# Competition Policy and Regulatory Reform

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1.

Thank you for your kind introduction.

I would like to thank the workshop organizers,, Mr. Ashok Chawla, Chairman of the Competition Commission of India, and Mr. John Davies, Head of the Competition Division of the OECD, for having me. It is certainly my pleasure and privilege to be here and to address such a distinguished audience.

I was asked to talk about competition policy and regulatory reform in Japan. As I understand it, there are three issues at the nexus of competition policy and regulatory reform. First, competition law often exempts certain sectors or certain activities. It is important to examine whether existing exemptions are still warranted.

Second, it is important for a competition agency to advocate for the importance and benefits of

competitive markets for government ministries, industries, and the general public. Third, removing regulation does not mean competition will prevail instantaneously. It is often the case that companies protected by regulation dominate the market even after deregulation. Competition policy should be enforced effectively at this stage. I would like to talk about these three issues from a Japanese context. But before doing so, let me briefly talk about Japanese competition law and the history of regulatory reform in Japan.

2.

Japan's competition law is called the Antimonopoly Act. It was enacted in 1947. At the same time, the JFTC was established as an independent commission to enforce this Act. However, in the 1950s and 1960s, when the economy was growing very rapidly, it was not actively enforced. Other regulatory ministries , particularly the Ministry of

International Trade and Industry (MITI), were much more powerful. This led to the proliferation of antitrust exemptions and government regulations. Initially, antitrust exemptions were supposed to be stipulated within the Antimonopoly Act itself. However, government ministries began including antitrust exemptions in their own laws regulating their sectors, so that they could avoid intervention from the JFTC. At its peak, the number of exempted cartels surprisingly increased up to 1,079 in 1966.

Here I must mention that the actual competition of markets during this period was intense, despite powerful industrial policies. Entry into rapidly growing markets was very active. Companies such as Honda and Sony entered into the car manufacturing industry and the electric appliance manufacturing industry, respectively. As for the car manufacturing industry, there were eleven manufacturers that were vigorously competing

with each other. The Ministry of International Trade and Industry tried to consolidate them into two large companies, claiming that in order to compete with GM and Ford, the Japanese companies also had to be big. Fortunately, this plan failed, and the intense competition made these companies competitive in the world market. There were other such plans to create "national champions", but industry successfully resisted. Thus, even though competition policy was weak compared to industrial policy, competition was nevertheless active.

3.

One incident which brought competition policy into center stage was the Oil Crisis of 1973. After a sudden three-fold increase in oil prices, the retail price of industrial goods, including gasoline and even toilet paper, rose sharply. People were angry and demanded that the government take necessary

actions. The JFTC litigated quite a few cartels during this period. Although the creation of price controls is not the purpose of competition policy, this incident nevertheless brought the attention of politicians and the general public to competition policy and to the JFTC.

4.

It was in the late 1970s throughout the 1980s that the Japanese government took the first step in strengthening competition policy and reforming regulation. In addition to the growing recognition of the importance of competition policy, one of the reasons for the strengthening of competition policy was the intensifying trade disputes with the US. The US government pressured the Japanese government to strengthen its competition policy and reform regulations, as they believed weak enforcement of competition law and tight regulations were hindering the penetration of

imported goods and services into the Japanese market. Some people inside and outside of the Japanese government welcomed this pressure from outside as the effort to reform had been often blocked by existing interests. Given this background, the first amendment to strengthen the Anti-Monopoly Act was passed, followed by a series of amendments in the same direction.

The first target of regulatory reform was the tedious approval and authorization systems of the government. Then, economic regulations became the next target, gradually moving to social regulations. Since the 1980s, the privatization of several sectors has been implemented. Cigarette and telephone companies in 1985, the railroads in 1987, and the postal service in 2006.

The Japanese Government has established several so-called action programs for deregulation or regulatory reform since 1995. This is the typical modus operandi to promote regulatory reform in

Japan, i.e., establish action programs and follow up with them every year.

1995 was a pivotal year for competition policy and regulatory reform. The 1995 Deregulation Action Program mentioned the importance of competition policy in regulatory reform saying "With the deregulation, Japanese government strengthen the JFTC's organization, personnel and so on, in order to promote competition policy and, to ensure fair competition in the market" and suggested that most Antitrust exemptions should be reviewed and abolished. Thus, it was recognized that both active competition policy and deregulation were needed.

The Figure in slide page 6 shows the change in the number of staff members of the JFTC. It rapidly increased in the 1990s through the 2000s, despite the general trend to decrease government employees in order to reduce government spending. The two exceptions whose employees increased

were the JFTC and the Patent Office. Today, we have about 800 staff members.
Now, let me move on to the three issues concerning competition policy and regulatory reform.

(1)The first issue at the nexus of competition policy and regulatory reform is the abolition of antitrust exemptions. As I mentioned earlier, a large number of antitrust exemptions were created in the 1950s and 1960s.
In 1979, the OECD recommended that the member states review government regulations and antitrust exemptions. Based on this recommendation, the JFTC launched economic studies on 16 regulated sectors, and published a series of reports proposing that regulators abolish antitrust exemptions, as well as government regulations in regulated sectors. These efforts led to the 1995 Deregulation Action Program I previously mentioned. In this process, the JFTC

tried to persuade stakeholders, including regulatory agencies, industry, and consumers to support the program. The cabinet submitted three packages of bills to repeal or reform AMA exemptions. Three bills were successfully passed through the Diet in 1997, 1999, and 2000, respectively. The number of exempted cartels went down from 1079 in 1966 to 28 in 2010. Where exemptions remained, such as in international aviation andinternational shipping, the JFTC tried to introduce prior-consultation systems with the JFTC, so that the JFTC would have the opportunity to examine the aims and objectives of regulations before anti-competitive regulations were introduced by regulatory agencies.

(2)The second JFTC action was “Competition Advocacy.” During regulatory reform, we, the JFTC, have been conducting advocacy activities using several channels, such as sector studies, study

group with outside experts, and prior consultations with sectoral regulators to adopt more pro-competitive regulations in the process of drafting laws and guidelines and regulatory impact analysis.

Let me give you an example of the advocacy for regulators. Japan is now introducing an "Emission Permit Trading Scheme." When the Ministry of the Environment started to consider an introduction of the scheme, the JFTC organized a study group with economists and asked them to examine the impact of this scheme on competition. Based on the report of the study group, the JFTC published its opinions and pointed out several problems, including the following points:

First, if emission permits are allocated through trade associations, it may lead to collusion or the exclusion of a particular firm.

Second, if the government allocates tradable permits free of charge to existing enterprises, it

may create a barrier to entry unless it is also permited to new entrants.

Directly after the publication of the report by the JFTC, the Ministry of the Environment largely ignored these opinions. However, the JFTC insisted that introducing a competition-neutral system would lead to a decrease in the entire volume of emissions, because all firms would try to introduce more energy-efficient means of production when new entrants are subject to equal conditions.

The Minister for the Environment stated that the Ministry would respect the JFTC's suggestions when they design details of the emission permit trading system.

One lesson from this episode is that competition advocacy should begin at the early stages of the discussion of regulatory change. I say this because after sectoral regulators have built a consensus among stakeholders and have written a final draft

of new regulations, it is very difficult to influence regulatory design.

Let me now talk very briefly about the Regulatory Impact Analysis (RIA). Since 2007, all Ministries have been mandated to conduct regulatory impact analysis prior to the introduction or amendment of regulations. The JFTC proposed to include the analysis of the impact of regulation on competition in the RIA. Currently, ministries are conducting analysis of the impact on competition on an experimental basis. The JFTC is helping ministries in various ways, including providing a competition evaluation check-list modeled after the list made by the OECD.

(3) The third issue at the nexus of competition policy and regulation is the enforcement of Antitrust laws in deregulated markets. Removing regulations does not necessarily bring about

competitive markets over night. It is now the role of Antitrust to ensure active competition. There are two important points: First, Antitrust law and enforcement should be such that they work effectively to prevent and detect anti-competitive conduct. We have introduced a leniency program and increased the surcharge rate so that we can more efficiently prevent and detect illegal conduct. In 2009, the types of conduct subject to surcharges were expanded to include monopolization. This leads me to the second point, which is that of monitoring the conduct of dominant firms. It is often the case that former state-owned monopolies maintain their monopoly position even after regulatory reform. It would be very difficult for new entrants to compete with a dominant firm when the playing field is not level.

Let me explain the case of NTT East.

NTT was a public telecommunications company. It was privatized in 1985, and broken up into several

companies, including two regional companies, NTT East and NTT West.

NTT East owns optical fiber networks and also provides internet connection services in eastern Japan.

In 2002, NTT East set the user fee lower than the interconnection charges which other service providers were required to pay to NTT East. Under ths price structure they set, it was impossible to earn profit at the secondary market as the wholesale price was higher than the retail price of the dominant firm. Therefore, it was impossible to expect the entry of competitors.

This is in violation of Article 3 of AMA concerning monopolization.

Let me conclude.

1. Both active enforcement of competition policy and regulatory reform are necessary to promote

consumer interests and economic vitality.

2. Dialogue with regulators to find a regulation that is least harmful to competition is important.

3. Prohibiting the abuse of a dominant position by a former monopoly after regulatory reform is important.