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# **Competition Policy and Regulatory Reform: Japan's experience**

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# **1. History of competition policy and regulatory reform in Japan**

## **2. Three issues at the nexus of competition policy and regulatory reform**

- (1) Abolition of antitrust exemptions
- (2) Competition Advocacy
- (3) Competition policy after regulatory reform

## **3. Conclusion**

# **1. History of competition policy and regulatory reform in Japan**

- 1947: Enactment of Antimonopoly Act (AMA) and establishment of the Japan Fair Trade Commission
- 1950s and 1960s: “Dark days” of competition policy, proliferation of AMA exemptions (number of exempted cartels 1,079 in 1966, at its peak)
- Oil crisis and inflation
- 1977: First amendment of AMA to strengthen it (introduction of surcharge, etc.), followed by a series of amendments to strengthen AMA and its enforcement

- 1979: OECD recommendation

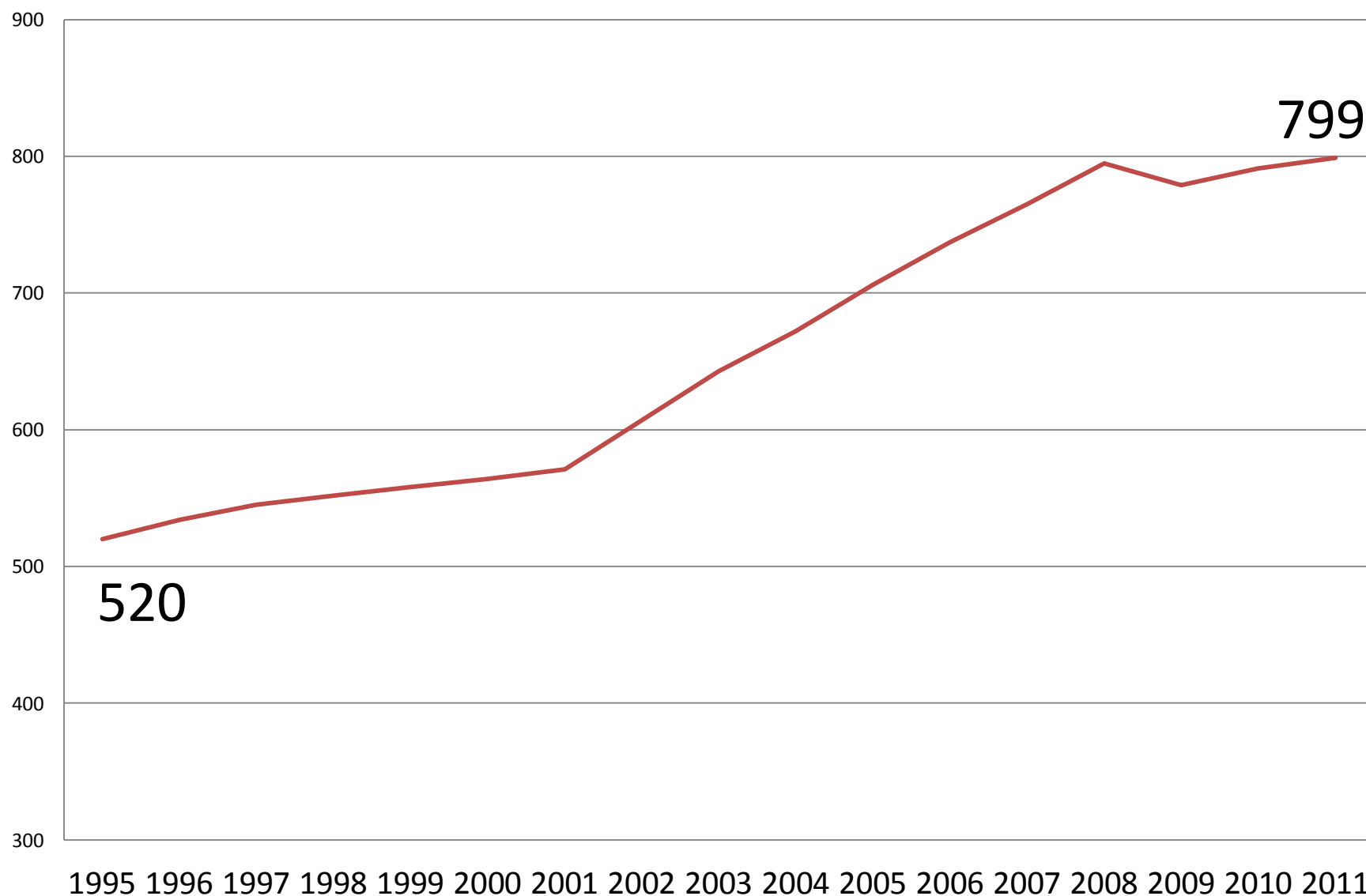
“The Council... recommends... to undertake, with the participation of competition authorities, reviews of regulatory regimes and of exemptions from restrictive business practices laws...”

- 1985: Privatization of cigarette and telecommunication
- 1987: Privatization of railroads

- 1995: Deregulation Action Program

A comprehensive program for regulatory reform and strengthening of Antimonopoly law and its enforcement, which included

- A list of regulatory reforms for all ministries
  - The strengthening of the JFTC and the abolition of antitrust exemptions
  - An annual follow-up progress report of regulatory reform
- 1998: Establishment of Regulatory Reform Committee<sub>5</sub>



## **2.Three issues at the nexus of competition policy and regulatory reform**

(1) Abolition of antitrust exemptions

- 1995 Deregulation Action Program  
“To review antitrust exemptions...to basically abolish.”
- Bills to repeal antitrust exemptions passed the Diet in 1997, 1999 and 2000
- Number of exempted cartels: From 1079 in 1966 to 28 in 2011
- In laws where exemptions remained, prior-consultation systems with the JFTC were introduced.

# **2.Three issues at the nexus of competition policy and regulatory reform**

(2) Competition Advocacy

Importance of competition advocacies  
within the government (sector  
regulators, ministries responsible for  
regulation)

## Examples of advocacy activities:

- Regulatory Impact Analysis
- Sector Study on Regulated/Antitrust exempted industries
- Study group with experts (economists)
- Consultation with sectoral regulators to adopt more pro-competitive regulation in the process of drafting policies
- Guidelines

# Example: Emission Permit Trading

- The JFTC published its opinions based on a report of the study group
  - Allowing the allocation of an emission permit to trade associations may lead to collusion or the exclusion of particular firms.
  - The free-of-charge allocation of a tradable permit to existing firms may create an entry barrier unless it is also allowed for new entrants
- Ministry of Environment would respect JFTC's opinions

# Regulatory Impact Analysis

- 2007:Ex ante evaluation of regulation became mandatory for all ministries, which include evaluation of impact on competition
- 2010:competition evaluation started on the experimental basis, and JFTC is helping competition evaluation of other ministries

## **2.Three issues at the nexus of competition policy and regulatory reform**

(3) Competition policy after regulatory reform

- Removing regulations does not necessarily bring about competitive markets
- Active and effective antitrust policies and their enforcement are necessary in the post-reform market

- Stringent and effective antitrust policy to detect and stop anti-competitive conduct

In 2005: The introduction of a leniency program, compulsory measures for criminal investigations, increase in the surcharge rate, etc.

In 2009: The expansion of types of conduct subject to surcharges, the review of the leniency program, the increase in maximum jail term for cartels and bid-riggings, etc.

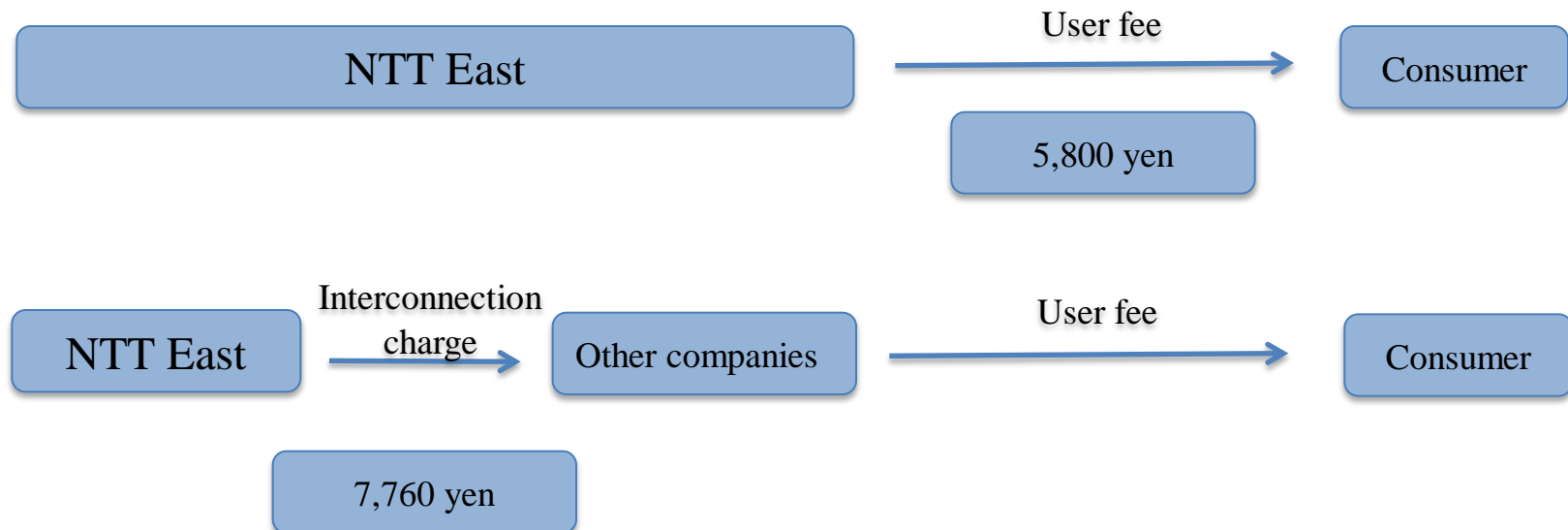
- It is necessary to monitor the conduct of dominant firms
  - Former state-owned monopoly had a dominant position, even after privatization and deregulation
    - To prevent abuse of dominant position by former state monopoly and to encourage entry is extremely important

# Case of NTT East in 2003

## NTT East:

- NTT was a public corporation but was privatized in 1985, and broken up into two regional companies (NTT East and NTT West) and a domestic and international telecommunication company in 1999.
- NTT East owns optical fiber networks and also provides internet connection services in eastern Japan.

NTT East set the user fee lower than the interconnection charges which other service providers were required to pay to NTT East. This resulted in the exclusion of competition which is in violation of Article 3 of AMA concerning monopolization.



# **3.Conclusion**

- Both active enforcement of competition policy and regulatory reform are necessary to promote consumer interests and economic vitality
- Importance of dialogue with regulators to find a regulation that is least harmful to competition
- Importance of prohibiting the abuse of a dominant position by a former monopoly after regulatory reform