The development of Japanese Competition Policy in the 1990s

- formal change and policy network

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ABSTRACT

This paper examines the development of Japanese competition policy in the 1990s. While there are certain signs of Japan's transition to more stringent competition policy largely as the result of the Structural Impediment Initiative with the United States in 1989, they should not be understood only by their appearances. It is remarkable, on the contrary, that the bargaining power of businesses toward public officials and politicians appears to have grown in general, and that Fair Trade Commission remains vulnerable to the pressure from all those parties.

1. Introduction

The development of Japanese competition policy has been one of the most popular agendas in recent years in Japan. Obviously the most crucial turning-point was the launch of the bilateral negotiation framework called "Structural Impediment Initiative" (SII) in 1989. In that framework, the United States requested the substantial reinforcement of Japanese competition policy so as to rectify the chronic trade imbalance between the United States and Japan. Whether such a way is desirable or not[1], there is no doubt that this external pressure put good spurs to Japanese competition policy. Following the discussions in SII and subsequent "Framework Negotiations", several regulatory reforms were carried out and the Fair Trade Commission (FTC) has dealt with more cases since 1989 than before. By the mid-1990s, accordingly, a prestigious Japanese lawyer came to remark that 'SII was successful in strengthening the Antimonopoly law with a view to harmonizing competition laws ... the enforcement of the Antimonopoly law increased rather remarkably as SII progressed'[2].

However, it might be misleading to discuss how much Japanese competition policy has converged to its counterpart in the United States only by looking at the changes in legal texts and enforcement level. After all, it merely represent the output of the policy-making process, but not the policy-making process itself. Since the most distinguishing feature of traditional Japanese competition policy in comparison with American and

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[1] With regard to this, see Ostry, S. (1993) 'Beyond The Border: The New International Policy Arena' in Kantzenbach, E., Scharrer, H.E., and Waverman, L.(eds.), *Competition Policy in an Interdependent World Economy*, pp.260-277

[2] Matsushita, M. (1995) 'Harmonization of Competition Laws Through Bilateral Trade Negotiations: The Japanese Experience' in OECD, *Beyond the Uruguay Round*, p.134

European models is 'its immersion in overall industrial policy', as Audretsch points out[3], it may be more important to see how such a structure in the policy-making process has changed during the 1990s, either by foreign pressure or by domestic change. On that ground, this study addresses the question how much FTC has gained its independence from the pressure of industry and of other pro-industry interests at other ministries, and at the Liberal Democratic Party (LDP). At least in the 1980s, FTC was quite vulnerable to such "pro-industry pressure", and what we examine here is how this has changed during the 1990s.

The paper is organized as follows. The next section presents the changes in legal texts and enforcement level of Japanese competition policy in the first half of the 1990s. Section 3 illuminates a number of negative elements in the development of Japanese competition policy during the 1990s. We then investigate the relational structure of the policy network of Japanese competition policy, focusing on the degree of independence/ vulnerability of FTC vis-à-vis other actors. This leads to some conclusions in the final section.

2. Changes in legal texts and enforcement level of Japanese competition policy in the 1990s

In the final report of SII, published in 1990, the United States Trade Representative (USTR) suggested a number of requests about Japanese competition policy. They included (1) the reinforcement of the penalty system so as to render it an effective

[3] Audretsch, D. (1989) *The Market and the State: Government Policy Towards Business in Europe, Japan and the United States*, p.115

sanction; (2) the promotion of criminal as well as civil trials for the remedy of anti-competitive practices; (3) the clarification of the enforcement guidelines of FTC regarding trade customs and *keiretsu* relations; (4) the revision of the provisions for cartel exemption; and (5) the relaxation of the rules which seemed to be disadvantageous to the entry of American businesses into the Japanese market, such as those in the Unreasonable Representation and Unreasonable Premium Act. Although the Japanese government was not legally responsible for those requests, it was virtually bound to carry them out, because the US government set up subsequent meetings to check their achievement.

Obviously, this created a strong 'fair wind' for Japanese competition policy. A number of reforms were thus followed to strengthen the regulatory criteria of competition policy. The first is to raise the administrative surcharge for cartels. In the case of manufacturers, for example, the amount of the surcharge was increased from 2% to 6% in terms of the ratio to the annual turnover of the offenders. Secondly, the upper limit of the penalty charge for a corporate body (but not individual employees) was also raised from 5 million yen to 100 million yen in relation to the misconduct of private monopoly, unfair trade restraints, and substantial restraints of competition. Thirdly, there was a large-scale revision of the exemption for resale price maintenance, and all exemptions concerned with cosmetics and medicines were abandoned until April 1997. Finally, attempts were made to abolish exemption cartels. Since 1990, there have no longer been 'depression cartels' and 'rationalization cartels' provided by the Anti-Monopoly Law (AML). There are also some authorized cartels based on other legislation, but they are now rapidly being removed under the dominant atmosphere in

favor of deregulation in recent years. Consequently, only 12 remain working in early 1998, while there were 276 in 1989.

Besides those changes in legal texts, FTC seems to have become much more active in its enforcement of competition policy. Firstly, the number of judgment cases and the amount of administrative surcharge have jumped since 1990. Between 1990 and 1994, the total number of judgment cases and the amount of administrative surcharges were 142 cases and 26.4 billion yen, compared to 44 cases and 2.1 billion yen, respectively, between 1985 and 1989. Moreover, in 1991, FTC made a formal prosecution for the first time in 17 years (the wrap case). It also made an effort to clarify the regulatory criteria for implementation by publishing various guidelines, such as those regarding vertical trade restraints, mergers, collusive tendering, and activities of trade associations, as well as extending its helping hand for private legal claims for the damages caused by anti-competitive practices, declaring that it would provide 'its opinion and relevant material on which its opinion is based as much as possible'[4] in its report presented in May 1991.

Furthermore, there has been a significant development in the resources of FTC during the 1990s, as indicated in Table 1. Whilst FTC staff increased by only 23 persons between 1979 and 1988, 73 new people were hired between 1989 and 1996. More strikingly, the number of staff in the Investigation Division almost doubled (i.e. from 129 to 236) during this last period.

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[4] FTC (1991) *Dokusenkinshihou dai 25jou ni motozuku songaibaishoseikyusosho ni okeru songaigaku no saiteihouhounado ni tsuite (About the measure for the calculation of the amount of damages on the lawsuit for damages based on Article 25 of the Anti-Monopoly Law)*

Table 1 The total number of FTC staff and of the staff in Investigation Division of FTC: 1989-96

Year	The total number of the FTC staff	annual growth	The number of the staff in Investigation Division	annual growth
1989	461	-	129	-
1990	474	+13	165	+36
1991	478	+4	178	+13
1992	484	+6	186	+8
1993	493	+9	203	+17
1994	506	+13	220	+17
1995	520	+14	228	+8
1996	534	+14	236	+8
1989-96	-	+73	-	+107

Source: calculated from the data of FTC[5]

In 1994, FTC secured its own place in the neighborhood of such judicial administrative bodies as the Minister of Justice and the Public Prosecutor's Office (PPO). This has given FTC an appearance of a part of the family of judicial bodies, whereas it was formerly lodged at the buildings of the Ministry of Foreign Affairs and the Economic Planning Agency, which made it look marginalized in the bureaucratic society.

For the first time in its 40-year history, there was also a reform in the status of FTC Secretariat in 1996. In the past, FTC Secretariat was composed of just one bureau, but the 1996 reform redefined FTC as a General Bureau, and its two divisions (Economic Trade Division and Investigation Division) were upgraded to Bureau status. Given the

[5] FTC, *Koseitorihikiiinkai Nenjihokoku (Annual Report of FTC)*

culture of Japanese bureaucracy for attaching importance to one's title, the change from 'Division' to 'Bureau' may well increase the power of FTC staff, which 'puts them on an equal footing with other public officials', as some senior FTC officials observed[6].

From those changes, it might be natural to say that FTC became more powerful and active by the mid-1990s. One foreign scholar went so far as to comment that 'it is plausible to suggest that a historic shift has taken place in favour of consumer-oriented policies and effective implementation of the Antimonopoly Act'[7]. At that time, many expected the emergence of a "biting watchdog" in Japanese competition policy.

3. Some negative elements in the development of Japanese competition policy in the 1990s

When examined carefully, nonetheless, a number of elements can be found which make us less confident of the advent of a "biting watchdog". To begin with, certain negative aspects should be pointed out in relation to the regulatory changes shown above. Firstly, it is true that the 1991 reform raised the percentages for administrative surcharge, but that was not the whole story. The reform also attached the condition that the administrative surcharge should only cover the turnover of the past three years, no matter how long cartels had been effective. Even though the percentage criteria were raised, it is obvious that the new legislation has reduced the degree of punishment for those who has retained their cartels for a long time. Secondly, it is also true that the

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[6] Quoted from *Nikkei Business*, 28 October 1996, p.131

[7] Wilks, S.R.M. (1994) *The Revival of Japanese Competition Policy and Its Importance for EU-Japan Relations*, p.45

upper limit of the penalty charge has increased from five million yen to one hundred million yen, but that was the result of the compromise of FTC, which allegedly wanted the upper limit to be 'several hundred million yen'. Moreover, the reform failed to satisfy both the director of the Antitrust Division of the US Department of Justice[8] and the representative of USTR[9]. Thirdly, whereas the large-scale reduction in the exemptions for resale price maintenance should be appreciated rightly, we must remember that there are still a number of exempted products including books, magazines, newspapers, music tapes, and CDs. Finally, even though there is no doubt that the exempted cartels were reduced significantly, that should be attributed not to the effort of FTC, but primarily to the change in the attitude of other ministries which had established the exemption rules on their own.

A number of questions can also be raised about the enforcement record of FTC. FTC has four choices (apart from prosecution) to regulate cartels: administrative surcharge, recommendation, warning, and attention. The first two are legal cases accompanied by formal judgment, while the others are not. It is true that the share of legal cases has increased since SII, but it is noteworthy that the total number of decisions, which once jumped up at the time of the inauguration of SII in 1989, has gradually fallen since then (Figure 1). It should also be remembered that the number of warning cases has fallen, giving way to a less serious means of attention cases. It could, of course, be argued that this only reflects the decrease in cartels in Japan, but there is no evidence of that.

With regard to prosecution cases, it is conceivably disappointing that only three cases

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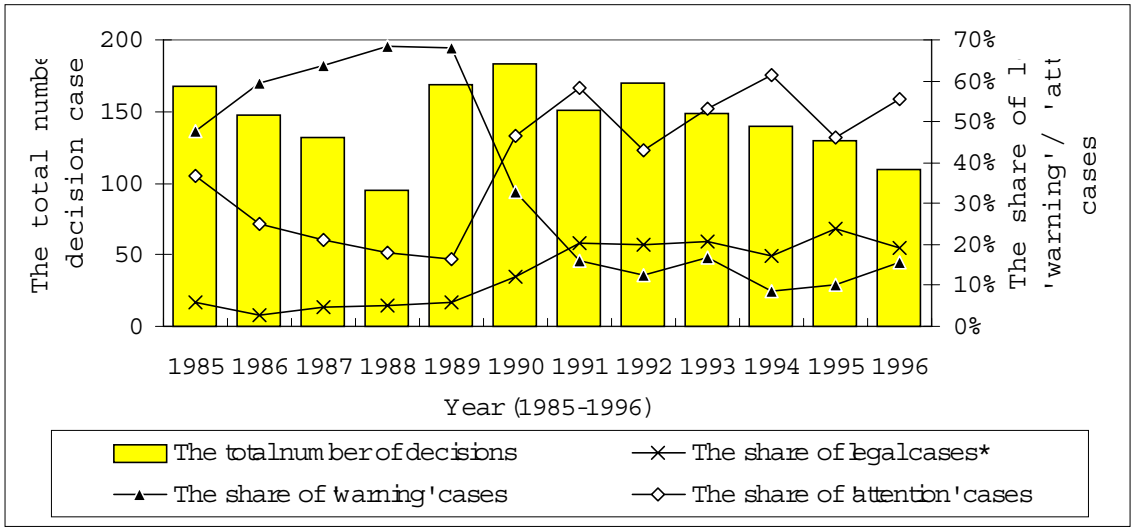
[8] See *Nihon Keizai Shimbun*, April 15 1992

[9] See *Nihon Keizai Shimbun*, April 28 1992

were added in six years after 1991. Those cases were often viewed either as the 'gestures' to satisfy US interests, or as 'scapegoats' for more serious problems. For example, the 1991 case occurred just before the Follow-up meeting of SII, and the 1993 and 1995 cases coincided with the Framework negotiations and the bilateral meeting of the US-Japan competition authorities. As for the 1997 case, furthermore, it is not unlikely that FTC brought it just in order to demonstrate the effect of the organizational reform. The target products - wrap, seal, electrical equipment for sewerage, and water supply meter - were rather marginal, and FTC is often seen as bullying the weak while leaving the strong untouched.

Figure 1 Trends in legal*/ 'warning'/ 'attention' cases for cartels: 1985-1996



Note: Legal cases here includes the direction for administrative surcharge and 'recommendation' cases, but not prosecution cases.

Source: calculated from the data of FTC[10]

[10] FTC, *Koseitorihikiiinkai Nenjihokoku (Annual Report of FTC)*

Those records of the achievement and enforcement have led other public officials to 'feel that FTC habitually avoids confronting difficult issues and only works on easy ones to justify its own existence'[11]. In addition, it is not very clear whether the clarification of various regulatory criteria and the declaration of the assistance in private actions has produced any significant change in the traditional pattern of business practices, or in the enforcement level of competition policy.

Two significant amendments in AML have taken place in recent years: the removal of the prohibition against the establishment of holding companies in 1997, and the reduction in the scope of merger control in 1998. These amendments made AML look more similar to its counterparts in many other developed countries, but it is questionable whether they are economically justifiable or not. Apart from economic discussion, we should remember that it was not FTC, but rather businesses and other ministries, notably the Ministry of International Trade and Industry (MITI) and the Ministry of Finance (MoF), that required the amendments. With specific regard to the amendment on holding companies, FTC starkly resisted it in the beginning[12], but it suddenly changed its position in favor of businesses as the policy discussion went on. Whereas it might be true that FTC was convinced that the prohibition was no longer economically

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[11] Ikuta (1995) *Kanryo: Japan's hidden government*, p.167

[12] For example, Kazuyuki Funahashi, the Companies Section Chief stated in 1995 that 'Recently, the issue of holding companies has frequently been taken up, and in particular the media such as newspapers seem to believe that the removal of the prohibition in the future has already been decided. ... However, FTC at this moment is not very optimistic about it.' See Funahashi, K. (1995) 'Mochikabukaisha Kinshi ha Hitsuyo (The Prohibition of Holding Companies is Necessary)', *Nihon Keizai Kenkyu Centre Kaiho*, July 1995, pp.20-21

significant, it is also possible that FTC might have made a compromise on this issue with LDP in order to get the party's support for its organizational reform[13].

4. The policy network of Japanese competition policy

The existence of both positive and negative aspects in the development of Japanese competition policy indicated above, suggests that it is difficult to assess it just by observing the changes in legal texts and enforcement level. We will therefore investigate how the structure of the policy-making process has transformed over time. To do that, we introduce the "policy network" approach, whereby the policy-making process is viewed as an interaction between those social actors (e.g. businesses), public officials, and politicians with mutual relationships and dependencies[14].

Since there are various actors and numerous kinds of relationships in the policy network of Japanese competition policy, it is useful to simplify the model by focusing only on the "routes of pressure" of businesses toward FTC, as shown in Figure 2. Here the "routes of pressure" denotes how one party persuades another party to its idea and direction, whether they are originally in agreement or not. It is true that there may be other "routes of pressures" (e.g. between "non-FTC" ministries and politicians) and internal controversies within each party, but we ignore those aspects here in order to keep things manageable.

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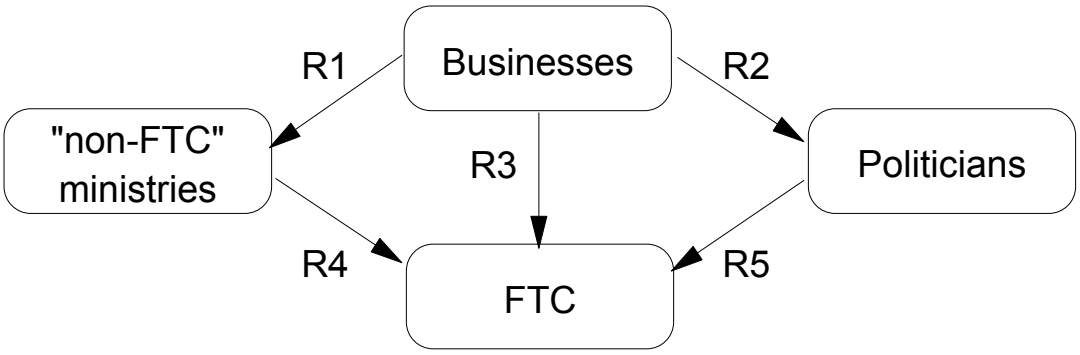
[13] For example, see *Zaikei Shoho*, 25 June 1996. The view was reconfirmed by several respondents in the interviews with the author.

[14] With respect to the policy network approach, see, for instance, Rhodes, R.A.W. (1997) *Understanding*

Figure 2 The "routes of pressure" of businesses toward FTC



R1: between businesses and "non-FTC" officials

In general, Japanese businesses seem to have increased their bargaining power vis-à-vis public officials in recent years. One reason for this is related to a mostly formalized network between businesses and the government through retired public officials, which is quite remarkable in Japan and is generally called the "descent from heaven" system. Whereas the increase in the bargaining power of businesses may imply the growth of this system, the fact is quite the opposite.

Previously, as Murofushi points out, businesses expected "descent from heaven" officials to establish, or strengthen, the connections through which their interests were reflected well in the government policies[15]. Yet as the scope of state intervention becomes smaller under the overall political atmosphere in favor of deregulation, the attractiveness of such connections has greatly been reduced. As the result of the long-standing recession during the 1990s, moreover, many businessmen today come to see

[15] See Murofushi, T. (1983) *Kokyu Kanryo (High-Ranking Bureaucrats)*, pp.116-137

the system as too costly to keep. According to the research of Nihon Keizai Shimbun, for example, over 80% of 300 middle-ranking businessmen in the largest Japanese companies in 1994 answered that businesses should be more distant from the government, whilst only 7% of them considered the 'descent from heaven' 'necessary' or 'rather necessary'[16]. In addition, strong public criticism has been occurring to the collusive relationship between businesses and the government, and to unfairly good salary conditions to the "descent from heaven" people. This has naturally made businesses more reluctant to engage themselves in that system.

Under the current employment routine, however, the majority of high-ranking officials are employed just after they graduate from the university and then retire very early when they are filtered out from the competition in climbing to the top (i.e. the position of the administrative vice-minister). This routine seems very difficult to change, but without changing it, the government must rely on the companies which accept, and are expected to keep accepting in the future, those early-retired officials. Under those circumstances, one may conceive that the bargaining power of businesses vis-à-vis public officials has been enhanced.

With regard to competition policy, it should also be noted that businesses may take advantage of MITI's coming to act for the sake of competition policy besides FTC in recent years. Given the close connection between industrial policy and competition policy, it may be natural for MITI to extend its authority to competition policy. The fact that MITI, not FTC, played a principal role in SII and other international negotiations,

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[16] Nihon Keizai Shimbunsha (ed.) (1994) *Kanryo - Kishimu Kyodai Kenryoku* (Bureaucrats - Creaking Great Power), pp.427-435

may also explain MITI's increasing concern with competition policy. Whereas MITI previously treated competition policy as an obstacle to its industrial policy, the ministry now seems to think that it is better to accommodate competition policy in the scope of its own policy. It is true that MITI would no longer be willing to advocate clearly anti-competitive policies even for the sake of businesses, but businesses would presumably be happy to have MITI, which is primarily concerned with the interests of businesses, engaged more directly in the policy-making process of competition policy.

R2: between businesses and politicians

Japanese politicians need a lot of money to be elected, which, to a larger extent, can be explained by the tendency of person-based, and not party-based, voting[17]. Whereas this has not changed over time, two important changes occurred in relation to political finance in the 1990s. Firstly, Keizai dantai rengokai (the Federation of Economic Organizations in Japan, Keidanren) stopped playing an intermediary role between businesses and political parties with regard to political finance in 1993. Formerly, Keidanren had drawn political donations from trade associations and collectively provided them for LDP (and to a less extent, the Democratic Socialist Party). However, Keidanren abandoned this system in 1993, partly due to strong public criticism of political corruption after some large-scale bribery cases around 1990, and partly because Keidanren became less confident of the exclusive connection with LDP, as the one-party dominance of that party since 1955 was broken under the political upheaval at that time.

[17] As for the political finance in Japan, see, for example, Iwai, T. (1990) *"Seiji-sikin" no Kenkyu (The Study of "Political Finance")*

Paradoxically, the discontinuance of the unitary financial supply from Keidanren to LDP has led to an increase in the bargaining power of businesses vis-à-vis LDP politicians. After all, politicians have to seek alternative financial sources now from individual sponsors. Since the tendency of large payment for the electoral victory has not changed at all, politicians must anyhow find their individual sponsors. Under those circumstances, it is not surprising that they tend to get more sensitive to the demands of their sponsors. On top of that, the current "demands" tend to be more focused, since the sponsors are no longer the whole industry, but rather individual firms or sectors. Although the Political Fund Rectification Law was reinforced so as to block unduly partial donations and to open relevant information to the public, there are still a number of loopholes in that law. For instance, politicians often collect donations by means of selling party tickets. While the law provides that a company cannot normally give more than 50,000 yen without opening its name, the upper limit is raised to 200,000 yen if the money is concerned with the payment for attending a party (lunch, dinner or whatever). On top of that, when a company wants to pay more than 200,000 yen without giving out its name, it can ask its workers to make an individual payment - there is no restriction as to how many workers can do that.

The second important change in the Japanese political system is the electoral reform, which introduced the small, or single-member, constituency system to the election for the House of Representatives. This has increased the financial demand of politicians tremendously, which naturally gives additional bargaining power to businesses as the providers of political finance. It is theoretically true that the election of one person in one constituency under the new system can turn the person-based voting into the party-

based voting to avoid conflicts between candidates of the same party in one district, so that the expenditures can be reduced. In practice, however, political finance in general allegedly rose in the 1996 election (the first election after the reform), because the candidates needed more votes to win in their constituency, and to get that, they tended to spend more money than before[18].

Apart from the changes in political finance, we should also note that the recent changes in the party structure seem to provide businesses with more influence over competition policy. Until the 1980s, each political party held a rather clear idea on competition policy. LDP, following the claim of businesses, tended to marginalize competition policy while other "progressive" parties often unitedly opposed it. For the latter, competition policy was one of the clear symbols of economic democratization, and it was easy for them to come to an agreement on that issue. However, the political change in the 1990s has totally changed this structure. While LDP regained its governmental position just two years after its defeat in 1993, the Socialist Party, which had formally been regarded as the leader of the "progressive" parties, rapidly lost its popularity - it reduced its seats in the House of Representatives from 136 in 1990 to 14 in 1998. It is true that another party (the Democratic Party) emerged and tried to take leadership, but it has become more difficult for non-LDP parties to make strong alliance. After all, the Democratic Party itself encompasses many former-LDP politicians as well as former "progressives", and the attitude of the whole party seems

[18] For example, one candidate complained in the 1996 election that he needs nearly twice as much money as before, because he had to 'catch' more voters to win the election. See *Mainichi Shimbun*, 2 October 1996

quite ambiguous in many political issues including competition policy. Consequently, LDP is now less likely to encounter strong opposition when it carries out the demands of businesses in relation to competition policy. In other words, businesses are now able to control LDP politicians more effectively, at least when it comes to competition policy.

R3: between FTC and businesses

It is true that FTC does not have such a significant "descent from heaven" system as other ministries, and one may see that businesses are less likely to put pressure on FTC in that way. Still, there is a suspicion about a cozy relationship between FTC and businesses through Koseitorihiki Kyokai (the Fair Trade Association), a public corporation largely sponsored by big businesses. Through this association, FTC officials often have regular meetings with businesses which are not open to the public. Also, Koseitorihiki Kyokai provides some executive posts for those who retired from FTC. As a matter of course, it is not automatically evil for businesses and FTC to exchange their ideas, nor is it unnatural for those specialized in competition policy to work for the FTA. Yet it should be remembered that such a relationship often leads to the suspicion of FTC's vulnerability to the pressure of businesses[19].

[19] In 1994, for instance, a group of 'discount' retailers, which primarily fought against cosmetics producers insisting the preservation of resale price maintenance at that time, made a 'public inquiry' about the relationship between FTC and Koseitorihiki Kyokai, believing that the apparent reluctance of FTC to beat resale price maintenance came from the collusion through that corporation. See, for example, *Shukan Toyo Keizai*, 4 June 1994, pp.40-43

R4: between FTC and other ministries

In the Japanese administrative system, FTC belongs to the Prime Minister's Office (PMO) with a status of "independent administrative commission". This means that FTC, unlike its counterparts in such countries as Britain and Sweden, does not belong to any other ministry concerned with industrial policy or policy for particular sectors, such as MITI and MoF. Since PMO is not generally in a position to supervise industrial policy, it is not normally interested in, nor capable of, managing competition policy. Thus, FTC has often been allowed to speak out on the design of competition policy, whilst other ministries have no formal power to prevent it. Moreover, the Chairman of FTC can stay in his office for five years unless he reaches the retirement age, and nobody can dismiss him in opposition to his will. He holds much independence in this sense.

When we look at FTC's personnel system, nonetheless, we realize that it is not presumably be regarded as totally independent from the pressure of other public officials. Although Article 29 of AML provides that the Chairman and the Commissioners should be "academics", this rule has largely been neglected so far. It is true that one of four Commissioner posts has been occupied by those from FTC Secretariat, who can possibly be treated as "academics" in this context, but all other posts were occupied by officials from other ministries, including MoF, the Ministry of Justice, the Public Prosecution Office (PPO), the Ministry of Foreign Affairs, and MITI. This post-distribution system is almost formalized and 'the ministries see the post in FTC just as one of the destinations for the "descent from heaven"'[20], which was commented in the 1960s, but has not changed considerably since then, despite SII.

As for the Chairman's position, for instance, it had long been occupied by public officials from MoF. There have been fifteen Chairmen so far, and nine of them have come from MoF. From 1963 to 1995, the post had been occupied by those either from MoF or from the Bank of Japan, which also bears a close relationship with MoF and the banking sector.

It is true that the current Chairman, Yasuchika Negoro (1996-), came from PPO and that he has a legal qualification, and it is widely known that his appointment resulted from strong public criticism about the long-time 'occupation' of MoF in the post of FTC Chairman, against the background of consecutive revelations of the scandals related to that ministry. Yet it may be misleading to think that MoF now has given up the control over FTC. Negoro was hired as a consultant by a private company thanks to the pressure of the National Tax Administration Agency, which is connected not only to PPO, but also to MoF. It should also be noted that he is widely known as 'political', particularly in the sense that he allegedly has a close relationship with Seiroku Kajiyama, one of the influential figures in LDP.

Of course, it may not be important where the Chairman and the Commissioners come from, but for several reasons, it should not be ignored. Firstly, criticism has often come out against "layman commissioners". The personnel system of the Japanese government is based on the "generalist model", whereby public officials are expected to work well in general, but not being "specialists". Whether such a model is good or not for the Japanese administrative system, it appears problematic to incorporate the recruitment system of FTC Chairmen/ Commissioners into that system, despite that their academic

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[20] Kajiya, Y. and Takahashi, F. (1968) *Kotorii no Shogen (The Testimony of FTC)*, p.196

professionalism is clearly required by AML.

Secondly, it is possible for the ministries to exert some influence by appointing those that are loyal to them. They have naturally become more cautious about their choice of appointees, as competition policy has increased its importance. For this reason, we are less likely to see the advent of so courageous Chairmen/ Commissioners as Mr. Toshihide Takahashi in the mid-1970s, who devoted himself to the reinforcement of AML, despite strong opposition of businesses.

In recent years, the influence of MoF has particularly been salient. The rise in the concern about competition policy after SII may well have increased their interest in keeping their position within FTC. We cannot ignore such a comment that 'we need an administrative body which supervise not only the financial sector but also all other sectors in order to implement balanced economic policy'[21], which was made by a former administrative vice-minister of MoF. According to Ikuta, MoF officials are seconded even to the posts at lower levels, that is, those in FTC Secretariat, at least up to the mid-1990s:

> how can FTC act independently, when it is said to be under the control of the Ministry of Finance? The Ministry of Finance has sent more than ten officials to work in FTC, including ... four incumbent career finance officials who occupied the deputy minister and planning section chief positions. Although FTC has hired approximately forty officials from other agencies, Ministry of Finance officials have the largest representation by far.[22]

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[21] See *Zaikai*, 9 April 1996, pp.50-51

[22] Ikuta, *op.cit.*, pp.168-9

Under those circumstances, FTC has been quite reluctant to intervene in matters of which MoF officials would be nervous. It is true that FTC investigated security companies in 1991, but FTC had not touched upon the financial sector for the previous thirty years. It is widely suspected that the investigation was carried out with the approval of MoF, who thought it was better that FTC would take some action in order to avoid stimulating foreign critics. Moreover, the following statement with regard to the merger between Toho Sogo Bank and Iyo Bank may well make us wonder if FTC is the independent administrative commission whose primary concern is competition policy or a branch of MoF, who preferred the preservation of all existing banks at that time:

> ... In this case, FTC judged that the merger would not substantially limit competition immediately in particular trade areas, given that the increase in the market share is generally small, that it is difficult to find an adequate bank other than Iyo Bank to absorb Toho Sogo Bank in order to avoid its bankruptcy, and that some branches are planned to be transferred to other banks where the market share is increased to a large extent, even if the market share in terms of deposit and loan is 29.6% and 41.3% respectively in Ehime prefecture.[23]

The reluctance of FTC to defy MoF was also shown when it dealt with holding companies. FTC gave up its own control over holding companies related to financial sectors from the beginning. Indeed, an FTC official told the author that 'financial holding companies are put under the authority of MoF, and we do not touch upon it'[24].

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[23] FTC, *Koseitorihikiiinkai Nenjihokoku (Annual Report of FTC) 1991*

[24] Quoted from the author's interview on 12 January 1998. A similar comment is shown in *Foresight*, December 1997, p.99

Besides the influence of MoF, there is a persistent question about the ability of FTC officials, when considering their negotiation power vis-à-vis other public officials in the government. As Ikuta notes[25], whereas 'many believe that FTC career officials hired during and after the early 1970s are of a higher caliber than their predecessors', 'it is a common belief among bureaucrats that a huge "ability gap" exists between FTC officials and their counterparts at other agencies', both because 'the majority were considered mediocre' by the standard of Japanese bureaucracy in terms of the record on the Level I Examination for the National Civil Service, and because 'many could reach, without contest, a rank equivalent to director-general' thanks to the small scale of recruitment. It must be added here that FTC has a particular group of Hokkaido University graduates in its mainstream[26], which is quite different from other ministries in which the graduates from Tokyo University take the initiative. Supposedly, this makes FTC officials marginalized regardless of their real competence, given the academic snobbism of Japanese bureaucrats. Against this background, FTC may often find it difficult to counter the pressure from other ministries properly.

R5: between FTC and politicians

It is not surprising that the above "ability gap" makes politicians high-handed toward FTC, while they often entrust such ministries as MITI and MoF. On top of that, the formal status of an independent administrative commission is seen as disadvantageous

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[25] Ikuta, *op.cit.*, pp.166-167 and p.171

[26] This is pointed out by Professor Atsuya, who currently works for Hokkaido University and was formerly the Head of FTC Secretariat Bureau (1988-1990) in Interview on 23 January 1998

to FTC. The independence of FTC might lead to the failure to find its alliance in the 'community' of Japanese bureaucrats, as Misonou pointed out[27]. Since FTC is a tiny agency whatever its formal legal position is, it is very difficult to withstand adverse political pressure just by itself. Whereas the concentration of power in one body can be quite advantageous to avoid complexity, the organizational singleness may increase the vulnerability to external pressure. Without any mutual checking system like the one between the Federal Trade Commission and the Department of Justice in the US, nobody could rectify the direction of FTC once it had yielded to such external pressure, as frequently shown in the history of FTC in reality. Although the American model is not recommended here, some consideration could be given to the organizational plurality and mutual checking system in this kind of policy area.

In relation to this, we should also take into account the decision-making structure within FTC. According to AML, the Chairman does not have any formal decision-making power, since his vote is considered as just one out of five votes within FTC, and other commissioners are not regarded as the subordinates of the chairman, but as his colleagues. Nonetheless, as Otake points out, 'since the functions of individual Commissioners is not differentiated, nor are they placed at particular divisions of the Secretariat, the Chairman holds an almost exclusive channel of communication with the Secretariat and with external parties, and this had in substance made the Commissioners subject to the control of the Chairman'[28]. Of course, the existence of strong leadership

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[27] Misonou, H. (1987) *Nihon no Dokusenkinshi Seisaku to Sangyo Soshiki (The Anti-Monopoly Policy and Industrial Structure in Japan)*, p.30

[28] Otake (1996) Gendai Nihon no Seiji Kenryoku Keizai Kenryoku (The Political and Economic Power in

can be a merit when the Chairman has so much vigor and enthusiasm. Otherwise, however, the "stand-off" of the Chairman may increase FTC's vulnerability so that one single person is exposed to political pressure. On this point, we should remember the case of collusive tendering among construction firms in 1992, where Setsuo Umezawa, the chairman of FTC, was suspected to have given up a formal accusation yielding to political pressure from Kishiro Nakamura, the Minister of Construction at that time.

With regard to the relationship between FTC and politicians, furthermore, it should also be noted that there is no 'Competition Policy Minister' under the current framework. Such a minister would protect FTC from the pressure of politicians concerned about other political purposes. It is true that the establishment of such a ministerial position allows direct political interference into the decision-making process of FTC, but we should not forget that the successive FTC Chairmen have already suffered from political pressure from anywhere. In relation to this, it should also be pointed out that there is no remarkable "Competition Policy *Zoku*" either in LDP or in other parties. As politicians with similar interests (or with support from similar interest groups) often join together under the same group labeled "*Zoku*", which means "family" or "tribe" in Japanese. While it has developed in many other policy areas, that is not the case in competition policy, and the lack of such support group of politicians seems to increase the vulnerability of FTC to other political interests. Although most politicians argue that 'competition policy is important' nowadays, they do not appear so serious as to give special support to FTC at the cost of other interests.

Modern Japan), pp.313-314

5. Conclusion

There is little doubt that "international harmonization" of competition policy provides a fundamental condition for the internationalization of the Japanese market, which is one of the key factors for the revival of Japanese economy, and the recent development of Japanese competition policy appears to be promising in that sense, although we should remember that it includes some negative aspects as revealed earlier.

Yet we should not finish our discussion just at that level. In this paper, we have observed that the bargaining power of businesses toward public officials and politicians appears to have grown in general, and that FTC remains vulnerable to external pressure even after SII. Taking those elements into consideration, we should be more cautious about the recent direction of the reform of competition policy. This is not to say, however, that the recent changes, notably the removal of holding company prohibition and the relaxation of merger control, were inherently evil.

Instead, a more serious problem of Japanese competition policy is that the current policy-making system does not provide any significant counterforce to businesses, and that the interests of businesses tend to be over-represented. This may be quite disadvantageous to the Japanese economy, given that the current depression comes, at least partly, from structural defects including collusive behavior and anti-competitive practices of Japanese businesses. While it is clear that those defects should be rectified by reinforcing competition policy, it may be natural that businesses rarely become courageous enough to support it policy when they encounter serious economic difficulties, even though they come to understand the importance of market competition. Needless to say, this problem cannot be solved only by focusing on the apparent changes

in legal texts or enforcement level.

There is no doubt that the discussion about “international harmonization” is significant, but it should not overshadow the importance of national policy-making structure. After all, the post-war history of Japanese competition policy has by itself shown us that it is very difficult to achieve substantial changes only by introducing formal legal framework.

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