

Remarks as we celebrate the 70th anniversary of the Antimonopoly Act  
～Realization of economic growth through promoting innovation～

## Section 1 Introduction

In 1947, soon after the Second World War ended, the Antimonopoly Act (“AMA” or “Act”) was enacted and came into effect. This year commemorates its 70th anniversary. The Japan Fair Trade Commission (“JFTC”) also marks 70 years of history as an enforcement agency of the AMA.

In the current economic society, securing the economic activity infrastructure of a fair and free competitive environment is essential to promote sustainable and stable growth of the economy. The mission of the JFTC is to maintain a competitive environment to ensure appropriate functioning of market mechanisms, to contribute to the realization of optimal allocation of resources through invigorating the market economy and enrichment of consumer interests and overall society. We believe that our role is to bring competition itself to non-competitive markets and further fair and free competition to competitive markets through the rulemaking and law enforcement.

On this occasion of 70-year anniversary of the AMA, we shall describe the challenges of a competition policy in an economic society being rapidly changed by factors such as advances of IT and digitization, following look back of reflect on the footpath of our competition policy.

## Section 2 70-year Anniversary of Antimonopoly Act

### 1. Enactment of Antimonopoly Act

The AMA was the third competition law established in Japan following by Canada and the US, as a structure to secure democratized economy. The aim was to restore the Japanese economy under the concept of a market economy in the post-war environment, where economy democratization was promoted in several ways, such as dissolution of “*zaibatsu*” - financial conglomerate in Japan -and abolishment of anti-competitive regulations. The AMA stipulates the basic rules of market economy as an “economic constitution” with its role to function as a

foundation for realizing a prosperous economy for our country through vitalizing competition.

## 2. Efforts toward the establishment of a competition policy

As the Allies occupation ended, rapid democratization policy of industry during the postwar period was reviewed and a recession returned after the truce of the Korean War in 1951. The revised AMA substantially loosened its enforcement in 1953. It, for example, allowed recession cartels under certain conditions. Also, governmental intervention to business to weaken competition, including administrative recommendations to shorten business operations, was frequently implemented and individual legislations were established one after another exempting certain cartels from the application of the AMA. Law enforcement activities were also inactive during the 20s and 30s of the Showa era (1945–1964). It can be said that the conservation and development of domestic industries were given priority during the period, aiming for economic independence. Nevertheless, even in such an era, efforts had been made to have a competition policy established which promotes fair and free competition while preserving the basic principles of the AMA.

First, efforts were made to make a competition policy take root in Japan. Namely, taking advantage of the revision of the AMA in 1953, regulations on unfair trade practices were reinforced. As a result, with the background of the double composition of the economy which created a gap between large enterprises and SMEs, abuse of superior bargaining position was stipulated as an unfair trade practices, and the Subcontract Act was enacted in 1956 in order to implement more effective regulations to secure fairness in subcontracting transactions. From the perspective of consumer protection against misrepresentation, the Act against Unjustifiable Premiums and Misleading Representations was also enacted in 1962. Further, in the late 40s of the Showa era (the middle of 1970s), efforts were made to reduce significantly the number of goods that were permitted to maintain resale prices.

During the period of rapid economic growth, while competition among businesses intensified in some areas, industries tended to be more oligopolistic in the background of capital liberalization and rising prices were seen as a problem.

During this period, the JFTC, for example, addressed boycotts against supermarkets which had experienced rapid growth, as well as cartel cases involving rising prices or fares and violations related to resale price maintenance.

Also, JFTC addressed cases that substantially impacted our society, such as the planned merger of Yawata Iron & Steel and Fuji Iron & Steel in 1968 and the petroleum cartel case in 1974.

In 1977, the AMA was revised to be reinforced for the first time since the enactment and the surcharge system was introduced to deter cartels in a more effective manner. Since this revision, the surcharge system has been recognized as a contributor to stringent enforcement of the AMA against businesses that violate the law from the perspective of effective violation deterrence.

### 3. Promotion of deregulation and expanding role of the competition policy

Since the 50s in the Showa era (1975–1984), the JFTC has expanded its implementation of competition policy extensively in a wider range of fields towards the promotion of deregulation and development of free trade.

First, in the 50s in the Showa era (1975 – 1984), in response to criticism of our exclusive market, commitment to deregulation was required. The JFTC clarified its stance on the review of government regulations in August 1982. It then made recommendations for the review of government regulations, such as requesting ministries and agencies to take appropriate actions from the perspective of easing government regulations and promoting competition between businesses using private-sector vitality.

The Recommendation of the Council on Competition Policy and Exempted or Regulated Sectors issued by OECD in 1979 and the so-called “Maekawa Report” released in 1986 confirmed that market mechanisms should serve as a basic principle and that deregulation should be encouraged.

Deregulation is expected to expand the fields of free economic activities by businesses and to raise consumer interests through reduced prices as a result of businesses competing to offer goods and services with higher quality at lower prices. The JFTC made recommendations for deregulation proactively and set out

rules that helped proper trade by publishing guidelines that would be applied in markets where deregulation or privatization was completed because the JFTC believed it was important to secure a competitive environment that enabled businesses including new entrants to compete actively (guidelines for proper trade electric power and gas etc.).

In 1997, with consideration of the reality of economic society, the AMA was revised to lift the ban on the establishment of holding companies, which had been originally prohibited by the AMA as a specific provision to prevent excessive concentration of business controlling power.

Second, exemption of the AMA was also reviewed. Although various exempted cartels were numbered at more than 1,000 in 1965 at the peak, a situation that had been established as a way to develop industries during the postwar period, a fundamental review of such exemption and further encouragement of fair and free competition were critical issues in order to seek structural reform of economic society in Japan and to increase its vitality. In 1997, the so-called comprehensive adjustment act came into effect to abolish and 35 systems in 20 laws among exemptions based on individual laws, and as of the end of FY2016, exemptions remain 24 systems in 17 laws (the number of exempted cartels are 36).

Third, starting from around the 40s of the Showa era, Japan and the US had had a trade conflict owing to the sharp rise of exports of textile goods from Japan to the US. In order to address this, voluntary export restriction was implemented for automobiles in 1981 and a Japan–US agreement was concluded for semiconductors in 1986. However, even such government-led measures could not remove conflicts completely and Japan was required to address issues that limited access to markets, known as non-tariff barriers. The JFTC committed to taking measures against acts that may have limited imports.

At the Japan–US Structural Impediments Initiative (SII), which started in 1989, six issues of Japan were on the agenda and four of them related to competition policy, such as distribution or exclusive trade practices. In order to respond to these, guidelines were developed regarding distribution systems and business practices, which had been identified long before as inefficient and resulting in higher costs and had been investigated for having hindered competition by the

JFTC since the 50s of the Showa era (1975–1984). These guidelines contributed to the improvement of accessibility to markets.

#### 4. Efforts to strengthen the enforcement capability of the Antimonopoly Act

As described previously, as a result of experiencing economic development, deregulation and trade conflict, the role of the competition policy had become increasingly important in our country, and the JFTC had been strengthening its enforcement capability to apply the AMA more stringently to anti-competitive conducts.

In 1990, the JFTC announced its policies on criminal accusation, and in 1991 raised the surcharge rate. In 1992, the AMA was revised to stiffen criminal penalties imposed on corporations involved, related to violations of the AMA, including cartels.

Further, in 2005, the AMA was revised to include among others the following matters, which could be seen as quite significant under the legal system in Japan, and also to strengthen the enforcement system drastically.

- Raising the surcharge rate (with regard to surcharges introduced by the revision in 1977, this revision was intended to increase the amount of surcharges by setting a reasonable calculation of surcharges required to achieve the administrative means to deter violations in addition to the amount deemed to be unjust profits) and introducing additional surcharges against repeated breaches
- Introducing a leniency program (in order to detect cartels, reveal the fact cases and prevent violations in a comprehensive manner)
- Introducing the compulsory measures for criminal accusations and establishing the Criminal Investigation Department

In more recent years, the AMA was revised to expand the scope of cases that surcharges are applied to, raise prison terms for undue restraint of trade (from three to five years) and review the merger regulations (prior notification system of share acquisition as well as revision of the notification threshold from the amount of total assets to that of domestic sales) in 2009.

Meanwhile, the number of staff has increased to be able to enforce the law sufficiently. The number of staff at the JFTC grew from about 460 in 1989 to 832 in 2017. In particular, during early period of the Heisei era (from 1989), the investigation department was extensively reinforced to increase staff members, contributing to the enhancement of enforcement capability.

The enhancement of enforcement capability in terms of systems and manpower has enabled the JFTC to take aggressive actions that may have a greater impact on bid-rigging or cartels involving larger companies, including criminal accusation. For example, a bid-rigging case for steel bridge construction projects (accusation brought forth in 2005) where not only businesses of large companies, but also staff members of the authority which placed orders were found guilty for their complicity, and a cartel case involving international ocean shipping companies (2014), where surcharge payment orders were issued with more than 10 billion JPY charged to one of the violators, were impressive.

### Section 3 Current Issues on Competition Policy

#### 1. Response to globalization of business activities

Free trade and investment across borders further advanced, and especially in the 1980s and onwards, the necessity for the JFTC to respond to international activities has been increasing. In recent years, as business activities became more globalized, anti-competitive acts or mergers took place across borders, which means that companies are required to comply not only with the AMA, but also with other competition legislations in the countries concerned. Thus, convergence of competition legislations among countries would be required. Because the enforcement itself is the exercise of public power of each country, some discrepancies in enforcement measures against anti-competitive acts among countries are inevitable, for example the judicial system addresses such matters in the US, while the EU as a community enforces anti-competitive regulations as administrative action in the Europe, and Japan on the other hand enforces administrative actions and criminal prosecutions concurrently; however, standards for anti-competitive acts should be complied with harmoniously at an international level. The JFTC has been endeavoring towards international harmonization of competition policy through multilateral or bilateral cooperation.

With regard to multilateral cooperation, the JFTC has also participated in discussions of the OECD Competition Committee since 1964. The International Competition Network (ICN), established in 2001, has grown to be the one of the largest global organizations, which authorities from more than 120 jurisdictions currently participate in. The JFTC, for example, plays a leadership role as a member of the Steering Group that administers the overall activities of the ICN.

In recent years, the significance of competition policy has been recognized in emerging countries, such as those in East Asia, and more movements have been seen as existing competition laws are strengthened and new competition laws are introduced. In those contexts, the JFTC has provided technical assistance to the competition authorities in such jurisdictions, such as sending staff. In addition, the JFTC took the initiative to hold the East Asia Top Level Officials' Meetings on Competition Policy since 2005, aiming to enhance coordination among authorities in East Asia.

Also, with regard to bilateral cooperation, the JFTC has entered into bilateral agreements or arrangements on competition policy, such as between Japan and the US, and has conducted information exchanges and regular competition consultations based on them. Taking an example of cooperation and coordination with foreign competition authorities as an individual case, the JFTC reviewed the merger between BHP Billiton and Rio Tinto as it exchanged information with relevant foreign competition authorities including European Commission and Australian Competition & Consumer Commission (prior consultation review in January 2010 and closing review in October 2010 owing to the withdrawal of a proposed joint venture). Another example is the investigation into a violation of the AMA concerning automotive parts, in which the JFTC simultaneously started its investigation with US and EU competition authorities (Wire harness case: the investigation started in February 2010, and Alternator case: March 2011). Moreover, the annual meetings to exchange views between Japan and the US have marked their 35<sup>th</sup> installment, the longest-running bilateral competition consultations for both countries. Also, annual consultations between Japan and EU competition authorities have been held 32 times and the JFTC has engaged in active dialogues with other relevant competition authorities.

To deepen such cooperative relationships, the JFTC concluded with Australia and

Canada so-called “second-generation agreements” that facilitate the communication of information obtained through enforcement activities, including investigations, and is preparing to negotiate with the EC with a view to conclude a similar agreement.

As discussed above, as borderless business activities become increasingly active, it was not sufficient to implement competition laws and policies within one country in order to ensure a fair and free competition environment in our domestic market. The JFTC believes AMA enforcement is critical with more cooperation than ever with competition authorities in other jurisdictions.

As an increasing number of jurisdictions enact and apply competition laws, the enhancement of coordination with worldwide competition authorities not only helps develop competition environment in our domestic market, but also expands markets in which companies are able to conduct free economic activities under certain competition rules, thereby contributing to the sound development of the global economy.

## 2. Response to digitization

The second challenge we face is how we should respond to the digital economy stream. Needless to say this is not limited to our country, but rather is a worldwide trend. The development of information technology has enabled us to obtain convenient goods and enjoy benefits from more alternatives than ever before. Meanwhile, network effects allow digital platform companies to monopolize or oligopolize markets. In the digital economy, many platforms operated by monopoly businesses tend to be multi-faceted, combining multiple markets and new business models emerging one after another.

The critical role of competition policy is to promote innovation by maintaining an environment that promotes competitions. The JFTC needs to monitor markets so that the following is ensured: benefits of further innovation of the digital economy will be brought to people; the environment that facilitates new innovation will not be harmed by anti-competition acts; productivity improvements in our country will not be disturbed owing to restraint of competition over prices or quality; and consumer benefits will not be undermined.



Also, to promptly remove competition policy problems in the digital economy while not discouraging competitive businesses, it is critical to identify acts deemed to be suspicious under the AMA in these markets in particular and clarify what type of responses the JFTC should take.

For example, issues on the competition policy indicated in the discussion with OECD and foreign competition authorities, including accumulation and utilization of data, may hinder new entrants. The JFTC is seriously tackling these issues by clarifying the issues of competition policy related to accumulation and utilization of data in our country as well as conducting market researches associated with the digital market-related field. We wish to continue responding to changing conditions by enhancing information-gathering capabilities in the fields related to IT and digitization as well as further utilizing economic analysis.

### 3. Implementation of a system to enable further effective and efficient enforcement

In these complicated as well as rapidly changing fields of technology development, to solve problems related to competition policy expeditiously and to conduct effective and efficient law enforcement, existing systems also need to be constantly reviewed.

In April this year, The Study Group on the Antimonopoly Act released a report proposing revision of the surcharge system in order to swiftly adapt to the advance of globalization, diversification and complication of recent economic activities. The JFTC intends to take a further step while hearing opinions from related parties, towards submission of the amendment bill to the Diet.

Additionally, the procedure to settle alleged breaches of the AMA through an agreement between the JFTC and alleged companies, a so-called “Commitment Procedure”, is considered to contribute to prompt correction of competitive hindrance and to expansion of the extent to which the JFTC and companies amicably settle cases. This has been legislated as part of the Act on Arrangement of Relevant Acts Incidental to conclusion of Trans-Pacific Partnership Agreement, and we are positive in utilizing this procedure in order to achieve the legal purpose of AMA.

#### Section 4 Significance of competition policy in the new era

Among many challenges our country faces, the first is a decrease in the productive-age population, low productivity and the income gap. For the next 20 years, it is estimated that the population of Japan will decrease by 10% and the productive-age population will decline by 20%. Our labor productivity is equivalent to only 60% of that of the US. In line with global trends, how we should tackle the income gap is a nationwide concern.

Our economy has now ripened through experiencing a rapid-growth era and a subsequent depression. In order to further develop the economy and enrich citizens' lives, it is necessary to constantly create innovation by ensuring market mechanisms function appropriately.

In our country, some traditionally criticize market mechanisms as a cruel system that widens the wealth gap and creates a society where “the law of the jungle” governs, seeing it as non-“Japanese.” However, market mechanisms encourage economic growth through ideas or innovation brought by competition among businesses. Innovation is produced constantly and used, thereby improving productivity. Production resources including workers are transferred to productive businesses or markets, leading to a rise in workers' wages. If competition policy makes the overall economy grow and become more efficient, that is, the entire pie expands, income redistribution policies, such as social security, may keep the wealth gap from widening.

In addition, competition policy contributes to more efficient resource allocation by preventing rent through cartel and bid-rigging or other unfair means taken by monopoly companies that hinder competition, also deterring the occurrence of monopolization or oligopolization that would otherwise harm competition through merger regulation. Those rents would be distributed to the broader public, including consumers or new entrants, and this distribution would serve as a backstop to some extent against the widening wealth gap.

There is no doubt that income redistribution policies, such as social security, will assume an important role in solving the issue of the widening wealth gap. However, competition policy coupled with it will help improve productivity and

wage level and realize more optimal resource allocation using market mechanisms. From a mid- to long-term perspective, it is expected to solve the challenges our country faces.

## Section 5 Closing remarks

Maintenance of functioning market mechanisms through securing a fair and free competitive environment is the crucial element of economic development, and it is critical that this point is widely understood by our citizens.

More than 130 competition authorities now operate in the world and among them the JFTC has the third-longest history, next to Canada and the US. The JFTC needs to strongly strive to invigorate the market economy in cooperation with foreign competition authorities.

The AMA and JFTC now celebrate their 70<sup>th</sup> anniversary and we remember the path that the AMA and JFTC followed. Keeping an eye on today's issues, such as economic globalization, the widening wealth gap and the evolving digital economy, and fixing our eyes on 10 or 20 years down the road, it is critical for us to push forward with a competition policy that leads to further innovation, consumer benefits and economic growth.