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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN JAPAN

-- 2005 --

This report is submitted by the Japanese Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 18-19 October 2006.

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1. Changes regarding competition laws and policies – Outline of new regulations in competition laws and related legislations

1.1 Amendment of the Antimonopoly Act

1.1.1 Establishment of the Amended Antimonopoly Act

1. The Amended Antimonopoly Act, which revised the surcharge system (including an increase in the surcharge rate), introduced a leniency program, introduced compulsory measures for criminal investigations and revised the hearing procedures, was established on April 20, 2005, and came into effect on January 4, 2006.

1.1.2 Development of relevant cabinet orders and Fair Trade Commission rules

2. With the amendment of the Antimonopoly Act above, the relevant cabinet orders and Fair Trade Commission rules were developed.

Partial revision of cabinet order for enforcement of the Antimonopoly Act

3. This revision includes the necessary developments of provisions concerning a) methods to calculate the purchase amount through a purchase cartel; b) methods to calculate the sales amount through private monopolisation, which dominates competitors; c) the size of business cooperative for which a reduced surcharge rate is applied; d) the application of the leniency program when an offender merges; and e) the rate of overdue charge in relation to the surcharge payment during the hearing procedure.

Partial amendment of cabinet order concerning organisation of Fair Trade Commission General Secretariat

4. This revision includes the organisational change of the Special Investigation Department to the Criminal Investigation Department for the purpose of conducting criminal investigations and other necessary developments of provisions concerning affairs under the jurisdictions of the Secretariat, Bureaus and Divisions of the General Secretariat of the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”).

Partial amendment of cabinet order concerning designation of investigator pursuant to Section 46 (2) of Antimonopoly Act

5. This revision was made to change the status of officers who may be designated as “investigators” so that officers within the Criminal Investigation Department will not be designated as “investigators” who may exercise administrative investigative powers.

Establishment and amendment of Fair Trade Commission rules

6. The JFTC established “Rules on Reporting and Submission of Materials Regarding Immunity From or Reduction of Surcharges,” “Rules on Administrative Investigations by the Fair Trade Commission” and “Rules on Compulsory Investigation of Criminal Cases by the Fair Trade Commission” and amended “Rules on Hearing by the Fair Trade Commission.”

1.2 Bilateral cooperation agreements

1.2.1 Signing of “Agreement between the Government of Japan and the Government of Canada Concerning Cooperation on Anticompetitive Activities”

7. On September 6, 2005, the Government of Japan and the Government of Canada signed the “Agreement between the Government of Japan and the Government of Canada Concerning Cooperation on Anticompetitive Activities,” which came into effect on October 6, 2005. It prescribes notification, cooperation, coordination, requests for enforcement activities and consideration of important interests between the competition authorities.

1.2.2 Signing of “Agreement between the Government of Japan and the Government of Malaysia for an Economic Partnership”

8. In December 2005, the Government of Japan and the Government of Malaysia signed the “Agreement between the Government of Japan and the Government of Malaysia for an Economic Partnership.” The chapter on “Controlling Anti-competitive Activities” provides that each country shall take measures which it considers appropriate against anti-competitive activities and shall cooperate in the field of controlling anti-competitive activities. The Agreement came into effect in July 2006.

1.2.3 Other moves toward agreements

9. The Government of Japan is conducting discussions concerning those texts on competition policy matters as it pursues examinations aimed at reaching economic partnership agreements with the Governments of Korea, Thailand, Philippines, Indonesia, and ASEAN. The Government of Japan initiated negotiations for economic partnership agreements with Chile in February 2006.

2. Enforcement of competition laws and policies

2.1 Measures against violations

2.1.1 Measures taken in 2005

10. Under the unrevised Antimonopoly Act, the JFTC conducts necessary investigations based on Section 46 of the Act, and when the JFTC finds that there is any existing fact of violation, it makes recommendations to take measures to eliminate the violation (Section 48 (1) and (2)), or initiates hearing procedures (Section 49 (1)). If the JFTC is unable to make recommendations because over one year has passed since the termination of violations, but it can still issue surcharge payment orders, it does so in this case (Section 48-2). Even if the JFTC doesn't have enough evidence to take legal measures, when it identifies any suspicions of violations of the Antimonopoly Act, it issues warnings and instructs the parties concerned to take measures. In addition, the JFTC issues cautions as a form of prevention of such violations when it doesn't have enough evidence to specifically identify the violation of the Antimonopoly Act, but is only able to recognise certain conduct which could lead to violations of the Antimonopoly Act.

11. Out of 76 examinations concluded by the JFTC in 2005, it took legal measures (recommendations and surcharge payment orders without recommendation) in 20 cases (20 cases of recommendations), ordering actions such as cease and desist orders to be carried out for violations. The JFTC also issued warnings in 8 cases in which it identified suspicions of violations of the Antimonopoly Act, issued cautions in 37 cases, and terminated examinations in 11 cases in which it was unable to uncover evidence of illegal conduct.

Legal measures

12. The JFTC has been especially engaged in continuous efforts to eliminate bid rigging. In 2005, 11 of the JFTC's legal measures were carried out against bid rigging.

| | |
|---|----|
| • Private monopolisation | 1 |
| • Bid rigging | 11 |
| • Price cartels, etc. (excluding bid rigging) | 4 |
| • Unfair trade practices | 4 |
| • Unjustly restricting the functioning and activities of constituent entrepreneurs by trade association | 0 |

Surcharge payment orders

13. The Antimonopoly Act states that when enterprises or trade associations form cartels, a surcharge will be levied in the following cases:

- a) Cases pertaining to the prices of goods or services; and
- b) Cases that affect the prices of goods or services by effectively restricting the volume of supply.

14. The amount of the surcharge is calculated by multiplying the amount of sales of concerned goods or services during the period of the cartel by a certain percentage. In the case of trade associations, the surcharge payment is levied on the enterprises constituting the association. In 2005, the JFTC issued surcharge payment orders to 121 enterprises totalling 8,369.1 million yen. In addition, the JFTC issued 28 orders to enterprises totalling 2,124.95 million yen following decisions in 2005 in cases for which a hearing procedure concerning a surcharge payment order before 2004 was conducted.

15. Of the 121 entrepreneurs ordered to pay surcharges, 14 enterprises requested hearings in 2005. The JFTC initiated hearings on all of the cases, and surcharge payment orders totalling 495.06 million yen were nullified. (One enterprise was ordered to pay 2.25 million yen surcharge after a decision via hearing procedures in 2005.)

Criminal accusations

16. The JFTC has adopted an active policy to apply criminal penalties to violations that a) substantially restrict competition in a particular field of trade, including price cartels, supply restraint cartels, market allocation agreements, bid rigging and boycotts, which constitute serious cases that are likely to have a widespread influence on the national economy; or b) involve firms or industries that are repeat offenders or which do not take appropriate measures to eliminate a violation, and for which the administrative measures of the JFTC are not considered sufficient to meet the aims of the Antimonopoly Act.

17. In 2005, the JFTC filed accusations regarding 2 cases as follows:

- a) The JFTC filed accusations with the Public Prosecutor General against steel bridge construction companies who designated in advance the winner of a tender for steel bridge construction projects ordered for competitive bids by the Kanto Regional Development Bureau, Tohoku Regional Development Bureau and Hokuriku Regional Development

Bureau of the Ministry of Land, Infrastructure and Transportation (hereinafter referred to as the "MLIT") and enabled the candidate to win. (23 May and 15 June 2005).

- b) The JFTC filed accusations with the Public Prosecutor General against steel bridge construction companies who determined in advance the winner of a tender for steel bridge construction projects ordered for competitive bids by the Japan Highway Public Cooperation and enabled the candidate to win. (29 June, 1 August and 15 August 2005).

Hearing procedures

18. The JFTC initiated hearing procedures on 18 cases in 2005. As of December 2005, the JFTC was conducting pending hearing procedures for 138 cases, of which 29 concerned allegations of violations of the Antimonopoly Act, 103 concerned surcharge payment orders and 6 concerned allegations of violations of the Premiums and Representations Act. The JFTC issued decisions on 28 cases in 2005 after hearing procedures, including a bid rigging case in which the JFTC found that contractors of civil engineering works and paving works had colluded to designate in advance the winners of bids and effectively to allow them to receive the works ordered by Chiba City.

Implementation of the Act Concerning Elimination and Prevention of Involvement in Bid Rigging, etc.

19. Under the Act, the JFTC may demand improvement measures from the heads of ministries and agencies, etc. when it finds their officers involved in bid rigging, etc. as the result of its investigation of bid rigging cases. Heads of ministries and agencies, etc., when they receive that demand, shall perform a necessary investigation and implement improvement measures on the basis of the results of the investigation. They shall also carry out a necessary investigation about any claims to their employees of compensation for damage and the reasons for disciplinary actions against these employees. The concerned government administrative institutions shall, with regard to the prevention of involvement in bid rigging, etc., cooperate by organising mutual coordination. In 2005, the JFTC demanded improvement measures from the President of the Japan Highway Public Corporation based on the Act. (See 2) E) below.)

2.1.2 *Summary of main cases*

Case against Intel Kabushiki Kaisha

20. Intel Kabushiki Kaisha (totally-held subsidiary of Intel Corporation), since around May 2002, has forced the five major Japanese OEMs to refrain from adopting competitors' CPUs for all or most of the PCs manufactured and sold by them or all of the PCs that belonged to specific groups of PCs by making commitments to provide the five OEMs with rebates and/or certain funds in order to maximise their MSS (the ratio of the CPUs manufactured and sold by Intel to the volume of CPUs to be incorporated into the PCs which are manufactured and sold by an OEM), respectively, on condition that:

- a) the Japanese OEMs make MSS at 100% and refrain from adopting competitors' CPUs;
- b) the Japanese OEMs make MSS at 90% and lower the ratio of competitors' CPUs in the volume of CPUs to be incorporated into the PCs manufactured and sold by them down to 10% or
- c) the Japanese OEMs refrain from adopting competitors' CPUs to be incorporated into PCs in more than one series with a fairly large amount of production volume in comparison to others.

21. On March 8, 2005, the JFTC issued a recommendation for the elimination of this misconduct for violation of Section 3 (Private Monopolisation) of the Antimonopoly Act. (Decision issued on April 13, 2005.)

Case against Chaku-Uta service providers

22. The five Chaku-Uta (See Note below) service providers entrusted the Chaku-Uta service to Label Mobile Co. Ltd. Without any justification, they jointly refused to grant a master license to any operators providing or wishing to provide the Chaku-Uta service, other than those entrusting the Chaku-Uta service to Label Mobile Inc.

23. On March 24, 2005, the JFTC issued a recommendation for the elimination of this particular misconduct for violation of Section 19 (corresponding to Paragraph 1 (1) of the Designation of Unfair Trade Practices, "Concerted Refusal to Deal") of the Antimonopoly Act. (Hearing procedures against 4 out of the 5 companies initiated on April 26, 2005.) (Note) "Chaku-Uta" is a service that provides part of the musical voice of the original master license to a cellular phone for use as a ringtone.

Case against a large-scale retailer

- a) When opening new stores or remodelled stores under its management, the large-scale retailer compelled suppliers of food products, clothing products, miscellaneous goods, etc. in a continuous business relationship with the retailer and in an inferior bargaining position with the retailer to dispatch their employees to locations in order to have these said employees engage in the display, supplementation, etc. of the retailer's goods for sale.
- b) The large-scale retailer compelled suppliers of clothing products, etc. in a continuous business relationship and in an inferior bargaining position with the retailer to lower the charge of goods supplied, on the condition of purchase, by an amount necessary to respond to reduced profit occurring in line with discount sales from the standard charge when making the said discount sales of inventory, even though these suppliers had no liabilities for this reduced profit.

24. Recognising these facts, on April 15, 2005, the JFTC issued a recommendation for the elimination of this misconduct for violation of Section 19 of the Antimonopoly Act (corresponding to Paragraph 2 and Paragraph 6 of the Designation of Specific Unfair Trade Practices in the Department Store Business). (Decision issued on May 12, 2005.)

Case against bidders for steel bridge construction projects ordered by the Kanto Regional Development Bureau, Tohoku Regional Development Bureau and Hokuriku Regional Development Bureau of the MLIT

25. Since April 1, 2002 at the latest, 45 companies, participants in bids for steel bridge construction projects ordered by the Kanto Regional Development Bureau, Tohoku Regional Development Bureau and Hokuriku Regional Development Bureau of the MLIT, had agreed that they would designate in advance the winner of the tender for the project ordered for a competitive bidding system (including a comprehensive evaluation bidding system) by the three Development Bureaus and enable the winner to receive the order for the purpose of preventing drops in contract prices and maintaining their stable profits.

26. On September 29, 2005, the JFTC issued a recommendation for the elimination of this misconduct for violation of Section 3 (Unreasonable Restraint of Trade) of the Antimonopoly Act. (Hearing procedures against 4 out of the 45 companies initiated on November 18 2005.)

Case against bidders for steel bridge construction projects ordered by the Japan Highway Public Corporation.

27. Since April 1, 2002 at the latest, 45 companies, participants in bids for steel bridge construction projects ordered by the Japan Highway Public Corporation, had agreed that they would determine in advance the winner of the tender for the project ordered for the competitive bidding system (including the

comprehensive evaluation bidding system) by the Public Corporation and would enable the winner to receive the order for the purpose of preventing drops in contract prices and maintaining their stable profits.

28. On September 29, 2005, the JFTC issued a recommendation for the elimination of the misconduct for violation of Section 3 (Unreasonable Restraint of Trade) of the Antimonopoly Act. (Hearing procedures against 4 out of 45 companies initiated on November 18, 2005)

29. In addition, the JFTC found that employees, etc. of the Japan Highway Public Corporation were involved in the bid rigging, so it demanded improvement measures from the President of the Corporation, who was meant to carry out orders under the Act Concerning Elimination and Prevention of Involvement in Bid Rigging, etc.

Case against manufacturer-distributors of glass wool for residences

Kinki district

30. Around September 24, 2004, three manufacturer-distributors of glass wool for residences made the following decisions with regard to glass wool for residences distributed to wholesalers called “construction material wholesalers” that engaged in sales in Shiga Prefecture, Kyoto Prefecture, Osaka Prefecture, Hyogo Prefecture, Nara Prefecture and Wakayama Prefecture:

- i. To raise the per-3.3 meter squared sales price of the product with a density of 10 kilograms and thickness of 50 millimeters (hereinafter referred to as “10-kilogram standard product”) to 380 yen.
- ii. To raise the sales price of all products having a 10-kilogram density in proportion to thickness, using the sales price of the 10-kilogram standard product determined in (i) above as the basis.
- iii. To make the sales price increases mentioned in (i) and (ii) above effective starting with shipments made on November 1, 2004.

Kyushu district

31. Around August 25, 2004, the same three manufacturer-distributors of glass wool for residences made the following decisions with regard to glass wool for residences distributed to wholesalers called “construction material wholesaler” that engaged in sales in Fukuoka Prefecture, Saga Prefecture, Nagasaki Prefecture, Kumamoto Prefecture, Oita Prefecture, Miyazaki Prefecture and Kagoshima Prefecture:

- i. To raise the per-3.3 meter squared sales price of a 10-kilogram standard product to 400 yen.
- ii. To raise the sales price of all products having a 10-kilogram density in proportion to thickness, using the sales price of the 10-kilogram standard product determined in (i) above as the base.
- iii. To make the sales price increases mentioned in (i) and (ii) above effective starting with shipments made on October 1, 2004 for Asahi Fiber-Glass Co., Ltd., shipments made on October 21, 2004 for Mag Co., Ltd. and shipments made on November 1, 2004 for Paramount Glass Manufacturing Co., Ltd.

32. On October 20, 2005, the JFTC issued a recommendation for the elimination of such misconduct for violation of Section 3 of the Antimonopoly Act (Unreasonable Restraint of Trade). (Decision issued on November 18, 2005.)

Case against manufacturer-distributors of aluminium foil

Plain foil

33. Six manufacturer-distributors of aluminium foil that did not undergo printing, colouring, laminating, or other processing (hereinafter referred to as “plain foil”) made the following decisions with regard to the consumer price for plain foil at meetings joined by executives in charge of the sales of the said six companies:

- i. Around July 26, 2002, to raise the per-kilogram price by 50 yen over the current price, beginning with shipments made in October 2002.
- ii. Around October 23, 2003, to raise the per-kilogram price by 40 yen over the current price beginning with shipments made in April 2004.
- iii. Around November 18, 2004, to raise the per-kilogram price by 30 yen over the current price beginning with shipments made in February 2005.

Processed foil for PTP

34. Around April 27, 2004, a total of five companies consisting of four manufacturer-distributors and one distributor of aluminium foil that, among aluminium foil that underwent printing, colouring, laminating, or other processing, was used in the lids of plastic containers for capsules, tablets, etc. for pharmaceutical products (hereinafter referred to as “processed foil for PTP”) decided to raise the consumer price of processed foil for PTP from 5% to 10% over the current price beginning with, at the latest, shipments made in July 2004 at a meeting joined by executives in charge of the sales of the said five companies and Sun Aluminium Industries, Ltd. (Mitsubishi Aluminium Co., Ltd., a company affiliated with MA Packaging, Ltd., participated in the meeting on behalf of MA Packaging, Ltd.)

35. On November 11, 2005, the JFTC issued a recommendation for the elimination of such misconduct for violation of Section 3 of the Antimonopoly Act (Unreasonable Restraint of Trade). (Decision issued on December 12, 2005.)

Case against Sumitomo Mitsui Banking Corporation

36. Sumitomo Mitsui Banking Corporation demanded that entrepreneurs in a financial relationship with the bank and in an inferior bargaining position to the bank purchase a derivative financial commodity (interest swap). It did so by proposing that said entrepreneurs should purchase the commodity during the process of moving forward with financial procedures and by directly expressing and/or suggesting that the entrepreneurs’ purchase of the commodity was a condition for receiving a loan, and that if the entrepreneurs did not purchase the commodity, their requests for a loan would be handled in an unfavourable manner. This left the entrepreneurs with no choice but to purchase the commodity. On December 2, 2005, the JFTC issued a recommendation for the elimination of such misconduct for violation of Section 19 of the Antimonopoly Act (corresponding to the Paragraph 14 (1) of the Designation of Unfair Trade Practices, “Abuse of Dominant Bargaining Position”). (Decision issued on December 26, 2005.)

2.1.3 Litigation

Lawsuits seeking to overturn a JFTC decision

37. Regarding lawsuits seeking to overturn JFTC decisions, no court decision was made in 2005. Meanwhile, two new lawsuits were filed. As of the end of December 2005, there were four pending lawsuits.

Lawsuits seeking injunction based on Section 24 of the Antimonopoly Act

38. Throughout 2005, two new lawsuits were filed based on Section 24 of the Antimonopoly Act. As of the end of December 2005, there were nine pending lawsuits.

Lawsuits seeking compensation for damages based on Section 25 of the Antimonopoly Act

39. Throughout the month of December 2005, four new lawsuits were filed based on Section 25 of the Antimonopoly Act. As of the end of December 2005, there were seven pending lawsuits.

Other claims for compensation for damages related to the Antimonopoly Act

40. In accordance with the provisions of the Civil Law, local governments that issued purchase orders have initiated lawsuits seeking compensation for damages suffered as a result of a violation of the Antimonopoly Act.

41. Following the enactment of the revised Local Autonomy Law in September 2002, residents living in local government districts may file a lawsuit against a municipality for individually bringing a case before the court seeking compensation for damages. With this reform, the system of resident subrogation lawsuits, in which residents living in local government districts subrogated the local government and sought compensation for damages, was abolished.

A major pending lawsuit seeking compensation for damages brought by an ordering party – A damage suit related to procurement auctions for public construction works ordered by Niigata City

42. With regard to bid rigging in procurement auctions for public construction works ordered by Niigata City, this city filed a lawsuit with the Niigata District Court in December 2005, seeking compensation for damages based on the provision of the Civil Law from respondents for which the JFTC issued a resulting decision on September 17, 2004. This lawsuit is currently pending.

2.2 Mergers and acquisitions

2.2.1 Effort to progress transparency and predictability of mergers and acquisitions regulations

43. In May 2004, the JFTC prepared and published the “Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination” from the standpoint of ensuring the transparency of merger review and enhancing the predictability of the entrepreneur. In addition, the JFTC published a general review context of those cases that could be useful to an entrepreneur planning mergers and acquisitions, chosen among cases that have taken notifications and prior consultations.

2.2.2 Statistics relating to mergers and acquisitions

44. Based on the provisions of Section 10, Section 15, Section 15-2 and Section 16 of the Antimonopoly Act, stockholdings, company mergers, divisions and business acquisitions of a particular

size in Japan must be reported to the JFTC. The JFTC conducts an examination of reported cases, and when it determines that a transaction may substantially restrict competition in a relevant market, the JFTC has the power to take measures, including the prohibition of said transaction. Throughout 2005, 83 company mergers were reported based on the provisions of Section 15, 16 company divisions were reported based on the provisions of Section 15-2, 152 cases of business acquisitions were reported based on the provisions of Section 16 and 841 stockholdings were reported to the JFTC based on the provisions of Section 10 of the Antimonopoly Act. None of the stockholding, merger, division or business acquisition cases reported in 2005 were cases in which the JFTC took any legal measures.

Number of reports concerning stockholdings, company mergers, divisions and business acquisitions

| | 2003 | 2004 | 2005 |
|-----------------------|-------|-------|-------|
| Stockholdings | 1 126 | 745 | 841 |
| Mergers | 118 | 80 | 83 |
| Divisions | 19 | 25 | 16 |
| Business acquisitions | 168 | 170 | 152 |
| Total | 1 431 | 1 020 | 1 092 |

2.2.3 Main mergers and acquisitions cases

Polystyrene business integration between PS Japan Corporation and Dainippon Ink and Chemicals Incorporated

45. In this case, PS Japan Corporation (hereinafter referred to as “PSJ”) and Dainippon Ink and Chemicals Incorporated (hereinafter referred to as “DIC”) planned to integrate their polystyrene (hereinafter referred to as “PS”) operation through the business acquisition of PS operations from DIC to PSJ and investment from DIC to PSJ. The JFTC let the parties know of their suspicions that the two companies could substantially unilaterally or cooperatively restrain competition in a particular field of trade by carrying out the planned integration. As a result, the parties decided not to proceed with said integration. (Published in April 2005.)

Market conditions

46. The domestic market size of PS in 2004 was approximately 130 billion yen in value. Although demand had been decreasing due to the offshore transfer of users’ production bases, the downward trend in demand had levelled off since 2001. It is expected that the demand will continue at the current level for some years. The combined share of PS sales volume of the two parties concerned after the integration in question would have been approximately 50%, ranking first in the market. (HHI after the integration would have been approximately 3600, an increase of approximately 900.)

Factors taken into consideration

Developing oligopoly in circumstances of low surplus supply capacity

- i. The integration in question would realise a combined share of the parties’ sales volume of approximately 50%, ranking top in the market, and would reduce the number of competitors in the domestic market from four to three. The market situation would become more oligopolistic with the concentration ratio of these three companies exceeding 95%. In addition, Dainippon Ink, the only company that has a different procurement source as it has

- no capital relationship with any manufacturer of styrene monomer, the raw material of PS, was to integrate their PS business with PSJ.
- ii. Domestic competitors have almost no surplus supply capacity. Moreover, the parties concerned planned to abolish some production facilities, which would have resulted in a tighter supply-demand situation.

Absence of competitive pressure from imports

- i. Due to inferior quality compared to that of domestic products, it is difficult for PS users to use imported PS products for food packaging (a part of PS for packing and foaming), which accounts for the majority of the parties' sales volume. While imported products are used for other purposes, there are cases in which the users cannot find the grade they need among imported PS products since there are fewer grades of imports available compared to the availability of domestic product grades.
- ii. Usual trading lots of imports are large containers (approximately 15 to 20 tons), which are so big that only users with a certain level of demand can purchase the imports. In addition, some users are concerned about the supply stability of imported products compared to those produced domestically.
- iii. Even at a time when the imports are less expensive than domestic products, there is only a modest increase in the import volume. The price disparity has not always brought about a fluctuation in import volume. It is, therefore, difficult to conclude that import pressures function fully to influence prices in the domestic market.
- iv. Most PS produced in Asian economies, such as in South Korea and Chinese Taipei (the main exporters to Japan), is exported to China in response to increasing demand, resulting in a shortage of PS supply. This situation makes it difficult to increase exports to Japan, and the tendency is predicted to continue for some period of time. Although China is building up their productivity of PS, the production capacity of PS in Asia as a whole, including in China, will be insufficient to cover the deficit in China, with the prospect of a continuing short supply of styrene monomer in Asia as a whole. Accordingly, PS produced in Asian economies is not likely to function as a form of import pressure.

No probability of new entry

47. The market size has levelled off since 2001, and no significant expansion is expected for the future. Considering these circumstances and the huge investment necessary to set up manufacturing facilities, new entry cannot be expected in this product market.

Absence of competitive pressure from neighbouring markets

48. Because of the difference in function and prices between PS and other resins, it is difficult to substitute another resin for PS in terms of technology and cost. Although some users have switched to a substitute resin since 2004 following the substantial price increase of PS, this is limited to only a minimal proportion of major users. Accordingly, this cannot be considered a factor in restraining the PS price increase incurred by domestic PS manufacturers.

Conclusions

49. Based on the evaluations in a) and b) below, the JFTC found that the parties to this integration might, either unilaterally or cooperatively with their competitors, substantially restrain competition in a particular field of trade if the integration in question were to take place.

Evaluation of the substantial restraint of competition by unilateral conduct

50. Four domestic manufacturers currently exist, and these competitors have practically no excess supply capacity. Some users cannot substitute imported products for those produced domestically due to insufficient quality and the instability of supply. In addition, PS exporters do not have excess supply capacity, reflecting the current tight supply-demand balance in the Asian market, and competitive pressure from new entrants and neighbouring markets is weak. Taking these factors into consideration, it is extremely difficult for users to switch suppliers at their own discretion, and the bargaining power of users in price negotiation is therefore insufficient.

51. Due to this domestic market condition, the integration in question would result in the parties garnering a share of approximately 50% of the domestic sales volume, widening the gap between the parties and the two other smaller manufacturers, and allowing the parties involved to reduce the said smaller manufacturers' power as a check against price increases. Consequently, it was considered that a situation would easily arise in which the concerned parties could, to some extent, unilaterally control the PS price, etc.

Evaluation of the substantial restraint of competition by coordinated conduct

52. Sufficient competitive pressure from imports, new entrants and neighbouring markets was not found. In this highly oligopolistic market, competing companies can each accurately predict competitors' behaviour based on a situation in which production capacities of competitors are easily known and competitors have similar cost structures with a higher proportion of common raw materials in the total production cost.

53. Due to this domestic market condition, the integration in question would reduce one competitor with different procurement sources for raw materials and create a more oligopolistic market. Consequently, it is considered that this would lead to a situation in which the integrating company and the competitors could, to some extent, easily cooperatively control the PS price, etc.

3. The role of a competition authority in the formulation and implementation of other policies

3.1 Coordination between the Antimonopoly Act and other economic laws and ordinances

54. When administrative bodies propose to enact or amend an economic law or ordinance from the standpoint of a specific policy requirement, the JFTC acts in consultation with these bodies to ensure coordination among the proposed provisions, the Antimonopoly Act and competition policy. In 2005, the JFTC acted in consultation with other administrative agencies and submitted the JFTC's opinions.

3.2 Notification of "Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers"

55. The JFTC had established the Designation of Specific Unfair Trade Practices in the Department Store Business (Department Store Business Notification, abolished on November 1, 2005), but the Notification was no longer necessarily effective in the current distribution environment. Consequently, the JFTC established the "Designation of Specific Unfair Trade Practices by Large-Scale Retailers to Trade

with Suppliers” (Large-Scale Retailers Notification) as a new rule on May 13, 2005, and put it into effect on November 1, 2005. In addition, to ensure the transparency of the application of the Large-Scale Retailers Notification and the predictability for business operators, the JFTC established the guidelines for this notification on June 29, 2005.

3.3 Revision of “Guidelines for Proper Electric Power Trade”

56. In December 1999, the JFTC established, in cooperation with the Ministry of International Trade and Industry (the present Ministry of Economy, Trade and Industry), the “Guidelines for Proper Electric Power Trade” which describe controversial acts, etc. in the electric power business concerning the Antimonopoly Act or the Electricity Utilities Industry Law from the standpoint of fair and effective competition.

57. In May 2005, the JFTC revised these Guidelines in cooperation with the Ministry of Economy, Trade and Industry. This revision was based on enforcement of the Revised Electricity Utilities Industry Law in April 2005 and examples of cases brought to the government for advice following the previous revision of the Guidelines in July 2002.

58. In this revision, the JFTC added a clarification of the types of conduct which may violate the Antimonopoly Act when carried out by general electric power businesses with regard to placement of improper limitations on the introduction, etc. of privately-owned electrical power facilities, such as cogeneration systems. Moreover, the JFTC added as types of conduct which may infringe upon the Antimonopoly Act a provision on a) the offer of unjust benefits in light of normal business customs under conditions to completely electrify residences; b) the improper request for establishment of complete electrification as a business condition; and c) the discriminatory treatment of other businesses compared to businesses that adopt complete electrification, etc.

3.4 Publication of “Guidelines on Standardisation and Patent Pool Arrangements”

59. On June 29, 2005, the JFTC established and published the “Guidelines on Standardisation and Patent Pool Arrangements”.

60. In industries experiencing innovation and technical change, such as an information telecommunication sector, activities by several parties to jointly develop specifications and to standardise them (specification standardisation activities) and efforts such as organising patent pools to license patents and other intellectual properties on specifications as a package are important in facilitating the standardisation of specifications.

61. Given this situation, the guidelines were established to clarify the interpretations of the Antimonopoly Act with regard to specification standardisation activities by several entrepreneurs as well as the organisation and operation of their patent pools. The guidelines contribute to preventing violations of the Antimonopoly Act and promoting specification standardisation activities.

4. Japan Fair Trade Commission resources (FY2005)

4.1 Budget (unit: \ billion and %)

| Fiscal Year | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|---|------|------|------|------|------|------|------|------|------|
| Budget amount (\ billion) | 5.56 | 5.62 | 5.78 | 5.9 | 6.04 | 6.16 | 7.85 | 7.82 | 8.13 |
| Change over previous year (%) | 3.3 | 1.1 | 2.8 | 2.1 | 2.3 | 2.0 | 2.2 | △0.4 | 4.0 |
| General Expenditures Budget—change over previous year (%) | 1.5 | △1.3 | 5.3 | 2.6 | 1.2 | △2.3 | 0.1 | 0.1 | △0.7 |

Notes

1. The General Expenditures Budget refers to the total budget of the Japanese Government and is the amount of General Account Budget Expenditures less National Debt Service and Local Allocation Tax Grants.
2. The rate of increase for the JFTC budget of FY2003 is compared to the post-reclassification budget (7.69 billion yen) in order to avoid the effects of an increase in personnel expenses, which required an independent calculation, in line with the JFTC's transfer to the Cabinet Office.

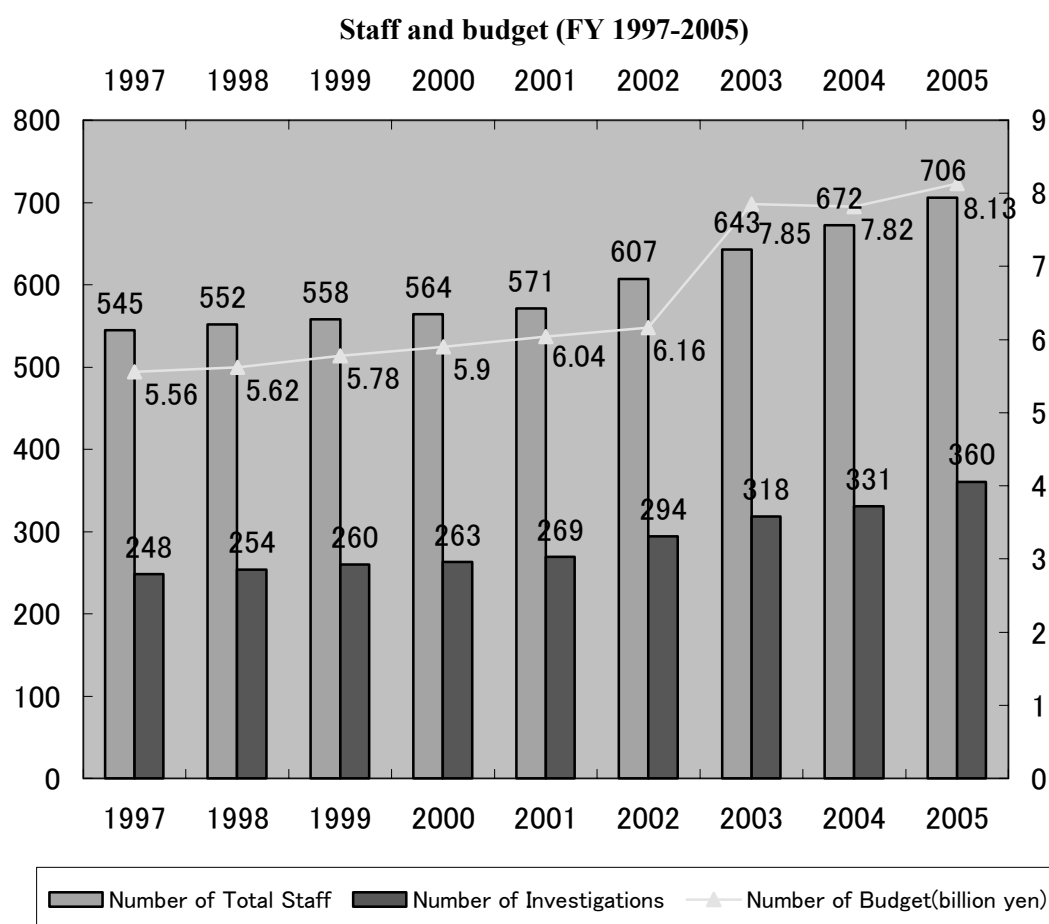
4.2 Number of officials

The number of officials in the General Secretariat of the Fair Trade Commission (unit: persons)

| Fiscal Year | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|--|------|------|------|------|------|------|------|------|------|
| Number of officials | 545 | 552 | 558 | 564 | 571 | 607 | 643 | 672 | 706 |
| Enforcement against anti-competitive practices | 248 | 254 | 260 | 263 | 269 | 294 | 318 | 331 | 360 |
| Merger review enforcement | 18 | 19 | 19 | 22 | 22 | 28 | 30 | 32 | 32 |
| Advocacy efforts | 23 | 23 | 22 | 22 | 22 | 25 | 30 | 30 | 37 |

Notes:

1. The number of officials engaged in enforcement against anticompetitive practices refers to the Investigation Bureau and Investigation Divisions of local offices.
2. The number of officials engaged in merger review enforcement refers to the Merger and Acquisitions Division.
3. The number of officials devoted to advocacy efforts refers to the General Affairs Division of the Economic Affairs Bureau and the Coordination Division.



4.3 *Activities of the Competition Policy Research Centre*

62. The Competition Policy Research Centre (hereinafter referred to as the “CPRC”) enhances research activities as a result of collaboration between visiting researchers (15 persons at the end of December 2005) who are specialists in the area of economics or law and JFTC staff in order to strengthen basic ideas on implementing the Antimonopoly Act, and planning and evaluating competition policies.

63. In 2005 the CPRC published six joint research reports and three discussion papers. Furthermore, the CPRC maintained its energetic activities, such as hosting 13 workshops and three open seminars and also implementing a specialised training session in economics for the JFTC staff to improve their ability of economic analysis.

4.3.1 *Reports*

- Research Paper regarding Regulations in Foreign Countries on Abuse of Dominant Position in Telecommunications Sector (March 2005)
- Quantitative Analysis on Competition, Innovation and Productivity (June 2005)
- Economic Analysis on Bid-rigging (September 2005)
- Technical Standards and Competition Policy (November 2005)

- Merger Review and Economic Analysis (November 2005)
- Economic Analysis on Network Externalities and Switching Costs (December 2005)

4.3.2 *Discussion papers*

- “The Stability of Market Leadership Positions in Japanese Manufacturing Industries” (April 2005)
 - Masatoshi Kato (Student Fellow, Competition Policy Research Centre/Graduate School of Commerce and Management, Hitotsubashi University)
 - Yuji Honjo (Associate Professor, Faculty of Commerce, Chuo University)
- “Competition Policy in Network Industries: An Introduction” (October 2005)
 - Nicholas Economides (Professor of Economics, Leonard Stern School of Business, New York University)
- “Product Improvement and Technological Tying in a Winner-Take-All Market” (October 2005)
 - Richard J. Gilbert (Professor of Economics and Chair of Economics Department, University of California at Berkeley)
 - Michael H. Riordan (Columbia University)

4.3.3 *Hosting of an Open Seminar*

64. The CPRC hosts open seminars to introduce the results of its joint research reports. This series of open seminars is also used as a venue for speeches by senior officers of the competition authorities and by academics abroad when visiting Japan.

65. On September 20, 2005, the CPRC hosted an open seminar on the theme of “Network Externalities and Competition Policy,” inviting Nicholas Economides (Professor of Economics, Leonard Stern School of Business, New York University), Richard J. Gilbert (Professor of Economics, University of California at Berkeley) and Tatsuo Tanaka (Associate Professor of Economics, Keio University/CPRC Visiting Researcher) as speakers. Materials from this open seminar are available at <http://www.jftc.go.jp/cprc/english/5-notice.html>.

4.3.4 *Implementation of Specialised Training in Economics*

66. The CPRC gives training in economics to enhance the economic analysis skills of the JFTC’s staff. In October 2005, it provided basic training of microeconomics, game theory and econometrics, inviting CPRC visiting researchers as lecturers.

5. Main surveys related to competition policy

5.1 Mutual Entries into the Public Utilities Fields (Published in February 2005)

67. From the standpoint of promoting competition in the electric power, gas, and telecommunications business fields, the JFTC published “Mutual Entries into the Public Utilities Fields” in February 2005. New businesses are entering the electric power, gas, and telecommunications fields in line with advancing the liberalisation of each of these fields. In addition, mutual entries among public utilities, such as electric power and gas businesses, are progressing, and business activities that stretch across multiple business fields are being developed.

68. In these business fields, it is desirable that the entry of an incumbent into another public utility field, who has 1) an advantage over other new entrants in terms of facilities and 2) a large management scale, be promoted. On the other hand, because obstacles to competition may arise due to mutual entries among public utilities, the JFTC conducted a fact-finding survey of mutual entries that involved interviews, etc. with businesses as well as an Antimonopoly Act-based study of the following items:

- customer inducement by unjust benefits, forced trade, etc. by the exploitation of monopoly powers in monopoly fields;
- unjust low-price sales through cross-subsidies from monopoly fields;
- sales activities, etc. in other business fields by the exploitation of sales bases in monopoly fields;
- sales activities, etc. in other business fields through the exploitation of purchasing powers in monopoly fields;
- use of information acquired in monopoly fields in other business fields.

69. The JFTC then clarified its cross-sector guidelines in terms of the Antimonopoly Act with regard to mutual entries in the public utilities field.

5.2 Survey report on actual trade conditions of funeral services (Published in July 2005)

70. It is apparent that consumers are not always able to appropriately select funeral service businesses based on an adequate knowledge of funeral services. Thus, an adequate provision of information to consumers must take place with regard to the content of funeral services, fees, and other aspects. Moreover, claims have been made that an environment conducive to competition for customers based on price and quality rarely exists among funeral service businesses.

71. Consequently, the JFTC conducted a fact-finding study concerning the special characteristics of trade in these funeral services, and clarified its position with regard to the Antimonopoly Act, the Act against Unjustifiable Premiums and Misleading Representations, and competition policy. The following is an outline:

5.2.1 Ensuring appropriate business selection by consumers

72. It was discovered that some funeral service businesses coerced consumers to hire them for later funeral services in combination with services to transport the deceased from hospital to home. This kind of conduct may violate the Antimonopoly Act (Tie-in sales) by hindering customers’ right to voluntarily and freely choose services.

73. With regard to information on funeral service content and fees that are provided by the funeral service business to the consumer prior to the commencement of business, the funeral service business should supply more detailed information on fluctuating expense items, unit prices, etc. prior to the commencement of business.

5.2.2 *Ensuring appropriate selection of goods and services by consumers*

74. There are some instances in which consumers are not provided with appropriate information on detailed goods and services content, and the occurrence of additional expenses after business has been concluded, etc. From the standpoint of an appropriate selection of goods and services by consumers, funeral service businesses should 1) supply materials, etc. during business consultations; 2) explain additional fees that could be incurred following the conclusion of a contract; and 3) explain various conditions at the signing of contracts to enter into mutual aid societies.

5.2.3 *Trade between funeral service businesses and funeral service-related businesses, etc.*

75. Because it is the funeral service business that enters into a contract with the bereaved family of the deceased for funeral service trade, there are many cases in which this situation generates a strong incentive for funeral service-related businesses that supply a portion of funeral services to the original funeral service business, as well as other funeral service businesses that undertake in lump form the funeral services that the original funeral service business accepted, to acquire continuing trade with the original funeral service business. Given this situation, cases have taken place in which some funeral service-related businesses and funeral service businesses that undertake outsourced funeral services are grappling with demands from the original funeral service business that are not directly related to the business at hand. This kind of conduct may violate the Antimonopoly Act (Abuse of Dominant Bargaining Position) if the original funeral service business uses its position of advantage over its business partners to the unfair detriment of these partners in light of normal business practices.

5.3 ***Survey report on actual approaches to prevent bid rigging in public purchasing, etc. (Published in October 2005)***

76. In Japan, instances of so-called “collusive bidding at the initiative of government officials,” in which officials of agencies that purchase orders participate in bid rigging cases, occasionally come to light. Because of this, the Act Concerning the Elimination and Prevention of Involvement in Bid Rigging, etc. was put into force in January 2003. As a result, if it is recognised that an employee of an institution that purchases orders is involved in a certain level of bid rigging, the JFTC may demand that the head of said institution implement improvement measures.

77. Since this law came into effect, the JFTC has demanded improvement measures in three cases amid intensifying public criticism of “collusive bidding at the initiative of government agencies.” In order to correct this situation, institutions that purchase orders will need to take thorough steps involving dissemination, advocacy, and legal compliance of their employees, while at the same time taking measures to prevent bid rigging in their own bidding activities.

78. From this standpoint, the JFTC conducted a questionnaire survey targeting 1) local governments (320 governments) and 2) government-subsidised corporations that receive one-half or more of their capital from the central government (210 corporations) to ascertain actual conditions surrounding efforts to prevent bid rigging as of July 2005. Based on the results of this survey, the JFTC compiled the following proposals in October 2005:

- Dissemination and training pertaining to the Antimonopoly Act and the Act Concerning Elimination and Prevention of Involvement in Bid Rigging, etc.
- Both local governments and government-subsidised corporations must strive toward full dissemination and training of employees. In particular, government-subsidised corporations engage in almost no dissemination and training, and they should work to improve this situation.
- Measures to prevent involvement in bid rigging, etc.
- Institutions that purchase orders should work to formulate compliance manuals from the standpoint of preventing involvement in bid rigging, etc. In particular, local governments should make improvements, as few of them have formulated such manuals. It is even more effective to clarify the intentions of the head of local government and corporations for legal compliance.
- Response to information on bid rigging
- Compared to local governments, the response of government-subsidised corporations to bid rigging information is insufficient. They will need to establish systems for organisational examinations of bid-rigging information.
- Management of bid information
- Regardless of the type of purchasing institutions, establishment of management rules for confidential information is not progressing. This situation should be improved.
- Suspension from bidding, etc.
- Concerning suspension from bidding measures, it is important that significant differences do not exist among ordering institutions. Consequently, it is appropriate to refer to the *Chuo-Kokeiren* model. (This is a standard model for suspension from bidding measures that was established by the *Chuo-Kokeiren* [a council made up of purchasing-related agencies of the central government]. The model sets standards that include the following: A suspension-from bidding-measure is enforced if it is recognised that a business has violated the Antimonopoly Act within a jurisdiction. In general, the measure is set at between two and nine months. The measure becomes effective from the time when a business accepts a recommendation for elimination of misconduct by the JFTC [or the time that a decision is issued in the event that the business refuses to accept the recommendation].)

5.4 *Survey of actual trade conditions in the advertising industry (Published in November 2005)*

79. Problems such as the lack of transparency in advertising space trade (trade by advertising companies involving selling of the advertising space of television stations, newspaper publishers, etc. to advertisers) have been identified by small and medium-sized advertising companies.

80. Given this situation, the JFTC presented its viewpoint of these problems based on competition policy, while also clarifying current conditions and problem areas in the structure and trade practices of the advertising industry, with a focus on advertising space trade of television and newspapers, which were the major forms of media. The following is an outline:

5.4.1 *Polarisation of the market structure due to oligopoly*

81. In the total sales of advertising companies in Japan, the advertisement expenditure of the top three companies accounts for 48.1% of the total, while shares of the fourth-place and lower advertising companies fall below 3%. Therefore, the market structure for advertising companies is polarised into major advertising companies and then other small and medium-sized advertising companies.

5.4.2 *Television advertising: Program commercials*

82. Because the majority of program commercial spaces are handled by major advertising companies, accurate information on advertiser changeovers is concentrated on these major advertising companies. Moreover, television stations are not disclosing enough necessary information to promote the entry of advertising companies. For example, there is a very short time period between when television stations specify their programs' commercial space available for sales and when new advertisers are determined.

83. Accordingly, from the standpoint of competition policy and in consideration of the public nature of television broadcasts, it is beneficial and necessary for television stations to further disclose information pertaining to the program commercial trade and to promote new entry by, among other activities, actively announcing their program commercial space available for sales beforehand, clarifying the price lists they use in actual trade, and studying the introduction of a bidding system.

5.4.3 *Television advertising: Spot commercials*

84. In spot commercial trade, disparities in the rate of return among advertising companies (maximum of 20%) result in differences in the price competitiveness of advertising companies. Because such striking disparities may be conducive to violations of the Antimonopoly Act, television stations should ensure rationality, fairness, and transparency in the determination of advertising company return by, among other steps, establishing standards for calculating the rate of return that is shared by each advertising company.

5.4.4 *Improvement of advertising effect evaluation and cost awareness, and improvement of trade practices toward ensuring transparency*

85. From the point of view of competition policy, it is beneficial for advertisers to make efforts to raise their awareness of advertising effects and costs and to verify current advertising fees.

86. Moreover, from the standpoint of promoting fair and free competition, it is desirable for media companies (television stations, newspaper publishers, etc.), advertising companies and advertisers to study the improvement of trade practices, such as conducting business based on the written description of trade conditions, etc. for the purpose of improving transparency in advertising trade.

5.5 *Survey report on actual distribution conditions of medical devices (Published in December 2005)*

87. Problems pertaining to differences between the domestic and foreign prices of medical devices have been identified for quite some time. It has been pointed out that one reason behind these differences is the existence of various trade practices and corporate activities at the distribution stages of manufacturers, wholesalers, and medical institutions. Some of these practices and activities involve conduct that restricts competition. Consequently, the JFTC conducted a survey on the distribution of medical devices. Based on the results of the survey, the JFTC clarified points for improvement in various

trade practices from the standpoint of competition policy and presented its viewpoint on cases that may violate the Antimonopoly Act. The following is an outline:

5.5.1 Differences between domestic and foreign prices and trade practices

88. Differences between domestic and foreign prices for pacemakers and PTCA catheters have been recognised for some time. Purchasing medical institutions tend to place priority on continuous trade relationships, due to ties with specific wholesalers that are formed as doctors become accustomed to particular models and due to the reluctance on the part of purchasing officers to change trade connections. Also looking at manufacturers, existing trade relationships tend to become fixed through manufacturers' involvement with wholesalers' trade connections as well as with their price policies. Thus, competition among wholesalers is inadequate.

5.5.2 Evaluation from the point of view of competition policy

Purchasing posture of medical devices by medical institutions

89. It is expected that medical institutions will improve their purchasing posture with doctors. For example, a united approach by medical institutions to take a posture toward behavior based on high cost awareness is desirable. This includes doctors cooperating whenever possible in efficient purchasing through competition among brands based on doctors presenting purchasing officers with multiple numbers of models, and purchasing officers asking many wholesalers to make estimates and then once again reviewing trade connections from the standpoint of cost awareness.

Sales policies of manufacturers

90. Attempts by manufacturers to specify to wholesalers the medical institutions that will be their purchasers and to forbid said wholesalers from engaging in new trade with other medical institutions, as well as attempts to refuse sales of products without giving a reasonable reason to wholesalers who sell products to institutions other than designated medical institutions, may violate the Antimonopoly Act (Dealing on Exclusive Terms, Unjust Refusal to Deal). Moreover, manufacturers' demands that wholesalers report back to them the sale prices, etc. given to medical institutions may be problematic (Resale Price Restriction).

91. Furthermore, in general, even if differences in transaction prices among individual trade partners emerge, these differences in themselves do not represent a problem in terms of the Antimonopoly Act if they are within a scope recognised as having economic rationality that reflects trade content, the supply and demand relationship, market conditions, payment methods, etc. However, if the disparity between an advantageous settlement price established for specific wholesalers and a settlement price for other wholesalers becomes significant and exceeds differences in trade content, etc. among wholesalers, and this disparity directly and seriously affects the competitive functioning of the wholesalers who are unfavorably treated and thereby adversely influences fair competition, then a problem may emerge with regard to the Antimonopoly Act (Unjust Discriminatory Pricing, Discriminatory Treatment).

Regulations on product sales

92. From the standpoint of competition policy, it is preferable to promote competition by distributing a variety of products on the market. Accordingly, it is desirable to consider shortening the application for approval process of product sales under the Pharmaceutical Affairs Law by, for example, reducing the burden on applicants.