is abuse of bargaining power by large buyers such as supermarkets, and can impose unreasonable disadvantages to small-and medium-sized suppliers. Halting this kind of conduct has been one of the important activities for the JFTC.

The “abuse of superior bargaining position” has been

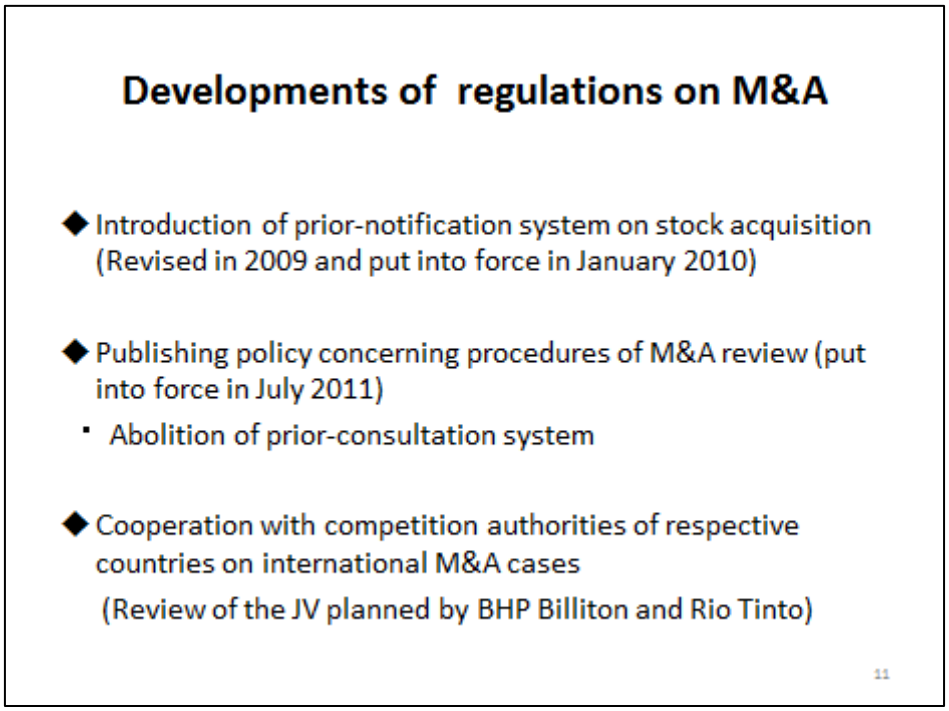
included in the list of conduct subject to surcharge payment order since 2009. The JFTC published its guideline called “Guidelines Concerning Abuse of Superior Bargaining Position under the Antimonopoly Act.” These guidelines were created for the purpose of achieving higher transparency and predictability in law enforcement.

The Royal Home Center case is one recent case of abuse of superior bargaining position. In this case, the JFTC issued a cease-and-desist order against a company called “ROYAL HOME CENTER Co.,Ltd (Royal Home Center)” in July 2010. Royal Home Center is a large-scale retailer selling products such as household items, pet-accessories, and garden supplies. This company is a very important buyer for the suppliers of these products. Many of these suppliers therefore strongly hoped to continue transacting with the company. In other words, they were placed in an inferior position where they had little choice but to comply with a variety of requests and demands from Royal Home Center

in order to continue their business relations. Against this backdrop, Royal Home Center one-sidedly returned certain goods to its suppliers without any good reason attributable the suppliers when it stopped selling the products or closed its stores, or while their stores were being remodeled. Moreover, when Royal Home Center newly opened or closed its stores, it one-sidedly compelled its suppliers, without paying necessary costs, to dispatch their employees to its retail stores where they were engaged in bringing in and displaying goods, including those supplied by other suppliers. The JFTC concluded that such conduct constitutes “abuse of superior bargaining position” against its suppliers and issued a cease-and-desist order against Royal Home Center.

Another interesting case is that of Johnson & Johnson. In this case, we applied the Anti-Monopoly Act to ensure that consumers can obtain information so that they can compare prices of products sold in different stores. The JFTC issued a cease-and-desist order against Johnson & Johnson Medical K.K. (Johnson & Johnson) in December 2010. Johnson & Johnson sells contact-lenses, among other products. It compelled its retailers not to display sales prices of its products in their advertisements. Such behavior significantly hampered chances for consumers to compare prices of J&J contact lenses at different stores. The JFTC

concluded such behavior as being trading on restrictive terms and issued a cease-and-desist order against Johnson & Johnson.



My last subject is merger regulations in which there were two major changes. First is the change in treatment of share acquisition. The revision of the Anti-Monopoly Act of 2009 changed it from an ex post report system to a prior-notification system. This applies to stock acquisition between overseas companies as well. Thus every type of combination of firms that exceeds a certain threshold became subject to the prior-notification system.

Second, the “so-called” prior consultation system was abolished this past June which took effect in July. Thus, judgment or possible judgment by the JFTC on a proposed

merger will only given after the formal review following notification. Consultation before notification will be limited to matters such as how to fill in the notification form. We believe that this will expedite the process, increase transparency and bring it in line with international practices.

Finally, I would like to briefly touch upon our experiences of cross border mergers. We have been taking on cross-border merger cases for the past few years. One example is BHP Billiton and Rio Tinto merger case. These companies plan to establish a joint venture for producing iron ore in Western Australia. It was highly likely that the competition in the Japanese market would have been restricted if this transaction had gone through. We began to review the possible impact. During this review process, we exchanged information with authorities in other countries and a region such as the Korean Fair Trade Commission, the Australian Competition and Consumer Commission, German Federal Cartel Office and European commission. Both parties finally

withdrew the merger plan.

Another example of cross-border merger investigations was the merger of two U.S. scientific instruments manufactures, Agilent and Varian. Again, both their products were used extensively in Japan. In this case, we exchanged information with the U.S. authorities, and we approved the proposed remedy.

I believe close cooperation between authorities in different jurisdictions is important for reducing costs and uncertainty for industry as well as authorities themselves. Creation of some sort of mechanism for promoting international cooperation in cross-border merger investigations might be a worthwhile objective.

On that note, I would like to conclude my talk with you today. Thank you for your attention.