



Japan is comprised of four main islands, Kyushu, Shikoku, Hokkaido and Honshu; as well as numerous other smaller islands. The island chain lies between the North Pacific Ocean and the Sea of Japan, east of the Korean Peninsula. Japan's capital is Tokyo, and the country is divided into 47 administrative prefectures. Japan is a constitutional monarchy with a Parliamentary Government.

Economy

Japan prides itself as being the second most technologically powerful country and the third largest economy in the world. Effective and sound competition law and policy have recently been hailed as one of the cornerstones upon which the economy of Japan relies to subsist and move forward.

Competition Evolution and Environment¹

Any discussion on competition law and policy in Japan might sound insufficient if nothing were said about what had taken place prior to its introduction. The Meiji Restoration, which took place about 130 years ago, saw the modernisation of Japan. Japan's economy had, since then, been market-oriented, without, however, laws to regulate cartels, trusts and market concentration, till the end of the World War II (WWII). In fact, the economy of Japan, prior to WWII, was characterised by the control of many companies, in various industries, by just a few families. Such groups of companies formed the *zaibatsu*, which was anticompetitive in nature.

The evolution of competition law in Japan began with the Allied occupation of Japan after the end of the WWII. The economic democratisation policy introduced by the Allied Powers saw, *inter alia*, the dissolution of the *zaibatsu*, the introduction of the *Antimonopoly Act* 1947² ('the Act') and the establishment of the Japan Fair Trade Commission (JFTC). The concept of competition policy,

PROFILE	
Population:	127.2 million***
GDP (Current US\$):	4.3 trillion
Per Capita Income: (Current US\$)	34,510 (Atlas method) 26,940 (at PPP)**
Surface Area:	377.8 thousand sq. km
Life Expectancy:	81.5 years**
Literacy (%):	99 (of ages 15 and above)
HDI Rank:	9***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

with economic development through competition, however, did not immediately take root.

Upon the cessation of the Allied occupation in the 1950s, the foremost priority in the then Government's industrial policy was to achieve economic independence, with the focus on fostering and strengthening domestic industries to earn foreign exchange. This led to the legislation of various laws exempting a wide range of industries from the Antimonopoly Act, particularly with the purpose of easing cartel regulations.

Furthermore, various anticompetitive administration measures were introduced during the recessions, in order to prevent excessive competition and stabilise the market. Despite an unfavourable political environment, the JFTC stood steadfast in support of the principles enshrined in the Act. It acted against unfair trade practices that were mainly related to SMEs, such as delays in paying subcontractors, and abuse of dominant position by department stores.

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1 Compiled from *Challenges/Obstacles Faced by Competition Authorities in Achieving Greater Economic Development through the Promotion of Competition – Contribution from Japan*, submitted by Japan to the OECD Global Forum on Competition, Session II, on 12 and 13 February 2004.

2 The full name is the Act Concerning Prohibition of Private Monopolisation and Maintenance of Fair Trade, 1947.

In the 1960s, Japan's economy became more internationalised and competition changed from domestic to international. This raised the need for industrial reorganisation through mergers and integration of enterprises. One mega-merger involved the then two largest steel companies, Yawata and Fuji. This largest post-WWII merger would have anticompetitive effects, as the market share of the merged entity would exceed 30 percent in more than 20 products. There were arguments for and against the merger. The JFTC conducted a hearing and eventually approved the merger, with conditions. The merger once again brought the JFTC into the public eyes.

The international monetary crisis and oil crisis of the 1970s rocked the Japanese economy. Many applications for recession cartels, exempt from the purview of the Act, were filed. Upon the recovery of the economy, traders continued to engage in speculative trade practices, and manufacturers formed illegal cartels to raise prices in advance of the rise in materials costs.

In February 1974, the JFTC, for the first time, referred those involved in petroleum cartels to the public prosecutor. The criminal prosecution highlighted two issues, namely:

- (i) that the tendency to believe that the formation of cartels were better than doing nothing in those times was difficult to eliminate; and
- (ii) that administrative oversight was actually involved in the cartels.

Subsequent convictions at the Supreme Court marked a turning point in cases where restrictive business practices were executed with administrative blessings.

In the 1980s and 90s, Japan's enormous trade surplus, and the appreciation in yen, necessitated deregulation in order to open up the Japanese economy and boost imports. The deregulations emphasised upon improving the quality of life; reducing the price difference between domestic and export markets; improving access to markets; revamping industrial structure and encouraging new entry; all being compatible with the competition policy.

Various exemptions, which owed their existence to the 1940s and 1950s, were also removed in order to stabilise and rationalise enterprise management, for the purpose of strengthening the industries and improving international competitiveness.

Competition Legislation

The Anti-monopoly Act 1947

The purposes of the Act, and its corresponding roles, may be divided into three main categories as follows.

1. Free Interaction between Production and Consumption

The principle here is that each seller should have the right to freely compete with another, in acquiring customers whilst consumers should have the right to freely choose which seller to buy from, and what goods or services of what quality to buy at what price.

The Act, therefore, prohibits any form of unfair trade practices, unreasonable restraint of trade or abuses detrimental to the interests of consumers.

2. Free and Fair Competition

The rationale here is that all producers should have equal opportunities in obtaining their supply of raw materials, and equal opportunities to have access to their buyers. No producer shall, whether by itself or in concert with others, prevent any other producers from having such equal opportunities for any such action.

The Act is aimed at, amongst other things, promoting free and fair competition, stimulating the creative initiative of firms, and encouraging the business activities of enterprises. The Act is, therefore, intended to rid markets of monopolies and oligopolies.

3. Elimination of Concentration of Market Power

The underlying notion here is that no one, single entity, or more, shall have such a dominant position in a particular market, as the case of the *zaibatsu*. Any proposed M&A, that may lead to the concentration of market powers, should be resisted to ensure that there is a healthy and even growth in the economy that benefits the society as a whole.

The Act, thus, puts mergers, acquisitions, interlocking directorates and others, under its regulation and such an objective is expressly enshrined in the Act by the words 'promoting democratic and wholesome development of the national economy.'

Anticompetitive Business Practices³

The types of practices subject to the control of the Act are:

Cartels

There are three categories of cartels with respective prohibitions as follows:

- (1) *Prohibition of Domestic Unreasonable Restraint of Trade*: The Act provides that no firm shall carry out any unreasonable restraint of trade. Unreasonable restraint of trade refers to cartels amongst firms, which include price cartels, volume cartels, market allocation cartels, and bid rigging;

³ Compiled from Japan Fair Trade Commission, *Role of JFTC (and Competition Policy) – How the Japan Fair Trade Commission Ensures a Robust Economy* (JFTC website, last accessed 6 Sep 2004)

- (2) *Prohibition of Participation in International Cartels:* Firms are prohibited to enter into an international agreement, which contains elements of unreasonable restraint of trade. The Act regulates trade between Japan and foreign countries, if such trade restrains competition in the Japanese market; and
- (3) *Regulation of Activities of Trade Associations:* The Act also prohibits cartels formed by trade associations. Furthermore, trade associations are prohibited from limiting the number of firms in a particular field of business, unjustly restricting the functions or activities of constituent firms, or encouraging or abetting firms to engage in unfair trade practices.

Monopolies and Oligopolies

Prohibition of Private Monopolisation: Private monopolisation by firms violates the Act. Private monopolisation means the formation of market power or the exercise of existing market power by a firm by artificially excluding or controlling the business activities of other firms, either individually or by combination or conspiracy with other firms.⁴ Exclusion means the case where other firms are made extinct through M&As or the like, or the case where new entrants are excluded. Control refers to the imposition of constraints on other firms through, for instance, the acquisition of stock, the dispatch of officers, and the utilisation of dominant bargaining position.

Measures against a Monopolistic Situation: Where one or two firms have an extremely large market share (e.g. over 50 percent), the Act deems this case a monopolistic situation and provides for necessary measures to be taken against the firm to restore competition, including the transfer of a part of its business though in practice this is the last resort.

Monitoring of Parallel Price Increase: In an oligopolistic industry, when a firm raises prices, other firms usually hike prices by almost the same amount within a short period of time, acting as if in concert. Such parallel price increases have the same effect as cartels. In order to control such parallel price increase, the JFTC may order the filing of a report stating the reasons for the price increase by major firms in an oligopolistic industry. The Act stipulates conditions precedent to the duty to report reasons for a price increase. If cartels are behind parallel price increases, the conduct in question is proscribed as a cartel.

Box 14.1: Dominance of Microsoft

Amongst the recent investigations or actions taken by the JFTC includes the recommendation issued in July 2004 against Microsoft Corporation ('Microsoft') against its practices of "dealing on restricted terms" in the Japanese market.

The salient facts of this case are that Japanese manufacturers of personal computers installed Microsoft's Windows OS, which carried some audio-video ('AV') function, in their computer pursuant to a licence agreement drafted by Microsoft.

As a result of the immense popularity of the Windows OS, the Japanese manufacturers had no choice but to install the Windows OS. Knowing their dominance in the market, Microsoft imposed an 'Immunity Provision' in its licence agreement with the Japanese manufacturers.⁵

Since some of the Japanese manufacturers of personal computers installed with the Windows OS also owned patents in AV technologies, there was a possibility of an overlap between the two sides and of Microsoft or its subsidiaries exploiting or infringing the patents of the Japanese manufacturers, with the unfortunate result that the latter would be barred from enforcing their patent rights against the former due to the Immunity Provision.

The JFTC viewed such a clause in the licence agreement as having the possibility of causing the Japanese manufacturers to lose their incentive in inventing or developing the technology relating to the AV function, with the result of tending to impede fair competition in this area of technology in Japan. As such, the JFTC issued a recommendation to Microsoft that it shall delete such a clause from its licence agreement.

Unfair Trade Practices

The Act prohibits unfair trade practices, which tend to impede fair competition. The Act regulates unfair trade practices by firms, by trade associations or unfair trade practices contained in international contracts. The Act stipulates certain such practices and empowers the JFTC to designate the specific definition of unfair trade practices. Such practices may be classified into the following three broad categories:

- (1) Conduct, which may restrain free competition, such as refusals to deal, discriminatory pricing, unjust low price sale, and resale price restrictions;

4 As such, if a firm that supplies high-quality, inexpensive products comes to monopolise the market after other firms have left the market as a result of competition, this will not violate the Act.

5 The 'Immunity Provision' provided *inter alia* to the effect the licensees shall not among others sue, bring, prosecute, assist or participate in any judicial, administrative or other proceedings of any kind against Microsoft, its subsidiaries or other licensees for infringement of the Japanese manufacturers' patents. Such immunity shall terminate upon the last to expire, of all the Japanese manufacturers' patents.

- (2) Conduct, which in itself cannot be considered fair competition, including customer enticement by deceptive methods or unjust benefits and tie-in sales; and
- (3) Conduct of large firms forcing unreasonable demands on trading partners by making use of dominant bargaining positions.

Amongst the practices subject to the Act are: refusal to deal; discriminatory pricing; discriminatory treatment; unjust low price sales; unjust high price purchasing; deceptive customer enticement; customer enticement by unjust benefit; tie-in sales; dealing on exclusive terms; resale price restriction; dealing on restrictive terms; abuse of dominant bargaining position; interference with a competitor's transactions, and interference with the internal operation of a competing company.⁶

Mergers and Acquisitions (M&As)

Under this heading, there are five main areas subject to restrictions of the Act, for the purpose of preventing the formation of an anticompetitive market structure.

Restriction of Mergers: Mergers are prohibited if they may cause a substantial restraint of competition in any particular field of trade.⁷ Whether a merger is unlawful is determined after considering various factors.

Restriction on Joint Establishment Divisions: Since joint-establishment divisions⁸ or acquisition divisions have the same effect as mergers, they are treated in the same manner as mergers in the Act.

Restriction of Acquisition of Business: The above reasoning applies here as well.

Restriction of Stockholdings: The Act stipulates that no company shall acquire or hold stock of companies in Japan where the effect of such acquisition or holding of stock may substantially restrain competition in any particular field of trade.

Restriction of Interlocking Directorates: Interlocking directorates are prohibited if they may substantially restrain competition in any particular field of trade.

Excessive Concentration of Economic Power

Whilst the regulation of mergers, divisions and acquisitions aims at preventing substantial restraint of competition in any particular field of trade, the Act also restricts excessive concentration of economic power in two aspects.

Restriction of Establishment of Holding Company: The Act prohibits the establishment of a company, or acquisition, or holding of stocks of other companies that may cause excessive concentration of economic power. Excessive concentration of economic power means a situation in which the extreme largeness of the overall business scale over a significant number of fields of businesses of a company and its subsidiaries; the remarkably large influence of the company and its subsidiaries on other firms due to transactions relating to finance; or the influential position over a significant number of mutually related fields of businesses by the company and its subsidiaries; have a large effect on the national economy and impede the promotion of free and fair competition.

Restriction on Holding of Voting Rights by Banks or Insurance Companies: The Act prohibits a company engaged in the banking business from acquiring or holding more than five percent of the total voting rights in another non-financial company in Japan, unless the prior authorisation of the JFTC is obtained or other exceptions apply. The same prohibition and exceptions apply to a company engaged in the insurance business, though the limit is 10 percent.

Institutions and its Competencies

The implementation of the Act is carried out by the JFTC, in the form of administrative measures, or by the Courts in the form of criminal penalties or civil remedies. The civil remedies available to a person whose interests have been infringed as a result of a violation of the Act include the right to seek an injunction in court, and the right to seek damages. A civil order in the case of a merger or acquisition consumed without the prior approval of the JFTC is a declaration by the Court that the M&A is null and void.

In the case of criminal convictions, the penalties include imprisonment for a maximum of three years or a maximum fine of US\$50,000 for those engaged in unreasonable restraint of trade or monopolisation; imprisonment for a maximum of two years and a maximum fine of US\$30,000 for failure to comply with a final decision; and a maximum fine of US\$1mn in the case of double punishment, for a person convicted of unreasonable restraint of trade or monopolisation.

The administrative measures that the JFTC may order include:

⁶ There is another law bearing a similar name, that is, Prevention of Unfair Competition Law 1993, but it deals mainly with labelling and trade secrets and is not directly related to anti-competition.

⁷ Any particular field of trade means the market. It is generally defined by the extent to which a merger may affect competition, taking into consideration specific factors found in the cases such as the types of goods and services handled by the merged company, the geographical extent to which such goods and services are to be traded, and the specific phase of transaction (manufacture, wholesale, retail, etc.)

⁸ A joint-establishment division means an establishment division that a company effects jointly with another company.

- to cease and desist, or to transfer a part of the business concerned (in the case of unreasonable restraint of trade, such as cartels, or monopolisation);
- to file a report or to dissolve the trade association concerned (in the case of cartels by trade associations);
- to dispose off the whole or a part of the stocks held, or to transfer a part of its business (where there is an excessive concentration of economic power);
- to file a report explaining rises in prices (in the case of parallel price increase);
- to order to resign as an officer from a company (in the case of interlocking directorate); and
- to delete the relevant contractual terms (in the case of unfair trade practices).

The JFTC may also impose surcharges⁹ in the case of price cartels, bid rigging, and production or sale cartels that may have an impact on prices.

Box 14.2: Bid-rigging Scandal

About 14 executives from 11 heavy-industry companies, including sector leader Mitsubishi Heavy Industries, were arrested in connection with one of Japan's biggest bid-rigging scandals in recent years. The move marks a step forward in efforts to quash *dango*, an institutionalised form of bid rigging that distorts competition for public works contracts and excludes many foreign bidders.

The arrests and the prospect of charging the 14 individuals are expected to make it easier for the authorities to prosecute the companies. In Japan, a company cannot be charged with violating the Anti-monopoly law until a related individual's crime is proved.

Source: *The Financial Times*, 27.05.05

The JFTC is administratively attached to the office of the Prime Minister and is positioned as an external organ of the Cabinet Office.¹⁰

The JFTC comprises of a Chairman and four Commissioners, whose proposed appointment by the Prime Minister requires the consent of both Houses of the Diet - the Parliament of Japan. The powers of the JFTC may be categorised into the administrative power (including the general power to implement the *Anti-monopoly Act* and the power to eliminate offences), quasi-legislative power (that is, the power to designate unfair trade practices), and quasi-judicial power.¹¹

⁹ Surcharges are penalties fixed as a percentage, and therefore the authority has no power to vary the same

¹⁰ Japan Fair Trade Commission, *Role of JFTC (and Competition Policy) – How the Japan Fair Trade Commission, Ensures a Robust Economy* (JFTC website, last accessed 6 Sep 2004)

¹¹ *Ibid*

¹² The full name is Nippon Telegraph and Telephone East Corporation.

¹³ Which NTT East purportedly but did not actually practise.

¹⁴ For further information, see the JFTC website (last accessed on November 22, 2004).

Sectoral Regulation

Telecommunications Sector

The Japanese Government is implementing various structural reform policies that are crucial for revitalising the economy. One particularly important policy is the dramatic development of Information Technology (IT). The Government's IT strategy intends to boost the telecommunications market, as this constitutes the core infrastructure of Japan's economy. The JFTC, which is in charge of the competition policy, is therefore working hard to encourage competition in telecommunications.

Strict enforcement of the *Anti-monopoly Act* is encouraged to promote competition in telecommunications, and especially to ensure efficient entry into the market. Due to substantial monopolisation by the giant Nippon Telegraph and Telecommunication (NTT) of regional networks and the subscriber lines, which were essential in the telecommunication business, it is crucial to make the market readily accessible to new entrants. If a new entrant requests connections from NTT and is rejected without legitimate reason, the JFTC considers this to be hindering market entry and so a violation of the *Anti-monopoly Act*.

Box 14.3: Hauling up NTT for Access and Predatory Pricing

In the domain of public utilities, the JFTC took action against NTT East¹² for violation of the Law concerning private monopolisation in 2003. NTT East, which had high-speed fibre-optic networks over Eastern Japan, offered optical broadband services to consumers as well as renting unused fibres to other telecom carriers.

It would be difficult for other telecom carriers to offer such broadband services without having access to NTT East's fibre-optic network. NTT East rented its fibres to other carriers at US\$50 per fibre, per month, whilst charging its customers US\$58 for the same rental.

When NTT East's competitor decreased its charges to customers, NTT East, upon the apparent premise of cost-down simulation per user based on a so-called 'split method',¹³ reduced its charges to its customers to US\$45 per month; with the underlying motive of preventing its competitor from reducing the latter's charges as well as preventing other carriers from entering the market. The JFTC concluded that NTT East's act substantially restricted competition in the field of fibre-optic services in Eastern Japan and ordered NTT East to cease that practice.¹⁴

The FTC is responsible for policy management for promoting competition in addition to enforcement of *Antimonopoly Act*.

Electricity Sector

On March 21, 2000, the second stage of reforms to the *Electricity Utilities Industry Law (Law 170 of 1964 - the Electricity Law)* came into force. The reforms have opened a path for new providers to sell electricity to a limited scope of ‘large-scale consumers’. These large-scale consumers account for about 27 percent of electricity consumption in Japan. The amendments are part of the Government’s policy, which aims to increase the cost-competitiveness of the industry as a whole, in order to decrease Japan’s medium to long-term electricity costs.

The first stage of partial liberalisation of the electricity market began in December 1995, when the Ministry of International Trade & Industry (MITI) – since January 06, 2001, the Ministry of Economy, Trade and Industry (METI) – introduced a wholesale tender system. Opinion is still divided as to whether this step achieved its objectives.

Although reform of the electricity industry is a high priority for the Government, there is as yet no comprehensive reform plan.

The *Electricity Law* is the central law regulating the supply of electricity in Japan, and covers such issues as:

- permission for undertaking an electric utility supply business;
- standards for electric facilities;
- use of land;
- inspection by designated authorities; and
- punitive provisions.

The Law is designed to protect consumers of electricity and promote sound development of the electricity supply business.

In the past, the electricity industry was exempt from the *Anti-monopoly Law*. The Law has been amended to remove this exemption, giving the JFTC jurisdiction over competition matters, such as fair treatment of new market entrants.

Consumer Protection

In recent years, there have been a number of scandalous events in Japan, which created anxiety amongst consumers and caused damages to even reputable firms. This is not only bad for consumers, but it can cause grave damage to companies. As and when they lose the confidence of

consumers, the companies are almost immediately shut out of the market, and they may not even survive.

Consumer Protection Laws

In Japan, a variety of laws have been enacted with the objective of protecting consumers from being harmed or to provide immediate relief if they suffer an injury.

Examples include the *Food Hygiene Law of 1947*; the *Consumer Basic Protection Law of 1968*; the *Consumer Goods Safety Law of 1973*; and the *Product Liability Law of 1994*.

There are also several laws targeting certain specific sectors with the objective of protecting consumers. Examples of these include the *Financial Products Sales Law of 2000* and the *Housing Construction Transactions Law of 1952*.

One of the most pertinent laws regulating sales methods, which target consumers, is the *Designated Products Transaction Law of 1976* (amended in 2000). This Law regulates six methods of sales to consumers; including door-to-door sales; mail order sales; telephone sales designated continuous provision of services; and tied sales transactions.

Other laws provide for cooling off periods on certain sales. Under this system, the consumer can cancel a sales contract, even without reason, and without penalty to the consumer. This system covers such fields as credit instalment sales, life insurance, real estate problems, in addition to those covered by the *Designated Products Transaction Law*.

There have been several instances where the Japanese authorities have stepped in to take action in order to protect consumer interests, or against big companies operating utilities businesses.

Box 14.4: Canned Beef Case

In the ‘false canned beef case’ in 1960, when it was discovered that canned beef consisted mostly of whale meat or horsemeat, despite the label depicting cattle, there was no law to address that problem.

The JFTC issued a cease-and-desist order against such a practice as one of ‘deceptive consumer inducement’ under the Act. This case marked the beginning of the link between deceptive representations and competition policy, with the role of the JFTC recognised as the leading consumer protection agency.¹⁵

¹⁵ This case also led to the passing of the 1962 Act against Unjustifiable Premiums and Misleading Representations, an act implemented by the JFTC. The Consumer Protection Basic Law was enacted in 1969.

Box 14.5: Misleading Consumers on the Place of Manufacture of Clothes

In one instance in 2003, three companies in Gifu City, Gifu Prefecture, were found by the JFTC to have been engaged in activities in violation of the 1962 Act Against Unjustifiable Premiums and Misleading Representations.

The three companies were manufacturers of clothes. They were found to have imported clothes made in China into Japan and taken the label 'Made in China' off, substituting them for the label 'Made in Japan' before distributing the clothes to their retailers.

The conduct was deemed to have contravened section 4(3) of the Act. As such, the JFTC warned the three companies to stop their activities and not to repeat them in future. As these three companies were members of the local cloth manufacturers' association, the JFTC also requested the association to extend the same advice to its other members.¹⁶

Apart from government actions, there is also a significant allocation in the national budget for consumer affairs. In the fiscal year 2000, the Japanese Government allocated more than US\$290,000 and more than US\$270,000 in the fiscal year 2001 for this purpose. In addition, there is a National Consumer Affairs Centre (NCAC), which serves to provide information and assistance to consumers through various means such as exhibitions, public lectures and the mass media. Consumer awareness education has also been made a part of school education at all levels.

Further, there is an active consumer movement in Japan, with groups, such as Consumers Union of Japan, Consumers Association of Japan etc.

Concluding Observations and Future Scenario

A Bill to amend Japan's Anti-monopoly Act, which had been long pending at the Japanese Diet, because of the gravity of powers it lends to the JFTC, was finally passed on April 20, 2005. The amendments were to:

- increase administrative fines for certain unreasonable restraints of trade, such as price fixing, bid rigging or conspiracy to limit supply, by 100 percent.

- introduce a 'leniency' or 'amnesty'. They exempt, from administrative fines, the first member of a cartel who voluntarily, independently provides relevant information to the JFTC. The second and the third reporting companies will be exempt from 50 percent and 30 percent, respectively, of the relevant fines.
- abolish the JFTC's current *shimpan* hearing process that permits companies to challenge, in an adversarial hearing, allegations of unlawful conduct. They permit the JFTC to issue cease-and-desist orders to alleged offenders *after* a much simpler hearing process, and affected companies will be permitted to challenge the allegations only after issuance of the cease-and-desist order; and
- expand significantly the JFTC's criminal investigative powers by authorising the JFTC to seize documents, with a court-issued warrant, directly from corporate offices or homes of company executives.

The amendments, an important part of Prime Minister Koizumi's reform programme announced in early 2004, engendered considerable opposition from the business community. Ultimately, the legislation was introduced after a compromise negotiated between the JFTC and the ruling Liberal Democratic Party-led coalition, with significant input from the business community.

Until this amendment went through, it has been more than half a century since the enactment of the Antimonopoly Act. In spite of all the difficulties since its establishment, the JFTC has continued to advocate for healthy competition in the Japanese industry and market. The challenges facing the JFTC, as voiced by the current chairman of the JFTC, are its independence from political influence and its ability to maintain an arms-length relationship with other government institutions, so as to eliminate influence from interested parties.

Continuing competition advocacy, particularly in relation to regulatory agencies requires that the JFTC be able to demonstrate sufficient operative influence and yet ensure its close relationship with the other government institutions. As policies change over time, the JFTC will have to ensure that its work keep up with such changes.¹⁷

¹⁶ For further information, see the JFTC website (last accessed on 22 November 2004).

¹⁷ TAKESHIMA, Kazuhiko, *The Position of Competition Authorities within Government*, speech presented at the ICN Annual Conference on June 23-25, 2003

Suggested Readings

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✦ Japan to Relax

Japan's Fair Trade Commission (FTC) is considering relaxing its merger control policy.

The Commission is expected to adopt the Herfindahl-Hirschman Index (HHI), which is used to measure market concentration in the US and Europe.

The HHI index calculates the degree of control held by larger firms, as well as market share. The Commission may also begin to clear mergers where the market share exceeds the current limit of 35 percent.

The Commission received 1,093 merger filings in 2005. The new draft guidelines of the Commission are expected in February 2007.

(Source: Global Competition Review, 28.11.06)

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