

**Technical Cooperation
for the Study on Capacity Building
for Implementation of
the Trade Competition Act
in
the Kingdom of Thailand**

FINAL REPORT

September 2005

Japan International Cooperation Agency (JICA)

Preface

In response to the request of the Government of the Kingdom of Thailand, the Government of Japan decided to conduct the Study on Capacity Building for Implementation of Trade Competition Act in the Kingdom of Thailand with the Department of Internal Trade (DIT), Ministry of Commerce, and entrusted the study to the Japan International Cooperation Agency (JICA).

JICA selected and dispatched a study team to the Kingdom of Thailand six times over the period from November 2004 to July 2005. The study team consists of members of UFJ Institute Ltd and is headed by Mr. Masayuki Ishida of the company.

The team held discussions with the DIT officials and conducted the Baseline Survey and program activities. Upon returning to Japan, the team conducted further studies and prepared this final report. I hope that this report will contribute to the economic development of the Kingdom of Thailand.

Finally, I wish to express my sincere appreciation to all those who participated in this study and hope this joint study promotes relationships between two nations.

September, 2005

IZAWA Tadashi
Vice-President
Japan International Cooperation Agency (JICA)

September 2005

Mr. Tadashi Izawa, Vice President
Japan International Cooperation Agency

Letter of Transmittal

We are pleased to submit the Final Report of the Technical Cooperation for the Study on Capacity Building for Implementation of the Trade Competition Act in the Kingdom of Thailand. This report compiles contents and results of the technical assistance activities conducted through this Program, together with the recommendations for further capacity building for implementation of the Trade Competition Act.

The goal of this Program is to assist strengthening the knowledge base and capacity of the related Thai Government officials, through knowledge and experiences sharing with Japanese competition authorities and experts, and enhancement of counterpart's self-sustainable capacity building activities. This Program, assigned to UFJ Institute Ltd. by JICA, started in November 2004, based of the Scope of Work signed on October 1, 2004, and concluded with the 4th Workshop and completion of Web-development planning & its launch in July 2005.

We believe this Program has contributed to human resource and institutional development of the Thai government through technical transfer activities by holding seminars and workshops. Furthermore, it covered transfer of Japanese experience in Competition area, by inviting Japanese officials and experts as guest lecturers. It is expected that the Thai government will make further effort in the capacity building in order to contribute in strengthening administrative orientation for further implementation of the Trade Competition Act.

We would like to take this opportunity to express our gratitude to the Japanese officials concerned of JICA, Japan Fair Trade Commission, a professor from the academic side and other relevant government organizations. We also wish to express our sincere gratitude to the officials concerned of the Thai counterparts, namely Department of Internal Trade (DIT), Ministry of Commerce, and other relevant organizations.

Masayuki Ishida
Team Leader
Technical Cooperation for the Study on Capacity Building for Implementation of the Trade Competition Act in the Kingdom of Thailand

Abbreviation

1. Thai Side

TCA	Trade Competition Act
TCC	Trade Competition Commission
OTCC	Office of Trade Competition Commission
TCB	Trade Competition Bureau
MOB	Monitoring and Operation Bureau
DIT	Department of Internal Trade
MOC	Ministry of Commerce

2. Japan Side

AMA	Antimonopoly Act
JFTC	Japan Fair Trade Commission

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Introduction

Introduction

Since the early 1990s the Government of Thailand (GOT) responded to the rapid development of Thai economy by making law amendments and enacting new laws. In April 1999, the GOT introduced the Trade Competition Act (TCA), establishing an operational authority called the Trade Competition Commission (TCC).

Five years have passed since the establishment of this new scheme; TCC noticed that capacity buildings are essential in the areas of practical knowledge and technical know-how in implementing the TCA.

In response to the abovementioned situation, the GOT and the Government of Japan (GOJ) have mutually agreed to conduct 'Technical Cooperation for the Study on Capacity Building for Implementation of the Trade Competition Act in the Kingdom of Thailand' (the Study).

The following, presented as Draft Final Report, is a report of findings from the Baseline Survey and program activities conducted by the JICA Technical Assistance Team (TA Team), with collaborative tasks by the DIT Team.

I. Overview of the Programs of the Study

I. Overview of the Programs of the Study

1. Objectives of the Study

The basic concepts of the Study included (1) sharing of knowledge and experiences of Japanese competition authorities and experts on the implementation of competition law, (2) promotion of active participations by the Thai counterparts to the Study thereby enhancing their self-sustainable capacities, and (3) strengthening of the knowledge base and capacity of the officials involved.

In light of the abovementioned capacity building objectives, activities with comprehensive viewpoint spanning the whole of human resource development is essential; with such understanding the Study in particular focused on the training program and advocacy activities which were based on, and utilized, the extensive experiences and knowledge of the Japan Fair Trade Commission (JFTC).

The Study, by sharing the experiences and knowledge of the JFTC officials with Thai counterparts, focused on delivering practical and procedural knowledge concerning implementation of the Anti Monopoly Act of Japan (AMA).

2. Programs

Activities of the Study can be categorized into the following four phases: (1) baseline survey on the status of implementation of the TCA; (2) capacity building of the DIT (the Department of Internal Trade) staffs on necessary measures and practical procedures for implementation of TCA; (3) advocacy activities; and 4) recommendation.

2.1 Baseline survey on the status of implementation of the TCA

As baseline survey, following activities were carried out.

- 1) Assessment of achievements in, and problems with, implementation of the TCA thus far.
- 2) Evaluation for understandings on problems of competition policies and measures.
- 3) Studies on the Thai Trade Competition Commission (T-TCC) and understand problems in terms of its status as a competition authority, power, organization, activities and management.
- 4) Studies on sectors from the macroeconomic viewpoint, and market structures and business habits to find if they would have problems concerning TCA.

2.2 Capacity Building of the DIT staffs on necessary measures and practical procedures for implementation of TCA

With regards to assistance in drafting guidelines, emphasis was on introduction to the DIT of recent cases handled by the JFTC as well as the guidelines drafted by the JFTC which are deemed useful for DIT, while conducting the following activities:

2.2.1 Workshops

- Case studies with particular focus on the four areas of Dominant positions, Mergers, Unfair Trade Practices and Cartels.
- During the project, four Workshops were held.

2.2.2 Market Survey

- Detailed market survey was conducted by out-sourced Thai researcher which has been determined through the discussion between DIT and TA Team. The choice of the sector, Maritime Transportation, was based on a request from DIT.

2.3 Advocacy Activities

Two activities were conducted as part of advocacy activities, with the objective of public education, promotion and communication regarding competition policy in Thailand.

2.3.1 Advocacy Seminar

- One-day advocacy seminar was held to promote the importance of developing competitive environments and fair market conditions as well as the importance of the TCA.

2.3.2 Website Development

- The website was developed for use in advocacy by the authority, namely the OTCC.

2.4 Recommendation

- An overall Recommendation was prepared for further strengthening the capacity of the OTCC to implement the TCA from the viewpoints of strengthening capacity building activities including human resource development.

2.5 Others

- Thai Senior Officials were provided with the opportunity for a study visit to Japan.

The TA Team ensured that the activities correspond to one another.

- In addition as part of the program, available assistance was provided for information sharing purpose for any relevant international meetings among the ASEAN countries.

3. Overview of the Field Surveys

The JICA TA Team has conducted a total of six Fields Surveys as follows:

3.1 Major Activities of the 1st Field Survey

Date: from the 14th of Nov. to the 3rd of Dec. 2004

- 1) Inception Meeting
- 2) Baseline Survey
 - a) Updating existing governmental measures and related laws & regulations to the TCA, and identifying priority areas in capacity building for further implementation of TCA scheme.
 - b) Updating achievement by the authority
 - c) Updating the organizational structure and its function
 - d) Updating the information of related technical assistance programs by the other international donors
 - e) Working to plan the Sector Study (the industrial analysis from the macroeconomic viewpoints)
- 3) Preparation for the Market Survey (the market analysis on the selected sector(s))
- 4) Discussing on the subject issues and schedule for the Workshops
- 5) Discussing on the subject issues and schedule for the Advocacy Activities

3.2 Major Activities of the 2nd Field Survey

Date: from the 12th to the 21st of Dec. 2004

- 1) Finalizing the baseline survey and conduct of the sector study
- 2) Making initial confirmations on schedules of the workshops and the advocacy activities
- 3) Preparing for the market survey

3.3 Major Activities of the 3rd Field Survey

Date: from the 12th to the 29th of Jan. 2005

- 1) Preparing and Conducting the First Workshop
- 2) Preparing the schedules and programs of the Second Workshop

- 3) Following up on the market survey
- 4) Preparing for the advocacy activities

3.4 Major Activities of the 4th Field Survey

Date: from the 24th of Feb. to the 12th of Mar. 2005

- 1) Preparing and Conducting the Second Workshop
- 2) Preparing the schedules and programs of the Third Workshop
- 3) Finalizing the market survey
- 4) Preparing for the advocacy activities
- 5) Preparing and discussing on the interim report

3.5 Major Activities of the 5th Field Survey

Date: from the 23rd of May to the 7th of Jun. 2005

- 1) Preparing and Conducting the Third Workshop
- 2) Preparing the schedules and programs of the Fourth Workshop
- 3) Finalizing the market survey
- 4) Preparing and conducting the advocacy activities
- 5) Assistance in website development

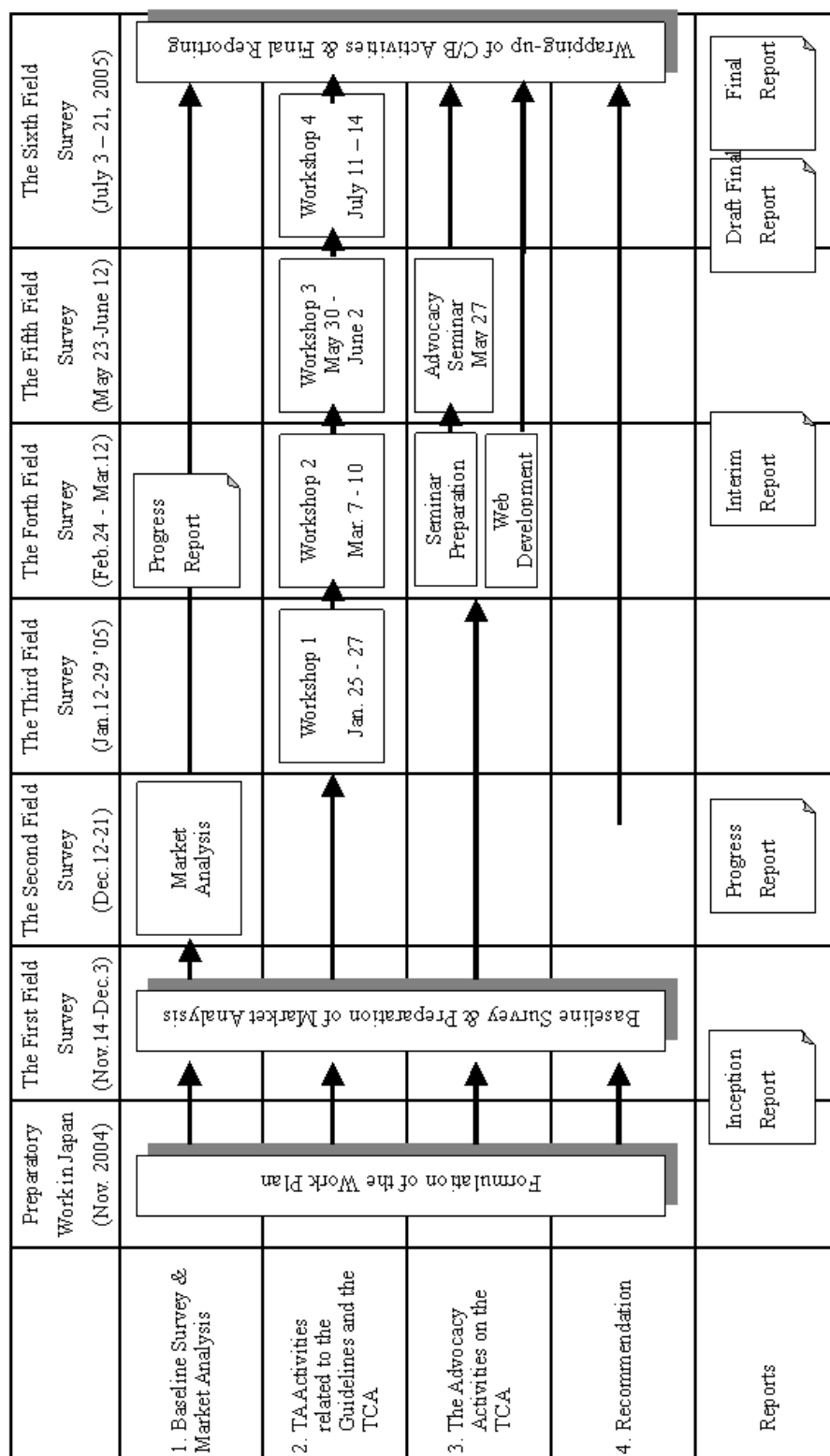
3.6 Major Activities of the 4th Field Survey

Date: from the 3rd of Jul. to the 21st of Jul. 2005

- 1) Preparing and Conducting the Fourth Workshop
- 2) Preparation for and discussion on the interim report
- 3) Assistance in website development

4. Schedule of the Study Programs

Figure: Overview of the Study Program Schedule



Note: The dates of submission of the Draft Final Report and the Final Report are July and Sept. respectively. The schedule for Web Development completed in Sept.

II. Background of the Technical Assistance Program

II. Background of the Technical Assistance Program

1. Competition Policy and Competition Law in a National Economy

Competition policy, which ensures an appropriate competitive environment in a free market system, has well been recognized as one of the essential instruments to maximize efficiency in a national economy¹. In general, appropriate implementation of competition policy exposes firms to fierce market competition, thus compelling them to swiftly and flexibly meet consumer demand by reducing costs and upgrading the quality of their goods and services. This mechanism contributes to promoting optimal resource allocations, as well as to stimulating economic development through giving incentives to firms to further improve their management and technology.

While competition is a welcome development for the national economy, particularly for consumers/user firms, certain frictions exist on the supply side, especially among existing major suppliers trying to maintain their power by means of anti-competitive practices such as abuse of dominant position or collusive arrangements. Competition policy aims to prevent and/or reduce such anti-competitive business practices and promote sound free market mechanisms. Hence, competition laws and regulations play a key role in appropriate implementation of this policy.

It is worth noting, however, that healthy market mechanisms would not be realized merely through the implementation of competition law and regulations. Other impediments aside from anti-competitive practices by firms exist in the market. For example, certain aspects in trade policy, investment policy, and industrial policy along with various other governmental measures could also distort market mechanisms. Having said that, upon implementing competition laws and regulations, a holistic approach should be taken, such that aspects of deregulation, privatization, and liberalization are well accounted for.

Progress of competition in the domestic market will also be advantageous to the activities of export business. As the export companies become capable of accessing appropriate market-based prices for intermediary inputs and services, this will in turn contribute to realizing competitive prices in the international market. It is thus beneficial for countries where exports play a significant role in its economic growth to promote competition in the domestic market. In this respect, Thailand, as well as other ASEAN member countries, should also enjoy such advantages.

¹ UNCTAD *The Relationship between Competition, Competitiveness and Development*, TAD/B/COM.2/CLP/30, UNCTAD, 23 May 2002

Another outcome of competition policy is to promote innovative management and technology at firm level. Market competition requires business to make swift and flexible adjustments, which in turn, promotes competition in the entire industry. Especially for a country like Thailand, where labor costs continue to rise, it is important to promote managerial and technological innovation in order to maintain and strengthen its international competitiveness. Needless to say, such innovation at the firm and industry level may contribute to sustainable development of a national economy.

2. Development of Competition Law in Asian Countries

Since the late 1990s, rapid developments in the enactment of competition law have been observed among Asian countries (Table 2-2-1). Following the 1997 Asian Financial Crisis, these law enactments were encouraged under the conditionality of international organizations, such as the International Monetary Fund (IMF) and the World Bank (WB). On the other hand, economic growth levels in this region no longer compelled these countries to preserve conventional protective industrial policies, thus, welcoming these new developments. In fact, even after the IMF/WB initiatives in 2000, voluntary development processes can be observed in Malaysia, Singapore, the Philippines, and in China.

Table 2-2-1: Competition Laws in Asian Countries/Economies

Country/Region	Name of Laws	Authority
North-East Asian Region		
1. Korea	Monopoly Regulation and Fair Trade Act (80/81)	Korea Fair Trade Commission
2. Taiwan	Fair Trade Act of 1992	Taiwan Fair Trade Commission
3. China	The Law Countering Unfair Competition (1993) The Price Law (1998)	State Administration for Industry & Commerce of the People's Republic of China (For the Price Law, State Development Planning Commission)
4. Mongolia	Law of Mongolia on Prohibiting Unfair Competition (1993)	National Development Board
South-East Asian Region		
5. Philippines	Article 186 of the Revised Penal Code (1957) Price Act (1992) Consumer Act (1992)	Bureau of Regulation and Consumer Protection / Fair Trade Division, DTI
6. Thailand	Competition Act (1999)	Thai Trade Competition Commission
7. Indonesia	Law of the Republic of Indonesia Number 5 of the Year 1999 on the Prohibition of Monopoly and Unfair Business Competition (1999)	Commission for Supervision of Business Competition
8. Singapore	Competition Act (2004)	Competition Commission of Singapore
9. Vietnam	Competition Law (2004)	Competition Administration Department / Competition Council

Source: "Competition Laws and Market Economy in Asia", Noboru Honjou, Japanese language, > tentative translation by UFJI

III. Updates of the Current Situation related to the TCA Authorities

III. Updates of the Current Situation related to the TCA Authorities

The objectives of the baseline survey are as follows:

- To understand achievements and problems in implementation of the Trade Competition Act (TCA);
- To evaluate and understand problems of competition policies and measure;
- To study the Thai Trade Competition Commission (TCC) and understand problems in terms of its status as a competition authority, powers, organizations, activities and management;
- To survey on capacity building activities from other donors; and,
- To study sectors from the macroeconomic viewpoints, such as market structures and business habits, to find if they would have problems concerning TCA.

This survey mainly dealt with the above objectives from three aspects: 1. organization, 2. laws, and 3. economics. Regarding organizational aspects, the survey focused on 1.1 organizational frameworks, 1.2. implementation frameworks, and 1.3. other donor activities. As for legal aspects, each section of the TCA were reviewed and compared with those of Japan, US and EU. Economic aspect research focused on a sector study of Thai industry.

Based on the above survey, it was recognized that (i) a case-based study workshop would work effectively to share the experiences of the JFTC in the areas, where *the OTCC has needs to substantiate its experiences and/or further knowledge*, and would be an effective opportunity to strengthen the capacity of OTCC officials more thoroughly, and (ii) introduction/explanation of JFTC guidelines would be effective and prove useful for formulating the ministerial regulations by the OTCC, since the ministerial regulations are currently under preparation process in TCC/OTCC.

1. Findings on Organizational Aspect Survey

1.1 Organization Framework

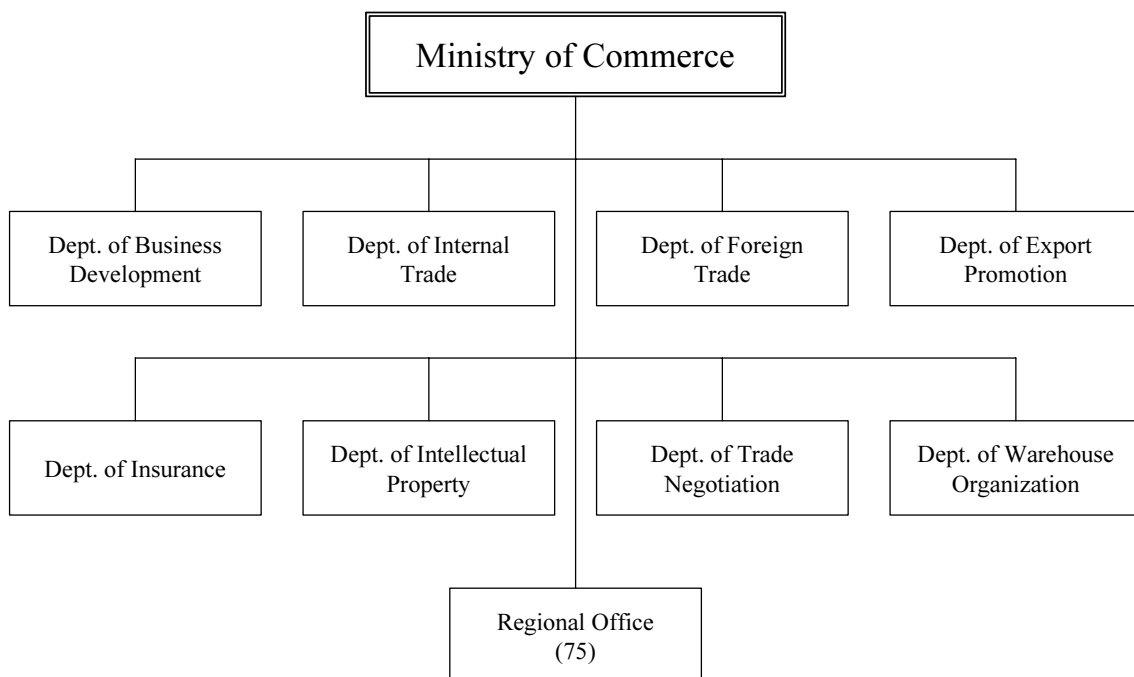
1.1.1 TCC

In 1999, the GOT introduced the TCA. Based on Section 6 of the TCA, the TCC was established as an operational authority. The TCC has main powers and duties such as (i) to issue Notifications prescribing market share and sales volume of any business by reference to which a business operator is deemed to have a dominant position (ii) to issue Notifications prescribing the market share, sales volume, amount of capital, number of shares, or amount of assets under Section 26 paragraph two, (iii) to

give orders under Sections 30 and 31 for suspension, cessation, correction or variation of activities by business operators (iv) to issue Notifications prescribing the form, rules, procedure and conditions for the application for permission to merge business or initiate the joint reduction or restriction of competition under Section 35.

Minister of Commerce works as a head of the TCC. The Ministry of Commerce is composed of 8 departments and OTCC was set in one of them, Department of Internal Trade, as follows;

Figure 3-1-1: Structure of the Ministry of Commerce, Thailand

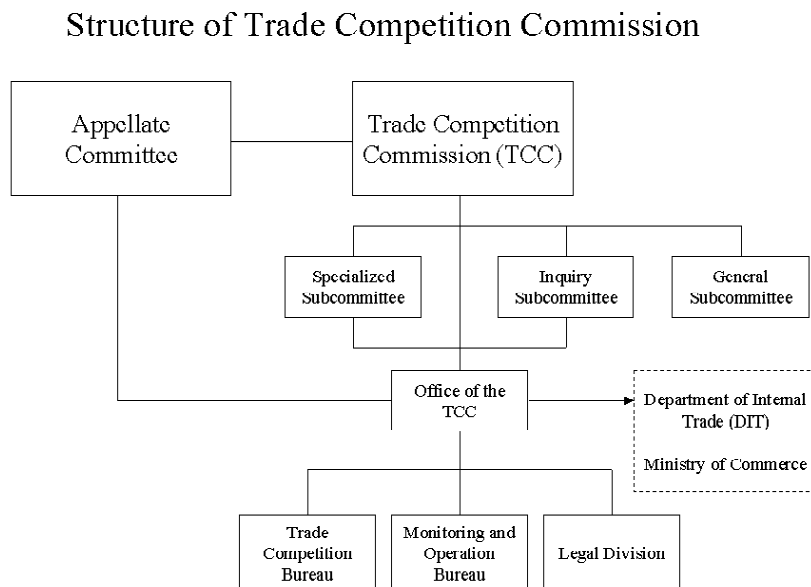


Source: OTCC

1.1.2 Appellate Committee

The Cabinet may appoint an Appellate Committee in order to consider and decide on the appeal against an order of the TCC under Section 31 or Section 37. The Appellate Committee is composed of not more than seven experts knowledgeable in law, economics, business management or public administration. The Appellate Committee has been appointed once since the enactment of TCA. Organization structure of the Thai Trade Competition Authority, including the Appellate Committee, is as follows;

Figure 3-1-2: Structure of Trade Competition Commission



Source: OTCC

1.1.3 Subcommittee

(1) (General) Subcommittee

TCA gives TCC the power to appoint subcommittees (Sec.11), specialized subcommittees (Sec.12), and Inquiry Subcommittees (Sec.14). Subcommittees under Sec.11, the so-called general subcommittees, “perform any act as delegated and give a report to TCC.” From 1999, 3 general subcommittees were established. The reports have included those focusing on guidelines for “Definition of Market Dominance,” “Unfair Trade Practices,” “Merger and Acquisitions,” and so on.

(2) Specialized Subcommittee

Specialized subcommittees are composed of not less than four but not more than six experts who have the knowledge in law, science, engineering, pharmacy, economics (Sec.12). A representative of the Internal Trade Department (DIT) is also a member. Specialized subcommittees propose opinions on the following matters such as the behavior of exercising power over the market, merger, reduction or limitation of competition. Since 1999, 4 specialized subcommittees were established and gave opinions to the TCC, which included those on specific cases, such as the Whisky-Beer case, the Cable TV case, etc.

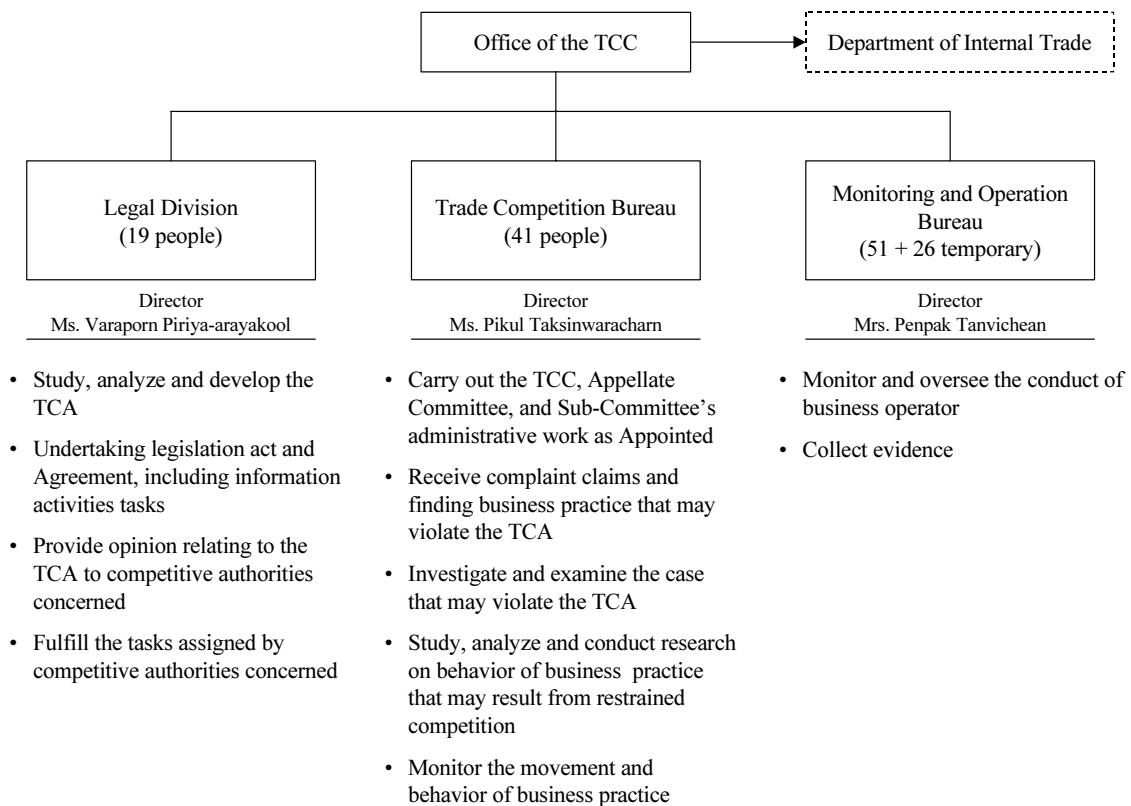
(3) Inquiry Subcommittee

Inquiry Subcommittees are comprised of one person knowledgeable in criminal cases (police officer/public prosecutor) and no more than four public servants experienced in economics, law, and commerce (Sec.14). Inquiry Subcommittees have the powers to investigate and to inquiry in connection with the commission of offences under TCA and to propose its opinion to TCC. No Inquiry Subcommittee have established since 1999.

1.1.4 Office of the Trade Competition Commission

The Office of the Trade Competition Commission (OTCC) is established in DIT and performs administrative works for the TCC, Appellate Committee, and the subcommittees (Sec.18). The OTCC have three main functions such as, secretarial, legal and monitoring functions. The OTCC as a whole is responsible for all of the three functions. The OTCC is composed of three different bureaus/divisions, the Trade Competition Bureau (TCB), the Legal Division, and the Monitoring and Operation Bureau (MOB)². The overall structure of OTCC is as follows;

Figure 3-1-3: Overall Structure and Function of OTCC



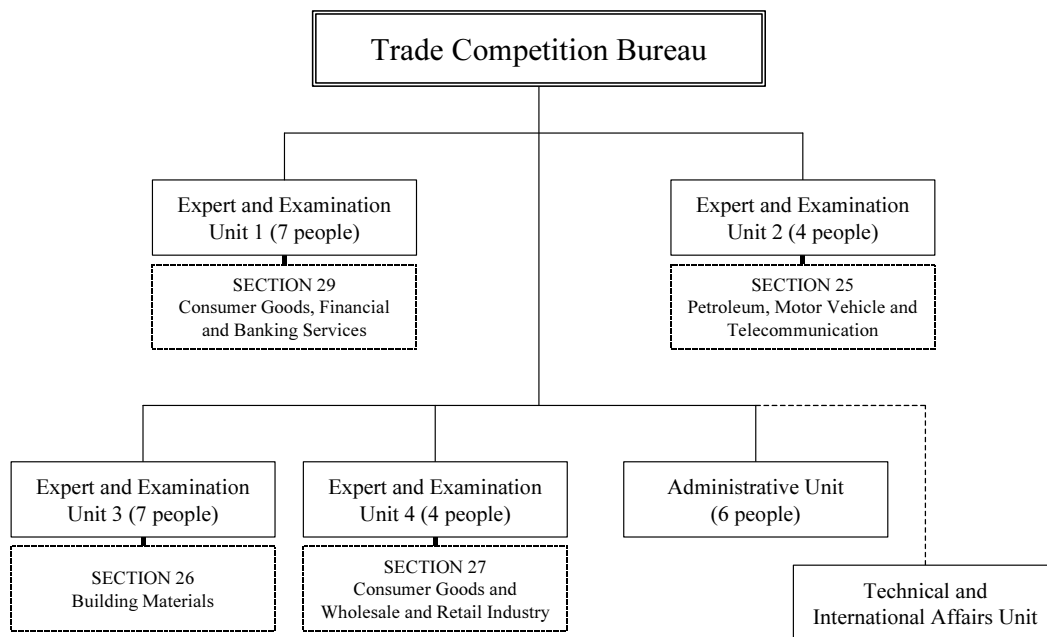
Source: UFJI

² See Appendix II(1)1) Organization Structure of Thailand Competition Authorities

(1) Trade Competition Bureau

TCB is comprised of 4 Expert Units (responsible for preliminary analysis of cases), the Technical and International Affairs Unit and the Administration Unit. Each Expert Unit is charged with drafting guidelines delegated to each unit. Also they are responsible for investigations and considerations for specific cases on a sector-basis. Expert Unit 1, composed of seven officials, carries the responsibility for consumer goods and financial and banking sectors, while is in charge of guidelines for Section 29. Expert Unit 2, composed of four officials, is in charge of petroleum, motor vehicle and telecommunication sectors, as well as Section 25 guidelines. Seven officials at Expert Unit 3 handle building materials and marine transportation sectors, along with Section 26 guidelines. Expert Unit 4, a unit with 5 experts, handles non-food consumer goods and wholesales and retail sectors, in addition to Section 27 guidelines. Technical and International Affairs Unit, which also serves as the contact point for this JICA capacity building Study, takes care of the international issues with 5 officials. In addition, the Administrative Unit takes responsibility for all the secretariat works for the whole Bureau.

Figure 3-1-4: Overall Structure and Function of the Trade Competition Bureau



Source: OTCC

(2) Legal Division

Legal Division, composed of twenty officials, takes responsibility for 7 laws under the Department of Internal Trade, including the TCA.

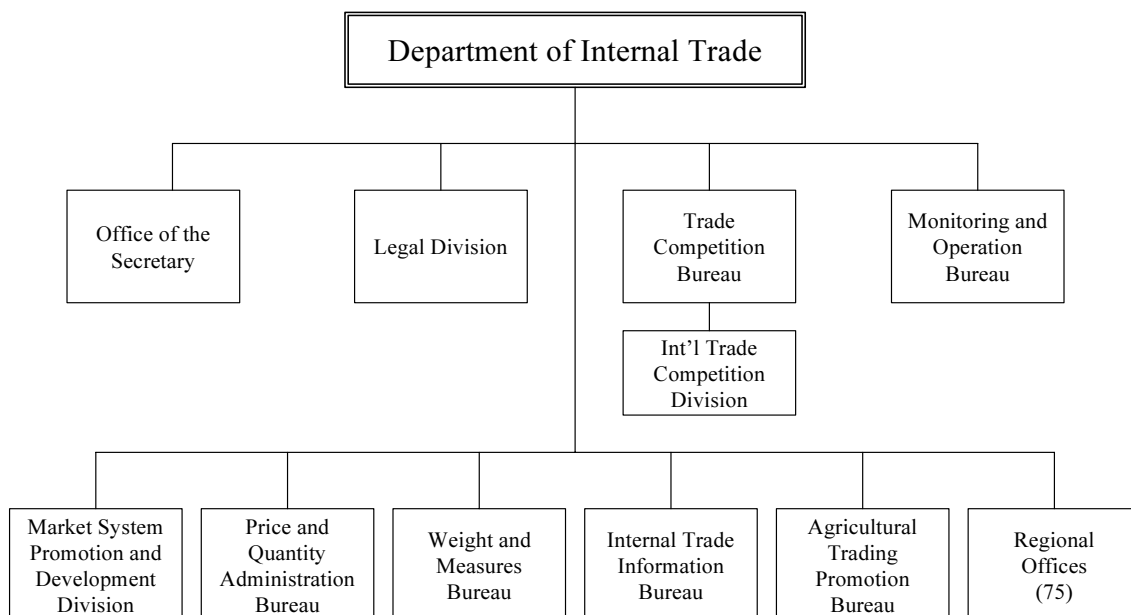
(3) Monitoring and Operation Bureau (MOB)

MOB is responsible for 7 laws under the DIT including the TCA. It administrates fairly the system of price and quantity of goods and service and negotiates with sellers or service providers for refunds. There are 2 units under MOB, which are related to the TCA, Complain Center, (which was formed in 1994) and the monitoring/operation unit. The former is composed of about 20 officials and the latter is of 40. In 2004, MOB received more than 3000 complaints. Almost 2% of them were related to the TCA and passed on to the TCB following command chain procedures. Based on the TCA, the MOB is currently supervising and surveying 72 products and services. The list of products and services is regularly changed based on the market needs and situations.

(4) Regional Office

MOC has regional offices in each of the 75 provinces in Thailand. One of the responsibilities for regional office is to collect information concerned with TCA violations. The whole structure of the DIT is as follows;

Figure 3-1-5: Structure of the Department of Internal Trade



Source: OTCC

1.1.5 Notes

OTCC plays a key role for implementing the TCA under the assignments from the TCC and works well and effectively in the current framework. However, the number of officials responsible for the TCA in OTCC is limited compared with the amount of complaints/cases they are expected to deal with.

In the process of investigating complaints/cases and drafting ministerial regulations (guidelines), three divisions, the TCB, the Legal Division and the MOB, works as a whole (OTCC). The three divisions have already worked in close relationships on a case by case basis. The communication among them on regular/periodic base may contribute not only for an effective information exchange, but also as a foundation to make a common consensus for a further implementation of the TCA among officials.

1.2 Implementation Frameworks

1.2.1 Investigation Procedures

(1) Initiation of a Case

The OTCC has the authority to receive complaints. In substantive terms, the OTCC analyzes the business practices, which allegedly violate the TCA, and submits advices to the TCC on prevention of violations of the TCA. Since 1999, the OTCC has received 53 complaints, 20% of which was received directly by way of MOB's call center. Of the 53 complaints, 12 deals with Section 25 of the TCA, no complaints related to Section 26, and 15 related to Section 27, and another 26 to Section 29. OTCC is currently investigating 10 complaints.

Table 3-1-1: Numbers of Complaints Received by TCB Expert Units

	Sec. 25 (Monopoly)	Sec. 26 (M&A)	Sec. 27 (Cartels)	Sec. 29 (Unfair Trade Practice)	Total
Unit 1	3	-	6	4	13
Unit 2	3	-	3	7	13
Unit 3	4	-	4	4	12
Unit 4	2	-	2	11	15
Total	12	-	15	26	53

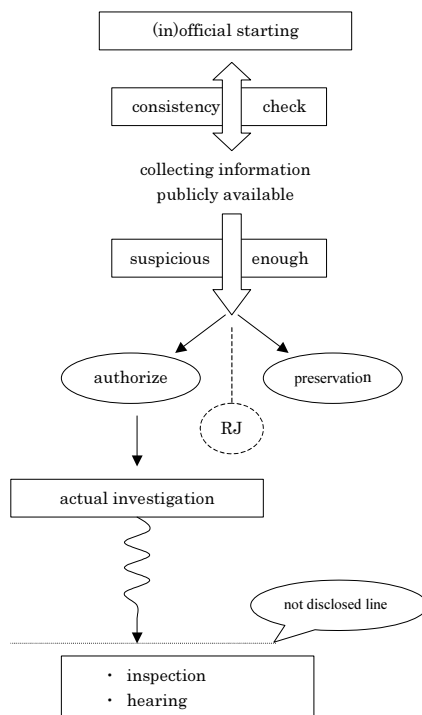
Source: OTCC (as of July, 2005)

Based on received complaints and also on its own initiatives, OTCC may start search on goods and services. As the first phase, OTCC analyzes market structure and related business practices. If enough charges were found during this step that should

amount to violation of the TCA, OTCC then proceeds to the second step of legal analysis. In this step the case is further analyzed from a legal perspective, and if it becomes clear that the alleged acts are in fact illegal, OTCC submits a report to the Secretary General of the OTCC suggesting detailed search. If the Secretary General supports the report, it will be passed on to the TCC as a submission from the OTCC. Through such procedure, 19 reports have been submitted since 1999, and 34 are in process.

When we compare these procedures of Thailand with the one of the JFTC, this corresponds to preliminary analysis conducted by the Information Analysis Office. The Office seeks whether formal investigation procedures should be initiated or not. OTCC does not have the authority to carry out on-the-spot inspections to the companies in doubt, as in the Office of JFTC. In Japan, in order to prevent destruction and scrapping of evidence by the concerned company (ies), the Office does not make any direct contacts with not only the alleged company (ies) but also its competitors and customers during the preliminary search phase. When deciding initiation of formal investigations procedure, the JFTC bases its decision on reports produced from public information that are collectable without getting in touch with the relevant parties. Therefore, the JFTC usually makes its decision for formal investigations without a priori evidences but with a certain amount of probabilities for violations.

Figure 3-1-6: Initiation of a Case for the JFTC



Source: JFTC

On the other hand, when initiating a formal investigation, OTCC carries a heavier burden than its Japanese counterpart to display a higher possibility of the fact of violation than is required in Japan. Hence there are cases where the OTCC conducts voluntary interviews, during such preliminary analysis phase, with relevant parties including the alleged company. However, confiscation of relevant documents, including by way of on-the-spot inspection, is only authorized in the consideration by the Specialized Subcommittee, which is at the following phase. Under such circumstances, prevention of destruction and scrapping of evidence incurred by the leak of investigative intentions of the authority could be a concern the OTCC is currently facing.

Table 3-1-2: Contents of OTCC Reports to TCC

<ol style="list-style-type: none"> 1. Names of Complaints and Defendants 2. Summary of the Case 3. Concerned TCA Sections 4. Results of Market Studies <ol style="list-style-type: none"> 4-1. Market Structures 4-2. Trade Behaviors 4-3. Barriers to Entry into Market 5. Results of Analysis 6. Comments

Source: OTCC

(2) Investigation by the Specialized Subcommittee

A Specialized Subcommittee will be set up in the TCC, to further gather detailed information as needed and conduct a detailed investigation (TCA Section 11). This phase corresponds to the initiation of a formal investigation procedure in Japan. OTCC serves as the secretariat for the Specialized Subcommittee. The Subcommittee has the authority to inspect the alleged company (ies) on the spot to confiscate documents, and to interview relevant parties and individuals (TCA Section 13). Since 1999, OTCC has conducted compulsory investigations 4 times. A TCB expert unit usually conducts compulsory investigations. However, because of constraints in human resources, officials from other TCB expert units and also those from regional offices may support the investigation.

Hence, Section 13 of the TCA allows for the Specialized Subcommittee, assigned by the TCC, to investigate conducts alleged of violation of one of the Sections from 25 to 29, and make recommendations to the TCC. However, there currently exist

no public rules and guidelines on the procedures regarding search and investigation by the Specialized Subcommittee. Under such conditions, certain elements, such as how and when the alleged company takes the opportunity to make counterarguments during the investigation procedure, is not clear. It could lead to some concerns with regards to protection of due process.

(3) Investigation by the TCC

Reports and Recommendations by the Specialized Committees are taken up by the TCC for its decisions. Finding violations of the TCA, the TCC has two options, of either moving on to criminal litigation to the public prosecutor (Section 16), or ordering to cease and desist the alleged business conducts (Section 30 and 31). However, there is only one case as of now that has moved on to a criminal litigation to the public prosecutor on the basis of Section 16.³ In addition, operation of Sections 30 and 31 on the other hand has been nil, with no cease and desist order issued based on the Sections as of now, due partly to the fact that operation procedures for the Sections are not yet in place.

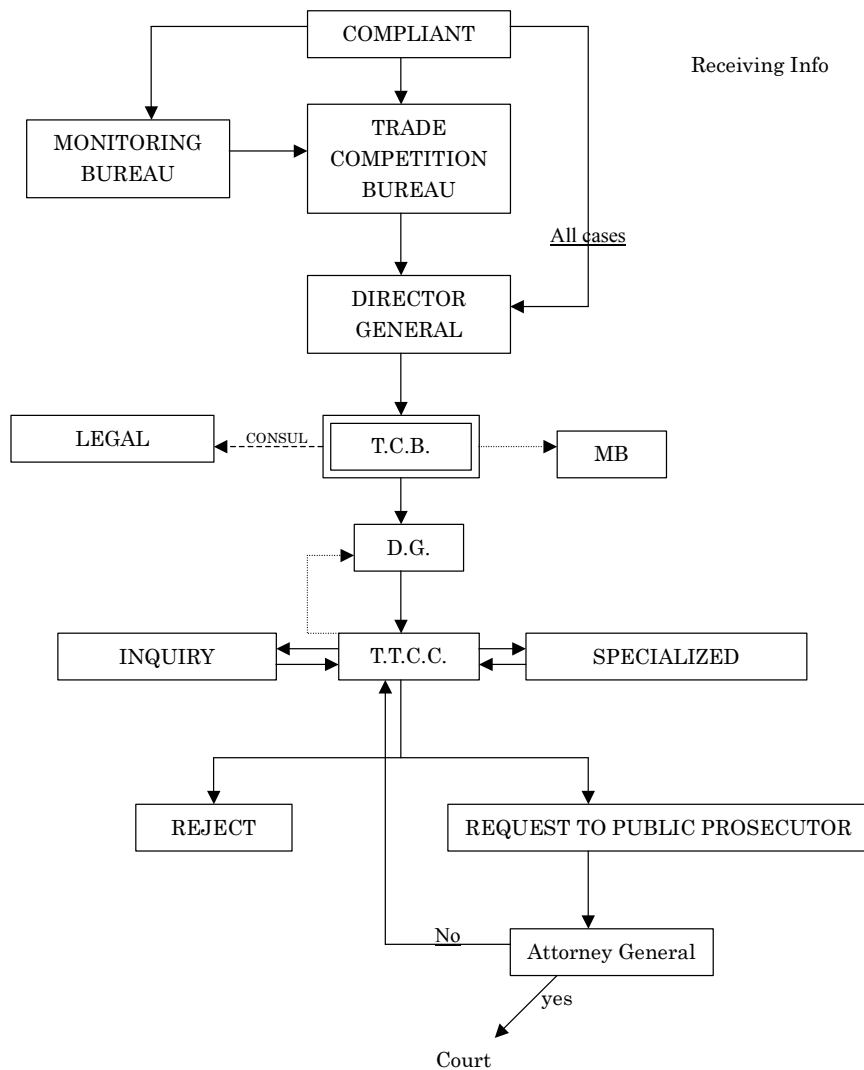
As with investigation procedures for the Specialized Subcommittee, investigation procedures of the TCC also are not disclosed. Therefore, from the perspective of protection of due process, appropriate procedural provisions should be urgently formulated, to overcome shortcomings such as no guarantee of opportunity for counterargument for the alleged company (ies), and unclear distinction between the two different procedures, namely the one in Section 16 and the other in Sections 30 and 31, upon application.

In terms of practical administration in Japan, the US and the EU, for cases with relatively low illegality or anti-social effect, instead of using the judicial process which requires detailed burden of proof to the authority, release of administrative orders are effectively functioning to correct the alleged conducts. With that in mind, development of operational procedures regarding Sections 30 and 31 of the TCA, and effective implementations of those procedures, could be useful in securing effectiveness of the competition policy in Thailand.

The following flow chart of investigation procedures for TCC was provided by the OTCC during the workshops.

³ AP Honda case.

Figure 3-1-7: TCC Investigation Procedures



Source: OTCC

1.2.2 Drafting Guidelines Procedures

OTCC, as a secretariat function for TCC, may take actions as assigned by the TCC (Sec.18) and TCC may order the OTCC to draft recommendations to the Minister on behalf of the TCC. Making the draft, OTCC made internal discussions and analyzed it both from the legal and economic viewpoints. OTCC as a whole takes responsibility to submit the draft to the TCC and, in particular, the Legal Division is playing a major role in the whole effort.

As will be noted later, OTCC works actively in preparing guidelines under the TCA, particularly in the field of “Abuse of Dominant Position,” “Merger,” “Collusion,” and “Unfair Trade Practice in General Business” and “those in the Wholesales and Retail Business.” Since the guidelines are current under preparation process, introductions/explanations on JFTC guidelines in the above fields are considered to be

useful. In particular, JFTC has just introduced a new guideline on merger and acquisition and its experience how to set criteria compatible with Japanese economic/industrial situations would be essential for OTCC.

1.2.3. Notes

Officers of OTCC has high expertise on competition policy and, more importantly, strong zeal to implement the TCA. It is possible to say that the TCC has already gotten basic human resource facility to implement the TCA effectively. Several legal arrangements, however, such as easing of the standards necessary for initiating formal investigations, establishing of procedures for administrative orders (e.g. Sec.30 and Sec.31), and enacting of formal and public procedures for investigations by the TCC and the specialized sub-committees, seem to be necessary for further effective implementations.

1.3 Capacity Building Activities from Other Donors

OTCC has been received several technical assistance from the donors other than Japan. The recent programs sponsored by other donors are as follows:

1.3.1 Fair Trade Commission of Chinese Taipei (TFTC)

TFTC provided seminars on investigations/enforcement of competition laws in November 2003. The duration was 2-3 days. They also provided internship programs at TFTC and invited two OTCC officials for one month twice in May 2002 and April 2004.

1.3.2 Australia Competition and Consumer Commission (ACCC)

ACCC conducted a seminar on August 2003. The theme of the seminar was the investigation/implementation procedures of competition policies. The program included case-based studies and also roll-playing activities. In 2004, ACCC sent two consultants for following up on the seminar and they stayed in DIT for one month respectively. DIT sent two officials for three months to ACCC for internship training.

1.3.3 US Federal Trade Commission (USFTC)

USFTC provided three-day seminar focusing on investigation/ implementation procedures in 2004. Also in 2005, USFTC co-organizes the first conference of ASEAN Competition Forum with the OTCC (DG Siripol is the first chairman for the Forum) and gives several technical assistances including web-developments for the Forum.

1.3.4 New Zealand

The Department of Internal Trade, in cooperation with the Commerce Commission, New Zealand, conducted a Technical Cooperation Program under a Closer Economic Partnership (CEP) between Thailand and New Zealand. The program comprised of 1) Consultative Activity by experts from the New Zealand Commerce Commission serving as consultants conduct a training on competition law enforcement at the Department of Internal Trade for 2 weeks, and 2) Internship Activity for staffs of the Department of Internal Trade to work at the New Zealand Commerce Commission for two weeks.

2. Findings on Legal Aspects Survey

2.1 Abuse of Dominant Position

Section 25 of TCA

A business operator having market domination is prohibited from conducting any of the following acts:

- (1) to unfairly fix or maintain the levels of sale or purchase prices of goods or services;
- (2) to set conditions which, directly or indirectly, unfairly compel other business operators who are customers of the Business Operator to limit the provision of services, production, purchase or distribution of goods, or their opportunity to choose to buy or sell goods, accept or provide services or obtain credit from other business operators;
- (3) to suspend, reduce or limit services, production, purchase, distribution, delivery, or importation into the Kingdom without reasonable grounds, or to destroy or damage goods in order to reduce supply to less than market demand; and
- (4) to interfere with the business operations of other people without reasonable grounds.

2.1.1 Current Status in Thailand

(1) Legal Structure of TCA Section 25

Section 25 of the Thai Trade Competition Act (TCA) prohibits “abuse of dominant position,” a prohibition of abusive conducts by monopolists along the similar lines with antitrust regulations in Japan, the US, and the EU. Monopolists subject to the regulation are defined in the Section as “business operator having market domination.” As for prohibited abusive conducts, Section 25 enumerates examples of conducts to be restricted, like the article 81 of the EC Treaty.

(2) Guidelines for Market Power

Section 3 of TCA

In this Act:

...

“business operator having power over the market” means one or more business operators in the market of any goods or service who have market share and total sales in excess of those prescribed, with the market competition taken into account, by the Commission with the approval of the Cabinet and published in the Government Gazette.

...

TCA Section 3 requires the TCC to clarify, with the approval of the Cabinet, the “market share” and “total sales” of the “business operator having market domination” in

Section 25. In concordance with the provision, the TCC disclosed the draft trigger levels for “dominant position” in 2003. In the draft, thresholds for “dominant position” were categorized into two, general criteria and sectoral ones (wholesales and retail sector, motorcycle sector, and etc.). The “guidelines” in Thailand are recognized as a legal order clarifying thresholds in applying Section 25. That is notably different from those of Japan, US and EU where “guidelines” work as administrative guidance for the implementations whose thresholds are easy to change without any parliamentary approval.

2000 TCC Draft Criteria for “Dominant Positions”

Criteria for “Dominant Position” (general criteria)

- (i) single firm individually accounting for a market share of 33.33% or more, and
- (ii) sales volume in the previous year exceeding 1 billion Bahts (USD 22 million)

Criteria for “Dominant Position” (sectoral criteria)

(1) wholesales and retail sector

- (i) single firm with market share of 20% or more, and sales volume in the previous year exceeding 27 billion Bahts
- (ii) market share of the top three companies totaling 33.33% or more, and sum of sales of the respective companies exceeding 45 billion Bahts
- (iii) exemption of companies with market share under 10%

(2) motorcycle sector

- (i) single company with market share of 20% or more, and sales in the previous year exceeding 5 billion Bahts
- (ii) market share of the top three companies totaling 66.66% or more, and sum of sales of the respective companies exceeding 10 billion Bahts
- (iii) exemption of companies with market share under 10%

Source: *DIT website*⁴ and *Poapongsakorn (2003)*⁵.

Former Commerce Minister Wattana, however, had directed withdrawal and reconsideration of the draft. According to a report in the Bangkok Post in May 2004, TCC considers “market share of 50% or more in the relevant market in addition to sales of over 1 billion Bahts” appropriate for the criteria for “business operator having power over the market.” Also it is reported as another concurrent criteria that all three

⁴ Summary of the work on Trade Competition Act, February, 2002; <http://www.dit.go.th/eng/contentdetail.asp?typeid=15&catid=108&ID=344> (last visited July 25, 2005).

⁵ Nipon Poapongsakorn, “Thailand Trade Competition Act,” in *Proceedings of the Fifth Workshop of the APEC-OECD Co-operative Initiative on Regulatory Reform*, OECD, December 2003; <http://www.oecd.org/dataoecd/28/44/32689476.pdf> (last visited July 25, 2005).

companies “who comprise the top three of the relevant market with market share totaling 75% or more in addition to whose respective sales over 1 billion Bahts” to be in dominant position⁶.

(3) Cases in the Past

Hence, the definition for “business operator having market domination,” which Section 3 of TCA requires the TCC to enact, has not been drawn up until now. Therefore, in past decisions, TCC has maintained that findings of violation of Section 25 are not possible without guidelines setting the criteria for “monopoly.” Overviews of the Whisky-Beer case and the Cable TV case, which were investigated subsequently to claims filed on the grounds of Section 25 violation, are as follows.

(a) Whisky-Beer case

This case was the first to be brought for an investigation under the TCA. Following a complaint from Singha Beer, the country’s largest beer producer, the investigation took place on alleged tie-in sales of beer with whisky by the Surathip Group (a liquor monopoly and owner of Chang beer). Such tying of Chang beer is said to have resulted in substantial damage to Singha. On January, 2000, this case was dismissed by the TCC, based on the grounds that, as of dismissal, the Cabinet had not approved the guideline on “dominant position” which the TCC had submitted for approval and therefore the TCC was not able to decide whether the alleged conduct amounted to “abuse of dominant position.” However, at the same time, the TCC had established a specialized subcommittee regarding this case and have issued its opinion that the alleged tying was “inappropriate,” agreeing to the subcommittee’s recommendation.

(b) Cable TV case

This case dealt with alleged abuse of dominant position by UBC, formed by a merger of two cable TV operators, IBC and UTV. According to the complaint from a consumer protection group, UBC became the only cable TV operator in the country as a result of the merger and thus gained the power to raise viewer fees, thereby harming consumer welfare. The TCC established a specialized subcommittee for this case for examination, and concluded that the viewer fees in fact were raised after the merger, and there also was a high entry barrier to the cable TV market. But because the claim was based on UBC being a monopoly operator, TCC also dismissed this case on the similar grounds to the Whisky-Beer case that without the guidelines for “dominant position” laid out in TCA Section 25, there will be no deciding whether the alleged conduct is

⁶ Phusadee Arumas Woranuj Maneerungsee, *Board redefines ‘dominant player,’* Bangkok Post, 17 May 2004

illegal or not.

(4) “Private Monopolization” and “Unfair Trade Practices”

Such lack of enactments in Thailand of the guidelines defining criteria for “monopoly” up until now has resulted in situations where cases that are more appropriately judged based on prohibition of private monopolization in TCA Section 25 are being prosecuted under Section 29, which regulates unfair trade practices. In fact, the allegations in AP Honda case (concerning motorcycles), which is currently in litigation, are based on Section 29, instead of Section 25. The difference can be seen in the treatment of different types of violations, where Thai law provides violations of both the Sections 25 and 29 as criminal offenses, whereas Japanese law does not consider unfair trade practices criminal.

According to officers of the OTCC, they see the difference between Sections 25 and 29 as the former following *per se* illegal approach, in contrast to the latter demanding proof of anticompetitive effects. However, since Section 25 prohibitions as a whole have wider coverage than price fixing conducts (which is regarded as *per se* illegal in many countries), there should be reservations upon adaptation of such *per se* approach, which disregards effect requirements.

2.1.2 Prohibited Conducts

(1) Targeted Entity

Section 25 of the Thai Trade Competition Act (TCA), as illustrated above, prohibits “abuse of dominant position.” Two points could be mentioned as its characteristics; targeted entity and prohibited conducts. First, regarding the TARGETED ENTITY, it is worth noting that under Section 25 the concerned conducts are those by “a business operator HAVING POWER OVER THE MARKET” (emphasis added by the author).

Under Japanese AMA, private monopolization is defined by Section 2(5) and is prohibited by Section 3⁷. Section 2(5) provides the prohibited “private monopolization” conducts as those “causing ... a substantial restraint of competition in any particular field of trade.” The phrase of “a substantial restraint of competition” is interpreted to include the action to acquire, maintain and strengthen a dominant market position.

⁷ Section 3 of AMA provides, “No entrepreneur shall effect private monopolization or unreasonable restraint of trade.”

Section 2(5) of AMA

The term "private monopolization" as used in this Act shall mean such business activities, by which any entrepreneur, individually or by combination or conspiracy with other entrepreneurs, or by in any other manner, excludes or controls the business activities of other entrepreneurs, thereby causing, contrary to the public interest, A SUBSTANTIAL RESTRAINT of competition in any particular field of trade. (emphasis added)

On the other hand, Section 2 of Sherman Act in the US provides more clearly its prohibited conducts as follows: "*Every person who shall monopolize, or ATTEMPT TO monopolize ... shall be deemed guilty ...*" (emphasis added). It is important to note, meanwhile, that both in Japan and the US, the Acts prohibits the conducts to acquire/maintain monopolizations, but not each and every conduct by a dominant player.

Section 2 of Sherman Act

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(2) Prohibited Conducts

Second, on the Prohibited Conducts, Section 25 of TCA enumerated restricted conducts specifically, like the EU. Article 82 of the EC Treaty also specifies the prohibited conducts by dominant market players.

Article 82 of EC Treaty

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of

supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

On the contrary, Section 2(5) of AMA simply specified conducts that “excludes or controls the business activities of other entrepreneurs” as prohibited. The “exclusion” under Section 2(5) is interpreted as a conduct to make other business operators’ activities difficult or to block new market entries. The word “control” means to fix free from decision-makings by other business actors.

In the US, as in Japan, Section 2 of Sherman Act also does not show clear examples of prohibited conducts and we have to see the case laws. One of the early case laws which defined “abusive conducts” by a dominant market player is *Grinnell Corp. v. United States*⁸. The decision defined that illegal monopolization consists of “*the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen or historical accident*” in addition to the possession of monopoly power. In recent days, the cases on “*the willful acquisition or maintenance*” of monopoly power has focused mainly on predatory pricing, product innovation, refusals to deal and leveraging⁹.

(3) Market Share Threshold

In Japan, as stated above, there is no specific market share threshold for monopoly, since Section 2(5) of AMA focused on conducts to monopolize, but not on conducts by monopolists. In US, courts frequently show that a market share exceeding 70 percent supports an inference of monopoly power¹⁰. However, it should be noted that “*courts rarely evaluate market shares in isolations*” when measuring the market power. They usually consider, in addition to market shares, entry conditions, the size and stability of market shares over time, and profitability¹¹. Regarding a case on “attempt to monopolize” concerning abusive conducts by entities which have not yet retained monopoly power, courts apply a rough presumption that “*market shares below 50 percent are insufficient to show the requisite dangerous probability of attaining a monopoly.*”

⁸ *Grinnell Corp. v. United States*, 384 US 563 (1966)

⁹ *Gellhorn (1996)* at 136

¹⁰ *opt. cite.* at 117.

¹¹ *opt. cite.* at 118.

In Europe, on the other hand, only the conducts by an entity with a dominant position are prohibited; in other words, Article 82 of EC Treaty does not cover the conducts by an entity without a dominant position. Regarding thresholds for a dominant position, the Commission shows that a market share of more than 50% composes a dominant position and also even a share less than 50% could be enough for a dominant position, if there are additional factors such as barriers for market entries.

Market Dominance: A European Commission Definition

A position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained in the relevant market by affording it the power to behave, to an appreciable extent, independently of its competitors, customers and ultimately consumers (*United Brands v Commission*, ECR 207).

Regarding the threshold criteria for “dominant position,” Section 3 of TCA provides Trade Competition Commission (TCC) with the approval of the Cabinet the power to prescribe “a market share and total sales” standard for “business operator having power over the market.” TCC is currently considering the threshold.

2.1.3 Note

One of the main issues TCB is currently facing with is establishment of criteria defining market share and total sales volume criteria for dominant position. However, as illustrated above, neither Japan, US, nor EU explicitly fixes threshold market share as legislation or guidelines. This owes to the fact that market share basis for findings of monopoly depend on the situations in relevant market(s). For instance, there could be some markets where a company with market share of 70% will still not be deemed as having monopoly power, whereas in other markets even a market share of 40% could be sufficient to conclude monopoly power. Fact follows that in both Japanese and American case law, “abuse” of alleged monopoly power carries more importance than the power itself. In EU, a dominant position also is determined by other related factors such as market entry, in addition to market shares. Therefore, it seems rational to retain some reservations towards explicitly declaring a trigger level market share on a legislation or a guideline.

2.2 Mergers and Acquisitions

Section 26 of TCA

A Business Operator is prohibited from conducting business mergers which may create a monopoly or unfair competition as prescribed and announced by the Commission in the Government Gazette, unless permission is obtained from the Commission.

The announcement of prescript by the Commission as mentioned in paragraph one must state that it shall apply to business mergers that result in the acquisition of market share, total sales revenue, amount of capital, amount of shares or amount of assets of not less than a certain amount.

Business mergers as mentioned in paragraph one shall include:

- (1) a merger between manufacturer and manufacturer, distributor and distributor, manufacturer and distributor, or service provider and service provider, which results in the continued existence of one business and the demise of another, or the establishment of a new business;
- (2) the purchase of assets, whether in whole or in part, of another business to gain control over business management policy, supervision or administration;
- (3) the purchase of shares, whether in whole or in part, of another business to gain control over business management policy, supervision or administration.

An application for permission under paragraph one shall be filed by the Business Operator with the Commission in accordance with Section 35.”

2.2.1 Current Situations in Thailand

(1) Structure of Section 26 of the TCA

Section 26 of the TCA, which regulates mergers and acquisitions, prohibits “business mergers which may create a monopoly or unfair competition.” In addition, as concrete criteria for determination of such actions, TCC is to prescribe thresholds in “market share, total sales revenue, amount of capital, amount of shares or amount of assets.” Based on this provision, TCC is currently formulating the “Financial Merger Guidelines” and the “Non-financial Merger Guidelines.”

The Section, in addition to the above criteria, provides three types of business conducts which are subject to regulation: (i) mergers (resulting in the continued existence of one business and the demise of another, or the establishment of a new business); (ii) asset acquisition (both in whole or in part, of another business to gain control over business management policy, supervision or administration); and (iii) stock acquisition (both in whole or in part, of another business to gain control over business management policy, supervision or administration).

(2) Guidelines

In 1999, the TCC in concordance with the above Section 26 established a subcommittee responsible for examining the criteria for the following: (i) mergers in relevant markets, (ii) acquisition of shares of other business and (iii) acquisition of assets of other business. Due to relevance between the criteria for mergers and those for “abuse of dominant position,” lack of approval for the latter served as a cause for rejection of the merger criteria drafted in the subcommittee.

TCC since then has again established an expert working group (hereinafter WG) to examine criteria for regulation of mergers and acquisitions based on Section 26 of the TCA. The 9-member WG consists of five members from private sector and four from the government, currently with tasks of examining two guidelines, the “Financial Sector Merger Guidelines” and the “Non-financial Sector Merger Guidelines”¹².

As for the substance of the “Guidelines” that are currently being discussed in the WG, separate criteria are under consideration for each of the two guidelines, the “Financial Merger Guidelines” and the “Non-financial Merger Guidelines,” respectively. For the former “Financial Merger Guidelines,” pre-merger market share of over 25% or post-merger market share of over 33.33%¹³, in addition to pre- or post-merger sales volume of 100 billion Bahts, is planned as the thresholds for prohibition in principle. For the latter, “Non-financial Merger Guidelines,” threshold market share should be the same as in the financial sector, with pre-merger market share of over 25% or post-merger market share of over 33.33%, while the sales volume threshold is planned to be set at pre- or post-merger sales volume of 5 billion Bahts.

Notable difference lies in the fact that the discussions in the WG is only concerning with the threshold values, and does not cover investigation guidelines and even regulations on investigation procedures, as determined in the guidelines set in Japan in 2004. Investigation guidelines and investigation procedures are planned to serve as DIT’s internal undisclosed documents, and are currently under consideration, referring to other guidelines including the 1998 Merger Guideline in Japan.

¹² TCB has categorized business combinations into seven as (a) mergers, (b) acquisitions, (c) takeovers, (d) holding companies, (e) interlocking directorates, (f) joint ventures, (g) cross investment, and are assessing regulatory situation in various countries (including Japan).

¹³ The basis for determination of the numeric thresholds of market share was based on that of Taiwan, as a country in similar development terms and with a competition legislation and administration. On the other hand, sales volume threshold is said to have been based on categorization of domestic business operators by sales volume to yield a level that would have an impact on competition.

(3) TCA Sections 35 and 37

Section 35 of TCA

Any business operator who wishes to apply for permission for doing an act under Section 26 or Section 27 (5), (6), (7), (8), (9) or (10) shall submit an application in accordance with the form, rules, procedures and conditions prescribed by the Commission and published in the Government Gazette.

The application shall at least

- (1) include the reasons and necessities for the act;
- (2) indicate the method of action;
- (3) specify the period of time for action.

Mergers which meet the thresholds in the “Guidelines” as prescribed based on the Section 26 of the TCA are prohibited in principle. Therefore, when conducting such mergers, parties must submit applications, following Section 35, to the TCC for permission of the merger of concern.

Upon acceptance of the application form, the TCC must investigate and decide whether it submits the permission or the rejection and within 90 days come to a decision (Section 36). Following points are considered upon discussion: (i) reasonable necessity from the business point of view; (ii) helpfulness to the promotion of the business operation; (iii) seriousness of damage to the economy; and (iv) effect to the significant interests entitled to the consumers in general. If such discussion leads to no findings of concern, the merger will be approved (Section 37).

2.2.2 Thresholds in Japan and US

In Japan, notifications of the mergers must be submitted to the JFTC, when the merger meets following criteria. For stockholdings (AMA Section 10), notifications must be submitted if the parties, the conduct and the result meets the following criteria: (i) when a party to the merger which retains total assets of more than 2 billion JPY, which also retains with its subsidiaries assets totaling over 10 JPY; (ii) as a result of acquiring voting rights of a company in Japan with total assets of more than 1 billion yen; (iii) is to possess stockholdings exceeding the threshold ratio of 10 percent, 25 percent or 50 percent. In addition, notifications are also required when a company (i) with total assets of over 10 billion JPY is to (ii) be involved in a merger (Section 15), a demerger (Section 15-2) or an acquisition of business (Section 16) with a company with total assets of more than 1 billion JPY. Reporting requirements for the stockholdings are *ex post facto*, where as for the other conducts they must be done *ex ante*.

In U.S.¹⁴, the Hart-Scott-Rodino Act (‘the HSR Act’) requires parties to mergers or acquisitions above a certain threshold to notify its deal to the FTC (the Federal Trade Commission) and the DOJ (the Department of Justice). All transactions must be reported (regardless of the size of the parties) if it involves an acquirer getting hold of an aggregate amount of the voting securities and assets exceeding US\$200 million.¹⁵ Also, the transaction must be reported if the acquiring person will hold more than US\$50 million but not in excess of US\$200 million and if (a) the seller has at least US\$10 million in total assets, and the buyer has at least US\$100 million in net sales or total assets, or (b) the seller has at least US\$1 billion in annual net sales or total assets and the buyer has at least US\$10 million in such sales or assets.¹⁶

¹⁴ See Kenneth P Ewing and James T Halverson, *The Antitrust Reviews of Americas 2005: US Merger Control*, available at http://www.globalcompetitionreview.com/ara/us_merger.cfm

¹⁵ 15 USC § 18a(a)(2)(A).

¹⁶ 15 USC § 18a(a)(2)(B)

Table 3-2-1: Criteria for Submission for Approval in Japan, US, and EU

	Articles	Criteria
US	Clayton Act, Section 7 (Hart-Scott-Rodino Antitrust Improvements Act of 1976)	<p>(1) horizontal merger (1992 Horizontal Merger Guidelines)</p> <p>(a) $HHI < 1000$ - unconcentrated market / less likely to have competitive effects</p> <p>(b) $1000 < HHI < 1800$ - increase in $HHI < 100$: less likely to have competitive effects - increase in $HHI > 100$: may raise significant competitive concerns</p> <p>(c) $1800 < HHI$ - increase in $HHI < 50$: less likely to have competitive effects - $50 < \text{increase in } HHI < 100$: may raise significant competitive concerns - $100 < \text{increase in } HHI$: more usually raise competitive concerns</p> <p>(2) vertical merger (1984 Merger Guidelines) - only under very special circumstances - vertical merger promotes conspiracy - vertical merger creates high entry barriers</p> <p>(3) mixed merger (1984 Merger Guidelines) – abbr.</p>
EU	EC Regulation on Control of Concentrations (No. 139/2004)	<p>(1) market position of the undertakings concerned and their economic and financial power</p> <p>(2) the alternatives available to suppliers and users</p> <p>(3) suppliers and users’ access to supplies or markets</p> <p>(4) legal or other barriers to market entry</p> <p>(5) supply and demand trends for the relevant goods and services</p> <p>(6) interests of the intermediate and ultimate consumers</p> <p>(7) development of technical and economic progress provided that it is to consumers’ advantage and does not form an obstacle to competition (Concentration Control Regulation Article 2(b))</p>
Japan	AMA, Chapter 4	<p>(1) mergers and other conducts,</p> <p>(2) may be to substantially to restrain competition,</p> <p>(3) in a particular field of trade.</p> <p>Filing Requirements: Section 15</p> <p>(1) between domestic companies: when the combination involves one company with assets including the parent and the subsidiary company totaling over JPY 10bn, and another company totaling over JPY 1bn</p> <p>(2) between foreign companies: when the combination involves one company with its domestic subsidiaries and branches having sales totaling over JPY 10bn, and another totaling over JPY 1bn</p>

Source: UFJI

Note: Hirschman-Herfindahl Index (HHI)

2.2.3. Notes

Clarification of characteristics and positioning of guidelines is important, for guidelines in Thailand first need to be recognized as displaying “objective numeric” concerning applications and investigations, unlike the ones in Japan, US or EU which serve as source of administrative implementation guidance. We then need to take the next step to further analyze the positioning of the “objective numeric,” as whether they are: 1) notification/applications thresholds; 2) safe harbor thresholds upon investigation; or 3) thresholds for illegal presumption.

(a) Thai “Guidelines” as Objective Numeric Thresholds

Section 26 of TCA as stated above requires TCC to prescribe thresholds in the guidelines for “market share, total sales revenue, amount of capital, amount of shares or amount of assets.” Lack of establishment of such “Guideline” renders impossible the

application of Section 26, just as in Section 25 (monopoly), and consequently “reported” number of cases regarding the Section is zero. The very issues currently being discussed in the WG are regarding as concrete criteria for determination of such actions, TCC is to determine thresholds in “market share, total sales revenue, amount of capital, amount of shares or amount of assets” in the Section. It is therefore reasonable to perceive the “Guidelines” as definitions of “objective numeric” which are requisites for notifications/applications of the TCA, rather than “interpretation guidance” upon which merger regulations will be based.

(b) Thai “Guidelines” as Thresholds for Illegal Presumption

The next question is whether Thai “Guidelines” serve as 1) notification thresholds, 2) safe harbor thresholds upon application of merger regulation, or goes as far as 3) thresholds for presuming illegality. The Guidelines in Section 26 is to be established based on prohibition of “conducting business mergers which may create a monopoly or unfair competition as prescribed and announced by the Commission in the Government Gazette,” as described in the Section. This in turn suggests that the thresholds being prescribed in the “Guidelines” correspond to “business mergers which may create a monopoly or unfair competition,” are neither 1) notification thresholds nor 2) safe harbor thresholds upon investigation, but are 3) thresholds for illegality presumption¹⁷.

(c) Mergers below the Thresholds in the “Guideline”

On the other hand, TCA Section 26 will be completely inapplicable for mergers below thresholds prescribed in the “Guideline.” It is important to recognize that this is different from the Japanese legislative structure, in which while there are no notification obligations for parties to mergers that do not meet the criteria in the AMA, they nevertheless are subject to regulation by the JFTC.

2.3 Cartels

Section 27 of TCA

No business operator shall do any act jointly with another business operator, constituting a monopoly or reduction of competition or limitation of competition in the market of any goods or service in any of the following manners:

- (1) Fixing the sales price of goods or service to be the same, or as agreed, or limiting the sale volume of goods or service;
- (2) Fixing the purchase price of goods or service to be the same, or as agreed, or by limiting the purchase volume of goods or service;
- (3) Reaching a mutual agreement in order to dominate or control the market;

¹⁷ Comment from a Thai Competition Authority official at the fourth Workshop.

- (4) Fixing agreement or conditions in a collusion manner in order for one party to win the bid or tender for goods or service, or in order to prevent one party to tender bid in the bid or tender for goods or service;
- (5) Dividing the area in which each business operator can distribute or reduce the distribution of goods or service, or identifying the customers to whom each business operator can distribute goods or service, whereby other business operators will not distribute such goods or service in competition;
- (6) Dividing the area in which each business operator can purchase goods or service, or fixing the persons from whom the business operator can purchase goods or service;
- (7) Fixing the volume of goods or service to be produced, purchased, distributed or provided by each business operator, in order to limit the volume to be lower than the market demand;
- (8) Reducing the quality of goods or service to be lower than that previously produced, distributed or provided, by selling at the original or higher price;
- (9) Appointing or designating any person as a sole distributor or provider of the same kind or category of goods or service;
- (10) Fixing the conditions or practice concerning purchase or distribution of goods or service to be in the same pattern or as agreed.

In case of business necessity requiring an act mentioned in (5), (6), (7), (8), (9) or (10) during any period of time, the business operator shall submit to the Commission and application for permission under Section 35.

2.3.1 Current Situations in Thailand

Section 27 of the TCA prohibits “business operator to act jointly with another business operator, constituting a monopoly or reduction of competition or limitation of competition in the market,” and in addition defines a list of types of prohibited collusions. The TCB is in the process of drafting the collusion guidelines.

2.3.2 Comparison of Cartel Regulations between Japan and Thai

In Japan, cartels (called as "unreasonable restraint of trade") are defined under Section 2(6) of AMA and prohibited under Section 3. Cartels under AMA composed of the following four factors; (i) any entrepreneur with other entrepreneurs (collaboration) (ii) mutually restrict their business activities in such a manner as to fix, maintain, or increase prices (mutual restrictions), thereby causing, (iii) contrary to the public interest (public interest), (iv) a substantial restraint of competition in any particular field of trade (effects to the concerned market).

Section 2(6) of AMA

The term "unreasonable restraint of trade" as used in this Act shall mean such business activities, by which any entrepreneur, by contract, agreement or any other concerted actions, irrespective of its names, with other entrepreneurs, mutually restrict or conduct their business activities in such a manner as to fix, maintain, or increase prices, or to limit production, technology, products, facilities, or customers or suppliers, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade.

In Thailand, Section 27 of the TCA provides, in its chapeau, the same factors as AMA such as (i) collaboration, (ii) mutual restrictions, and (iii) effects to the concerned markets, but not public interests. On the other hand, Section 27 stipulates, contrary to the AMA, prohibition of cartels specifically. It should also be noted that cartels could be subject to surcharges under the AMA, but not in the TCA.

2.3.3 Note

The cartel regulations are to cover any conducts which causes a substantial restraint to the concerned market. However, in countries where competition laws are recently introduced, there tends to be limited mutual understanding between competition authorities and domestic industries about which conducts could be prohibited under the competition laws. Therefore it is useful to enumerate and clarify the restricted activities like the TCA in order to build mutual recognitions on prohibited conducts.

2.4 Unfair Trade Practices

Section 29 of TCA

No business operator shall do any act which is not a free and fair competition and which results in destruction, damage, obstruction, prevention or limitation of business operation by other business operators, or in order to prevent other persons from doing business or to cause other persons to terminate their business.

2.4.1 Current Situation in Thailand

(1) TCA Section 29

Unfair trade practice prohibited under Section 29 of the TCA corresponds to the 'unfair trade practices' in Section 19 of the AMA. Thai TCA Section 29, unlike the prescriptions for private monopolization or cartels, is enabled to regulate various

anticompetitive conducts by not listing up prohibited conducts individually and substantively, similar to unfair trade practices provision in Japan. The provision of Section 29 has broad scope. Some experts have made proposals to ‘adopt guidelines similar to the Japanese Fair Trade Commission’s (JFTC) 1982 General Designations of Unfair Trade Methods.’

(2) Guidelines for the Wholesales and Retail Sector

In the 1990s, the Central Group invested in superstores such as Carrefour and Big C, while the CP Group invested in Lotus and others. However, the locals were forced to give up their investments in the groups due to financial constraints brought about by the Financial Crisis in 1997, and the retailers which carried foreign names had their management also fully taken over by the overseas capital. As a result, stores such as Carrefour and Lotus heavily invested in expansion, and SME-retailers in the rural area asked the Thai Government for remedy. Under such circumstance was the Guidelines for the wholesales and retail business brought on the table for consideration within the TCC, based on the TCA Section 29. However, it is understood that with focus on FDIs and export orientation, the Thai Government was reluctant to regulations on foreign capital and instead reverted to resolution by zoning regulations, and establishing the ART (Allied Retail Trade Thai Co. Ltd.) with the role of supporting SMEs in the rural area. Because the response structured by way of zoning regulations and establishment of the ART more or less worked, formulation of the guidelines for the wholesales and retail sector has not shown much progress.

(3) Unfair Trade Practices Frequently Observed in Thailand

As noted above, the legislative structure of the Section 29 makes it possible to restrict various anticompetitive conducts by setting an abstract provision, similar to provisions on unfair trade practices in Japan. Under such provision, it is important to distinguish the business conducts that are subject to Section 29, in other words conducts that are deemed anticompetitive but are not covered by Section 25 (on prohibition of private monopolization) or Section 27 (on prohibition of cartels) of the TCA. Based on this recognition, upon hosting workshops for this study JICA TA Team have conducted following surveys and extracted problematic cases in Thailand which were related to “unfair trade practices.”

(a) Recognizing the types of violative conducts that are of concern to the Thai officials

First and foremost, referring to case laws in Japan, the TA Team attempted to recognize the types of violations that are under concerns in Thailand. In particular, for

unfair trade practices, after the introduction of cases related to each of the 15 types of conducts listed in the General Designation from the Team, Thai counterparts studied whether there are similar cases in Thailand that were brought up in the past or are currently under investigation.

(b) Introducing the newest cases brought up by the JFTC

In parallel to introductions of case laws, the Team also introduced cases handled by the JFTC in the last two years to the counterparts, and sought their degree of interest to each case.

(c) Local needs

Thai counterparts, after consultations with all the leaders of the four Investigation Units and the International Affairs Unit, extracted cases of high interest for them, which are in other words the types of cases that the counterparts have faced in the past or are currently facing. This section will put a particular focus on the area of unfair trade practices, and will touch upon the specific cases that were chosen and the reasons behind such choice. Their displayed interest could be categorized into four types of unfair trade practices, namely: (i) exclusive dealings (and unjust interference); (ii) unfair low price sales; (iii) tie-in sales; and (iv) restriction of parallel import.

2.4.2 Comparison of Cartel Regulations between Japan and Thai

Under the AMA, unfair trade practices are prohibited by the Designation of Unfair Trade Practices (1982) (hereinafter the Designation) through Section 2(9) of the AMA. The Designation enumerated prohibited conducts as follows; (i) concerted refusal to deal (Sec.1), (ii) other refusal to deal (Sec. 2), (iii) discriminatory pricing (Sec. 3), (iv) discriminatory treatment on transaction terms (Sec. 4), (v) discriminatory treatment in a trade association (Sec. 5), (vi) unfair low price sales (Sec. 6), (vii) unjust high price purchasing (Sec. 7), (viii) deceptive customer inducement (Sec. 8), (ix) customer inducement by unjust benefits (Sec. 9), (x) tie-in sales (Sec. 10), (xi) dealing on exclusive terms, (xii) resale price restriction (Sec. 12), (xiii) dealing on restrictive terms (Sec. 13), (xiv) abuse of dominant bargaining position (Sec. 14), (xv) interference with a competitor's transaction (Sec. 15) and (xvi) interference with internal operation of a competing company (Sec. 16).

In Thailand, the draft guidelines for unfair practices in the wholesales and retail sector enumerates the following conducts as prohibited: (i) unfair low price sales (Sec. 1), (ii) abuse of powerful bargaining power (including a) coercion to purchase (Sec. 2.1), b) request for dispatch of sales persons to shops (Sec. 2.2), c) coercion for suppliers to

share profits (Sec. 2.3), d) requirement that suppliers must sell goods up to certain amount (Sec. 2.4), e) introduction of business conditions that take advantage of suppliers (Sec. 2.5), f) introduction of business conditions that restrict supplier's business opportunity (Sec. 2.6) and g) requirement that customers must sell a product at a certain price (Sec. 2.7)), (iii) unequal treatment (Sec. 3), (iv) an act acquiring trade information unfairly (Sec. 4) and (v) deceptive customer inducement/ customer inducement by unjust benefits/tie-in sales (Sec. 5).

2.4.3 Note

It is possible to point out the following characteristics of Thai rules on unfair trade practices. As a backdrop to the formulation of the Guideline, it is important to note that the draft Guideline is working in process. On the other hand, "an act acquiring trade information unfairly" prohibited by Art. 4 of the Thai Guideline, is covered under other rules including "Unfair Competition Prevention Act" in Japan. In this regard, JFTC has established study groups and is examining the relationship between competition policy and trade secrets.

As mentioned above, some experts have made proposals to 'adopt guidelines similar to the Japanese Fair Trade Commission's (JFTC) 1982 General Designations of Unfair Trade Methods,' in order to make clear the prohibited conducts under Sec. 29. As in the case of Sec. 27 of the TCA, it is useful for making common understandings on prohibited conducts between competition authorities and private sectors to enumerate standards and contents of the prohibitions. On the contrary, enactments of these guidelines make it impossible for TCC to prohibit conducts other than those prohibited under the guidelines. In case of Thailand, it seems to take some time for establishing guidelines of Sec. 25 and 26., and the prospected roles for Sec. 29 (not only for prohibitions against unfair trade practices, but also for those against monopoly and others) is still large. Therefore, maybe the priority to establish the guidelines for Sec. 29 is not so high at this moment, but it is important to recognize the need as mid-long term targets.

Table 3-2-2: Comparison between Japanese AMA and Thai Competition Act

	Japan		Thailand	
	Sections	Guidelines	Sections	Guidelines
Abuse of Dominant Position	Sec.8-4 Sec.18-2 (Sec.3, Sec. 19)	<ul style="list-style-type: none"> Guidelines on “Specific Business Fields” as Defined in the Provisions of “Monopolistic Situations” (1977) Guidelines for Section 18-2 of the Antimonopoly Act (1977) 	Sec. 25	In 2003, the TCC announced draft criteria for ‘dominant position.’ The draft focused on two criteria; (1) dominance by a firm in general, (2) dominance by a firm in specific sectors (i.e. ‘wholesales and retail business’ and ‘motorcycle’) In 2004, however, the Minister of Commerce, Wattana Muangsoo, rejected the draft and ordered the TCC’s review. The TCC is currently a new draft.
Merger	Sec.15 (mergers) Sec.16 (acquisitions) Sec.13 (interlocking directorates) Sec.10&14 (stockholding by company)	<ul style="list-style-type: none"> Guidelines on Holding Companies which Constitute an Excessive Concentration of Economic Power (2002) Administrative Procedure Standards for Examining Mergers (2004) etc. 	Sec.26	The TCC has examined the draft criteria for merger control. However, the criteria for merger control is dependent upon dominant position lots.
Unreasonable Restraint of Trade (Collusion)	Sec.2.6 Sec.3	<ul style="list-style-type: none"> Guidelines on Administrative Guidance Under the Antimonopoly Act (1994) Guidelines on Distribution Systems and Business Practices (1991) etc. 	Sec.27	The TCC did not establish a sub-committee for collusive activities
Unfair Trade Practices	Sec.19 General designations of unfair trade practice (1982) Specific designations of unfair trade practices	<ul style="list-style-type: none"> Guidelines on Unfair Price Cutting (1984) Guidelines on Unfair Trade Practices with Regards to Patent and Know-How Licensing Agreements (1989) Guidelines on Joint Research and Development (1993) etc. 	Sec.29	The TCC has established a sub-committee and requested examination of the guidelines regarding section 29 of the TCA (with particular focus on wholesales-retail business). The prospected guidelines do not have the force of law, but serve only as a notice of the government’s current enforcement intent.

Source: UFJI

IV. Capacity Building Programs

IV. Capacity Building Programs

1. Workshops

1.1 Development of Program Formulation Process

With regard to designing and operating workshops in the Project, the counterpart side has set forth the project team, the DIT Team, to work with the TA Team. Instead of providing programs in a unilateral manner from the TA Team, the programs have been formulated through a collaborative process that proved effective in finding the best match to the counterpart's needs and program feasibility.

In formulating the program activity, the following step cycle was utilized in order to substantiate a continuous series of programs. The step cycle has been stylized into the matrix form as a worksheet of the Program Formulation Process (referred as chart 4-1-1). The basic concept of the matrix is, first to share common motivation within the authority and to identify the priority of the subject issues, second to grasp the level of understanding and coverage of the issues, and third to facilitate to recover the possible inadequacy of coverage of the previous program. It is expected that the matrix, when finalized in the Project, can be utilized as one of the model methodologies for the further program formulation task.

Step 1: Identify theme subject(s) through discussion within the authority (among the units).

Step 2: After prioritizing the theme subject(s) in each unit, the priority in the authority as a whole be identified.

Step 3: Identify point(s) of focus and referential resources (ie. cases).

Step 4: Identify the reason(s) why the item(s) of Step: 3 above is/are chosen.

Step 5: Evaluate the level of understanding from the material(s)/program(s) actually provided in terms of the context of Step: 4 above

Step 6: Consider rearranging the next program to recover inadequacy in the previous program when found necessary in the Step: 5 above. (Provided that the new interest(s) is/are addressed at this stage, the cycle can be re-processed from Step: 1.)

Step 7: Evaluate over-all program by over viewing completed matrix. The cycle can be re-processed from Step: 1 where inadequacy is found in the matrix.

1.2 The First Workshop

1.2.1 Summary

(1) Workshop Program

Program of the First Workshop

Theme: Unfair Trade Practice Date: January 25 to 25, 2005 Venue: UN Conference Center Thai competition authority Language: Thai (Japanese-Thai simultaneous translation for Japanese speaker)	
Day 1	Session 1: Introduction of Japanese Competition Policy (1) “Introduction to the Japanese Antimonopoly Act” Speaker: Mr. Fumihiko Sajima, Director, Investigation Division II, JFTC Session 2: Introduction of Japanese Competition Policy (2) “Introduction to Guidelines Concerning Distribution Systems and Business Practices” Speaker: Mr. Fumihiko Sajima
Day 2	Session 3: Case Study 1 “Yonex Case” Speaker: Mr. Kaoru Yokoshima, Chief Investigator, Special Investigation Division III, JFTC Session 4: Case Study 2 “Mr. Max Case” Speaker: Mr. Fumihiko Sajima
Day 3	Session 5: Case Study 3 “Mitsubishi Building Techno-Service Case” Speaker: Mr. Kaoru Yokoshima Session 6: Unfair Trade Practice - Tie-in Sales - Speaker: Mr. Fumihiko Sajima

Notes: Venue, participants, Language in the 2nd to 4th workshop is same as those in the 1st workshop.

(2) Contents of the Workshop

(a) Session 1: Introduction of Japanese Competition Policy (1) “Introduction to the Japanese Antimonopoly Act”

In this session, the history of Antimonopoly Act of Japan was explained, particularly focusing on how the JFTC has obtained the trust of public and industries in Japan. The lecturer impressed the fact that it took long time for JFTC to acquire citizenship as a competition authority in Japanese society. He also gave explanations on the structures and frameworks of the Antimonopoly Act of Japan, as well as its policy goal which is “maintaining free economic order (including the consumer benefits.) Participants made questions on other policy goals of Japanese AMA such as “protections of small and medium companies,” “protection of consumers,” and “a price control.”

(b) Session 2: Introduction of Japanese Competition Policy (2) “Introduction to Guidelines Concerning Distribution Systems and Business Practices”

After giving a brief history and overview of the “Guidelines Concerning Distribution Systems and Business Practices,” the lecturer made detailed explanations focusing on “retail price maintenance,” “exclusive dealings,” “abuse of dominant positions,” and “parallel imports.” After the lecture, various questions were raised from the participants including; (1) “a sale below the costs by large retailers” and the standards for its judgments, (2) illegality of articles on resale price maintenance in franchise contracts. Reason behind the question on a sale below the costs attributed to the fact that TCC was currently facing with similar problems and preparing the guidelines on the concerned conducts by large retailers.

(c) Session 3: Case Study 1 “Yonex Case”

The lecturer gave explanation on “Yonex Case.” He explained the case from the following four points: (a) an overview of the case, (b) an outline of the violations, (c) an application of the law and elimination measures, and (d) important topics of the case. Major points addressed by the participants included: (i) investigation methods of JFTC (e.g. what kinds of proofs and witness JFTC used, how to take depositions), (ii) procedures before on-site inspections, (iii) JFTC’s power and authorities for investigations and inspections. The focus of questions is based on the fact that one of the main roles of OTCC is to submit a report recommending whether the TCC should start formal investigations or not. The OTCC officials are interested in how to make assumptions before conducting formal investigations.

(d) Session 4: Case Study 2 “Mr. Max Case”

The lecturer gave a lecture on “Mr. Max case,” in which he actually took responsible for the investigations. He focused on the four topics; (a) violations, (b) ways and methods collecting information on inspections, (c) structures of Mr. Max case, and (d) Market definitions in Mr. Max. The followings are major questions raised by the participants; (i) how to issue press releases and what its legal basis, in addition to (ii) the questions on Mr. Max case itself. Regarding backgrounds of the questions on press release methods, participants showed their interests how the well-grounded basis for proofs could be made public in order to obtain awareness of competition policy.

(e) Session 5: Case Study 3 “Mitsubishi Building Techno-Service Case”

As supplemental information on the Yonex Case (“Case Study 1”), Mr. Yokoshima explained investigation/hearing techniques. After the explanations, he gave a lecture on “Mitsubishi Building Technologies Case” as a case study 3. He focused on the following points: (a) an overview of the case, (b) an outline of the violations, (c) an application of the law and elimination measures, and (d) important

topics of the case. Questions raised by the participants included; methods and standards on which JFTC judged the existence of violations. In the case of Mitsubishi Building Techno (MBT), JFTC found it illegal since MBT set prices for its competitors as 1.5 times as higher than those for its own customers. Participants showed their interests on how to evaluate the illegality of different prices between its competitors and its own customers and on the standards. Differential treatments against competitors were sometimes claimed in Thai and the MBT case study provided important suggestions for Thai authority.

(f) Session 6: Unfair Trade Practice - Tie-in Sales -

The lecturer explained the concept of “Tie-in Sales,” on which participants raised questions intensively during this workshop. After the session, many questions were raised from the participants regarding methods and standards, on which JFTC judged the existence of violations. Tie-in practice was one of the most important issues OTCC are facing with. In particular, in the prospected guidelines on wholesales/retail practices, tie-in sales are one of conducts supposed to be illegal. Participants raised questions on; (i) points for investigation (e.g. durations, scales and prices) and (ii) illegality of a case in which the concerned activities did not affect to a tied market.

1.2.2 Evaluation/Point of Focus

The TA Consultant Team conducted a questionnaire survey to the participants on the 1st workshop. All the 34 participants answered the questionnaires.

On one hand, approximately 80% of the respondents answered that the way of selecting the topics for the workshops was “Good” or “Excellent.” On the other hand, only about a half of the respondents answered that information delivered to the participants “prior” to the Workshops was “Good” or “Excellent,” possibly because most of the materials have not been distributed to the participants until the first day of the workshop. More than 60% of the respondents answered that the contents of the program as a whole “Excellently” or “well” matched to their expectation. The detailed results of the questionnaires are as follows.

(1) Methodology to select the topics for the Workshops (Single Answer: SA)

	Number of Respondent	(%)
Excellent	2	5.9%
Good	25	73.5%
Fair	7	20.6%
Poor	0	0.0%
No-good	0	0.0%
Total	34	100.0%

(2) Adequacy of information prior to the Workshops (SA)

	Number of Respondent	(%)
Excellent	4	11.8%
Good	14	41.2%
Fair	11	32.4%
Poor	5	14.7%
No-good	0	0.0%
Total	34	100.0%

(3) Did the contents of the program as a whole match to your expectation? (SA)

	Number of Respondent	(%)
Excellent	2	5.9%
Good	19	55.9%
Fair	13	38.2%
Poor	0	0.0%
No-good	0	0.0%
Total	34	100.0%

(4) Which slot(s) of the program was (were) the most beneficial? (Multiple Answers)

The “Yonex case” was selected by 35% of the participants as the most beneficial slot in the Workshop. This is followed by the “Japan Anti-Monopoly Act and General Designations of Unfair Trade Practices” (14.7%), the “Mitsubishi-Techno case” (14.7%).

(5) How do you evaluate materials for the Workshops (SA)

	Number of Respondent	(%)
Excellent	2	5.9%
Good	23	67.6%
Fair	6	17.6%
Poor	3	8.8%
No-good	0	0.0%
Total	34	100.0%

1.3 The Second Workshop

1.3.1 Summary

(1) Workshop Program

Program of the Second Workshop

Theme: Private Monopolization Date: March 7 to 10, 2005	
Day 1	Session 1: Introduction of “Private Monopolization” in Japanese Anti-monopoly Act Speaker: Prof. Shingo Seryo, Professor of Law, Doshisha University Session 2: Case Study 1 “Hokkaido Newspaper Case” Speaker: Prof. Shingo Seryo
Day 2	Session 3: Case Study 2 “Yusen Broad Case” Speaker: Mr. Kazuya Toyohara, Chief Investigator, Special Investigation Division III, JFTC Session 4: Case Study 3 “NTT East Case” Speaker: Mr. Yasushi Ishizuka, Chief Investigator, Special Investigation Division III, JFTC
Day 3	Session 5: Question and Answer Session
Day 4	Session 6: Moot Court Practice Coordinator: Prof. Seryo and the TA Team

(2) Contents of the Workshop

(a) Session 1: Introduction of “Private Monopolization” in Japanese Anti-monopoly Act

Prof. Shingo Seryo gave a lecture on introduction of “Private Monopolization” in the Japanese AMA. He gave explanations on the history and framework of “Private Monopolization” regulation in Japan as well as related provisions in AMA. In Thailand, TCC is currently considering a threshold for the definition of dominant positions, and hence participants showed their interests on the standards and thresholds JFTC used for judging private monopolization cases. Prof. Seryo emphasized that market shares threshold is not a necessary condition in judging violation of AMA in Japan and JFTC dealt with issues case by case basis. Because of lack of the threshold

for dominant positions, TCC could not apply the section prohibiting a certain conducts by dominant players and, instead of the section, TCC tried to use the section for unfair trade practices against the monopolization cases. Other than issue above, one of the major questions raised by the participants were difference between “Private Monopolization” and “Unfair Trade Practices”, and difference between “Private Monopolization” and “Monopolistic Situation” in the context of AMA.

(b) Session 2: Case Study 1 “Hokkaido Newspaper Case”

Prof. Seryo also handled the first case study. As important points of the Hokkaido Shimbun case, he pointed out the following conducts by Hokkaido Shimbun; (a) to raise the costs of a market entry by its competitor, (b) to decrease the charges for advertisements (for the purpose blocking a new market entry), (c) to abuse trademarks, and (d) an illegality of Hokkaido Shimbun composed as compounds of the above three activities. Questions from the floor included; (i) methods and procedures for investigation/on-site inspections, (ii) definitions of geographic and product markets. One of the participants also pointed out the illegality of the conducts by Jiji Press and Kyodo News not to provide their services because of their dominant positions in news delivery markets. These questions showed quite sophisticated knowledge of participants on competition policies and TA Consultant Team had an impression that it would be worth to consider two-way stile workshops (discussion and exchange information) between Japan and Thai, in addition to the current one-way type seminar.

(c) Session 3: Case Study 2 “Yusen Broad Case”

Mr. Kazuya Toyohara, Chief Investigator, Special Investigation Division III, JFTC, conducted “Case Study 2” on “Yusen Broad Case.” He explained the points of the inspections and investigations in the case as follows: (a) presumptions of evidences before on-site inspections, and (b) evidences actually collected. One of the participants raised a question on objective standards for judging substantial restraints of a competition in Japan. He was especially curious about the methods to calculate market shares. In the concerned case, although the market share based on numbers of contracts was appeared on the press release, JFTC work out two market shares on sales volume in addition to numbers of contracts. The lecturer explained that JFTC usually calculate two market shares based on contracts and sales volume and consider/evaluate both for effective analysis. While the practical knowledge is essential for effecting investigations of Thai counterpart, this kind of information are usually confined to competition authorities. In this sense, it is possible to say that the attempt of this project to transfer the knowledge directly from Japanese competition authorities to Thai governments works quite well.

(d) Session 4: Case Study 3 “NTT East Case”

Mr. Yasushi Ishizuka, Chief Investigator, Special Investigation III of JFTC, presented a lecture on “NTT East case.” He focused on the following points; (a) the importance in this case to prove the illegality from objective facts, and (b) the rapid progresses of the concerned technologies as a key factor for this case investigation. One of the participants raised a question on the relationship between technology and competition in this case, since NTT East case was concerned of the competition in high technology industry. Also some of the participants showed their interests on how JFTC coordinated with Ministry of Internal Affairs and Communications who is in charge of telecommunication policy in Japan. This would be because Thai competition authority could face with the similar situation with JFTC in relation to other ministries in several cases.

(e) Session 5: Question and Answer Session

In this session, the floor was opened for questions. The participants raised questions such as: (a) methods of market definitions, (b) relationship between Section 3 and Section 19 of AMA, (c) procedures and methods collecting information before initiating formal investigations, and so forth. After that both Japanese and Thai sides explained their respective investigation procedures. Some of the Japanese lecturers pointed out the importance to disclose more detailed procedures for investigations to the public in order to maintain transparency of the competition policy.

(f) Session 6: Moot Court Practice

On the 4th day of the second workshop, participants conducted moot court as practical trainings. The presupposition of this moot court practice is the NTT East type case occurred in Thailand. Participants were divided into two groups: Group A and Group B. Group A was the Claimant in the dispute, and Group B is the Respondent. At the morning session, each group prepared written submissions. Group A prepared a submission challenging the measure of the respondent in question, whereas Group B prepared a submission defending the measure. After the submission, oral hearings and debates were carried out. Group A sat on one side of the room vis-à-vis Group B and the Advisors in front of both Groups. Each group presented their views based on their written submissions and made counter arguments each other. The discussions between two parties were ranged from market definitions, existence of dominant powers and illegality of the concerned conducts. This was followed by some comments made by coordinators. The sample case supposed that TCC enacted the guidelines on dominant positions, which included not only market shares, sales volumes,

but also other qualitative factors such as market entries. Current TCA requested TCC to provide threshold for dominant positions from only two aspects, market shares and sales volumes and this training provided with the participants to review the importance of “other factors,” in particular market entries in order to define a dominant position. After considering the threshold for dominant positions, participants analyzed and discussed about how to deal with cases on monopoly under Section 25 of TCA (prohibiting a certain conducts by companies with dominant powers). At pre-workshop hearings, some officers mentioned that Section 25 was *per se* illegal, while Section 29 (Unfair Trade Practices) was “rule of reasons”. The moot court practice provided with the participants an opportunity to realize the importance of “other factors” in establishing Section 25 cases.

1.3.2 Evaluation/Point of Focus

The TA Consultant Team conducted a questionnaire survey to the participants on the 2nd workshop. While 22 participants responded the questionnaires, approximately 95% of the respondents (a level much greater than that of previous workshop) answered that the way of selecting the topics for the workshops was “Good” or “Excellent.” Approximately 70% of the respondents answered that information delivered to the participants “prior” to the Workshops was “Good” or “Excellent.” This number also rose from the previous workshop, possibly because some of the materials were distributed to the participants before the first day of the workshop. About 78% of the respondents answered that the contents of the program as a whole “Excellently” or “well” matched to their expectation, reflecting the fact that both TA team and DIT team had intensively coordinated for designing workshop program. The detailed results of the questionnaires are as follows.

(1) Methodology to select the topics for the Workshops (Single Answer: SA)

	Number of Respondent	(%)
Excellent	5	22.7%
Good	16	72.7%
Fair	0	0.0%
Poor	0	0.0%
No-good	0	0.0%
NA	1	4.5%
Total	22	100.0%

(2) Adequacy of information prior to the Workshops (SA)

	Number of Respondent	(%)
Excellent	4	18.2%
Good	13	59.2%
Fair	4	18.2%
Poor	0	0.0%
No-good	0	0.0%
NA	1	4.5%
Total	22	100.0%

(3) Did the contents of the program as a whole match to your expectation? (SA)

	Number of Respondent	(%)
Excellent	6	27.3%
Good	11	50.0%
Fair	4	18.2%
Poor	0	0.0%
No-good	0	0.0%
NA	1	4.5%
Total	22	100.0%

(4) Which slot(s) of the program was (were) the most beneficial? (Multiple Answers)

The “Yusen Broad Case” was selected by 36.4% of the participants as the most beneficial slot in the Workshop. This is followed by the “Moot Court Practice” (27.3%), and other 3 case studies (18.2%).

(5) How do you evaluate materials for the Workshops (SA)

	Number of Respondent	(%)
Excellent	4	18.2%
Good	16	72.7%
Fair	1	4.5%
Poor	0	0.0%
No-good	0	0.0%
NA	1	4.5%
Total	22	100.0%

1.4 The Third Workshop

1.4.1 Summary

(1) Workshop Program

Program of the Third Workshop

Theme: Cartels Date: May 30 to June 2, 2005	
Day 1	Session 1: Prohibition of Cartels under the Japanese Antimonopoly Act Speaker: Prof. Shingo Seryo, Professor of Law, Doshisha University Session 2: Preparation for Role Playing Practice Coordinator: Prof. Shingo Seryo and the TA Team
Day 2	Session 3: Case Study 1 “Iwamizawa City Case (Bid Rigging)” Mr. Atsushi Konno, Chief Investigator, Planning Office, Investigation Bureau, JFTC Session 4: Case Study 2: “Graphite Electrode Case (International Cartel)” Mr. Kazuya Oya, Deputy Director, Special Investigation Division III, JFTC
Day 3	Session 5: Case Study 3: “Cold-Rolled Stainless Steel Sheets Case (Price Fixing)” Mr. Atsushi Konno Session 6: Case Study 4: “Vitamin Case (International Cartel)” Mr. Kazuya Oya
Day 4	Session 7: Role Playing Practice Coordinator: Prof. Seryo, Mr. Oya, Mr. Konno, and the TA Team

(2) Contents of the Workshop

(a) Session 1: Prohibition of Cartels under the Japanese Antimonopoly Act

This session offered explanations on AMA’s provisions relating cartels (unreasonable restraint of trade), as well as on types of cartels, application criteria, possibility of extraterritorial application of the AMA for international cartels, options of measures taken against violations (elimination orders, surcharges, criminal prosecutions), and general flow of investigations, among other issues. Questions raised in response concerned with issues including: illegality of an agreement without explicit amount of price increase; to which party rests the burden to prove the conduct is “not contradicting to public interest” (which rests on the suspected parties); illegality of the decision on production level lead by trade associations; regulations on export cartels; and basic concepts regarding methods to prove the substantial restraint to competition.

(b) Session 2: Preparation for Role Playing Practice

This session was reserved for preparation for the “Role Playing Practice” session which was to be held on the fourth day. The participants were divided into 7 groups (firms A, B, C, D, witness X, Y, and the TCB) and to each group a respective “mission letter” was handed out from the TA Team, based on which a list of “anticipated questions and answers” were created.

(c) Session 3: Case Study 1 “Iwamizawa City Case (Bid Rigging)”

After a brief description by the lecturer on the situation of bid-rigging in Japan, explanation on the case was conducted, touching upon the overview of the case, the course of investigation, and the points to be clarified for, and the actual means (e.g. methods for hypotheses creation and the concrete methods used to structure proof) to prove the violation of the AMA. Questions asked concerned: the size and budget of the site inspection; the reason why the firms were found liable (and hence were ordered surcharges as administrative punishment) for a bid-rigging when the city as a procurer was involved; and the decisive evidence that sealed the case and finally rendered all the 126 participant companies to agree to pay surcharges.

(d) Session 4: Case Study 2: “Graphite Electrode Case (International Cartel)”

Starting off with general explanations on applications of artificial graphite electrodes using photos, the lecturer then moved on to the facts regarding this case (relevant parties, market scale, preferences of users, distribution system of electrode, market trend, etc.), provisions in the AMA concerning international cartels (Sections 3 and 6), the alleged conduct and applicability of the Act, measures taken by the JFTC (a warning), and then to important issues upon investigations in international cartels. Questions from the participants followed, on issues such as: the key reason why surcharge order was not chosen in the end, existence of an exemption on markets with extremely small demand, possibility of proof gathering from a foreign company, and possible responses in a supposed situation where sufficient evidence mounts up after the issuance of warning.

(e) Session 5: Case Study 3: “Cold-Rolled Stainless Steel Sheets Case (Price Fixing)”

Another explanation with photos on cold-rolled stainless steel and its applications took place, followed by the description of the case, with outline of the case (relevant products, market scale, distribution flow, trade practices, suspected violations, etc.), developments of the case, points to be clarified for the investigation and its conclusion, and the contents of the decision. Participants asked about how the case was initiated (a news report), methods of on-site inspection, points to bear in mind for preliminary investigations before the on-site inspection, methods for planning the on-site inspection, and measures that could be resorted to when the companies do not cooperate.

(f) Session 6: Case Study 4: “Vitamin Case (International Cartel)”

The description of the case, including the developments of the case, relevant facts (relevant parties, trends of demand and price, distribution channel, etc.), suspected

conducts, alleged violative conducts and applicability of the AMA, measure taken by the JFTC (a warning), was followed up by a further supplementations. The supplementations were on the possibility of extraterritorial application of the AMA, effective bilateral treaties between competition authorities, differences in investigation methods among the various authorities, and amendments to the AMA after the case. Participants particularly asked about responses to companies that may not pay its surcharge, possibility of ordering a surcharge to import agents, existence of a case in which no violation was found after on-site inspection.

Lastly, the lecturer explained why the surcharge was set at 6% in Japan. The reasons behind the figure was the fact that 6% was the average profit ratio of sales of major companies in Japan, the fact that calculation of unreasonable profit on a case-by-case basis results in low cost-benefit ratio in practical terms, the fact that the AMA was not instituted to order punitive surcharges that correlates with the weight of offense, and the high possibility that the 6% figure may change in the future if necessary.

(g) Session 7: Role Playing Practice

In this session, the participants were divided into seven groups, and simulated preliminary investigations which takes place before on-site inspections, following their lists of anticipated questions and answers each group had prepared. This practice succeeded in reaffirming, from their respective viewpoint as the TCB and cartel-participant firms, the importance of the risks of evidence destruction from having direct contacts with the suspected firms, and the difficulty in establishing a case to initiate formal investigations if the approval standard for on-site investigation by TCC is prohibitively high. Also after the practice, lecturers offered explanations on, among other issues, the necessity of ensuring a communication method with the anonymous witness, the importance of specifying individuals in the suspected firms who were involved in cartels before the on-site inspection, the items for market analysis that could be studied without getting in touch with the suspected companies, and detailed techniques which could be employed upon interviews. In addition, the lecturer pointed out that it was important for effective exposition of cartels that they should be subject to administrative instead of criminal procedures, thereby enabling on-site inspections with less evidence.

1.4.2 Evaluation/Point of Focus

The TA Consultant Team conducted a questionnaire survey to the participants on the 3rd workshop. While 28 participants responded the questionnaires, approximately 89% of the respondents answered that the way of selecting the topics for the workshops was “Good” or “Excellent.” Approximately 85% of the respondents answered that information delivered to the participants “prior” to the Workshops was “Good” or “Excellent.” About 81% of the respondents answered that the contents of the program as a whole “Excellently” or “well” matched to their expectation. The detailed results of the questionnaires are as follows.

(1) Methodology to select the topics for the Workshops (Single Answer: SA)

	Number of Respondent	(%)
Excellent	8	28.6%
Good	17	60.7%
Fair	1	3.6%
Poor	0	0.0%
No-good	0	0.0%
NA	2	7.1%
Total	28	100.0%

(2) Adequacy of information prior to the Workshops (SA)

	Number of Respondent	(%)
Excellent	7	25.0%
Good	17	60.7%
Fair	3	10.7%
Poor	0	0.0%
No-good	0	0.0%
NA	1	3.6%
Total	28	100.0%

(3) Did the contents of the program as a whole match to your expectation? (SA)

	Number of Respondent	(%)
Excellent	6	21.4%
Good	17	60.7%
Fair	3	10.7%
Poor	0	0.0%
No-good	0	0.0%
NA	2	7.1%
Total	28	100.0%

(4) Which slot(s) of the program was (were) the most beneficial? (Multiple Answers)

The “Cold-Rolled Stainless Steel Sheets Case (Price Fixing)” was selected by 39.3% of the participants as the most beneficial slot in the Workshop. This is followed by the “Graphite Electrode Case (International Cartel)” (35.7%), the “Iwamizawa City Case (Bid Rigging)” (28.6%).

(5) How do you evaluate materials for the Workshops (SA)

	Number of Respondent	(%)
Excellent	8	29.6%
Good	18	66.7%
Fair	0	0.0%
Poor	0	0.0%
No-good	0	0.0%
NA	2	7.1%
Total	28	100.0%

1.5 The Fourth Workshop

1.5.1 Summary

(1) Workshop Program

Program of the Fourth Workshop

Theme: Mergers and Acquisitions (Business Combinations) Date: July 11 to 14, 2005	
Day 1	Session 1: Introduction of Japanese Competition Policy – M&A – Speaker: Prof. Shingo Seryo, Professor of Law, Doshisha University Session 2: Introduction of M&A Guidelines (2004) [1] Speaker: Ms. Toshiko Igarashi, Investigator for Mergers and Acquisitions, JFTC
Day 2	Session 3: Introduction of M&A Guidelines (2004) [2] Speaker: Ms. Toshiko Igarashi Session 4: Case Study 1 “Electric Power Line Cases” (2004) Speaker: Mr. Toru Hosoi, Chief Investigator for Mergers and Acquisitions, JFTC
Day 3	Session 5: Case Study 2 “Dai-Nippon Ink Chemical – Asahi Life & Living” (2004) Speaker: Mr. Toru Hosoi Session 6: Case Study 3 “PS Japan – Dai-Nippon Ink Chemical” (2005) Speaker: Mr. Toru Hosoi
Day 4	Session 7: Introduction on the Draft M&A Guidelines in Thailand Speaker: Sumalee Wasiganont, Senior Trade Technical Officer, TCB Session 8: Comparative Studies and Discussions on the Importance of M&A Guidelines Speaker: Mr. Hosoi, Ms. Igarashi, and the TA Team

(2) Contents of the Workshop

(a) Session 1: Introduction of Japanese Competition Policy – M&A –

This session served to describe various aspects of the M&A related regulations in the Japanese AMA, including their purposes, application criteria and their history,

procedures such as prior consultation, and outline of the Guideline. Following the lecture, there were explanations from both the Japanese side and the Thai side on their own respective M&A regulations. The Japanese lecturers explained some important points, some of which are as follows: the rooms reserved for applicability of the AMA for cases that do not meet the notification criteria; extreme rarity of remedies *ex post* due to effective utilization of prior consultation procedures; and disclosure of the policies for dealing with prior consultation, with a view of ensuring transparency. Thai side confirmed that, in contrast to the regulations in Japan, M&A shall generally be allowed on approval basis, and cases not meeting the merger criteria, which is currently being drafted, will be difficult to regulate, at least using Section 26 of the TCA.

(b) Session 2: Introduction of M&A Guidelines (2004) [1]

This session served to explain the structure and purpose of the Merger Guideline, overview of “a particular field of trade,” and various types of business combination (e.g. horizontal, vertical, and conglomerate) and their respective impacts. In Thailand, guideline dealing with M&A is currently under drafting process, and in it criteria for *prima facie* illegal is to be prescribed. With such progress in background, questions were actively raised regarding issues such as concepts of each types of M&A (particularly on “demergers” to which the Thais are unfamiliar with), the reasons behind the difference in notification criteria for stockholdings and acquisitions of business, basis for the respective notification thresholds, and organic interrelationship between the Commercial Code and the AMA.

(c) Session 3: Introduction of M&A Guidelines (2004) [2]

Following the second session, this session further offered explanations on the Merger Guidelines, particularly on the details regarding practical investigation procedures (i.e. prior consultation, flow of investigations, required documents, and methods used for market definition, items for consideration upon investigation of anticompetitive effects from the business combination, and etc.). Questions from the participants were concerning issues including: points for improvements to ease the burden on the companies upon their filing of notifications; the methods for, and the party in charge of market definition; methods for calculating market share; and investigation methods for conglomerate mergers.

In addition, Professor Seryo pointed out that anticompetitive effects anticipated by Section 26 of the TCA is limited to monopolization and unfair trade practices, and thereby there is still room left for consideration of ways and means to regulate anticompetitive conducts that have a coordinated conducts, mimicking effects from

cartels.

(d) Session 4: Case Study 1 “Electric Power Line Cases” (2004)

This session began with an explanation of the case from the lecturer, ranging from the characteristics of the case (relatively closed market with a limited demand) and items for consideration (situation of supply and demand, and possibility of unilateral/coordinated conduct), to actual investigation procedures. Participants asked, for example, what would be the measures in response if any false claim was found in the submitted documents, and what would be the possibility for any coordinated conduct in this case. Another question was regarding the significance of HHI calculation in addition to determination of market concentration, to which the lecturer replied and confirmed that the intention of HHI calculation was not in decision of illegality but was in checking applicability of the safe harbor rules, and therefore share data of all the companies were not necessarily required.

(e) Session 5: Case Study 2 “Dai-Nippon Ink Chemical – Asahi Life & Living” (2004)

This session again first offered description of the case from the lecturer, covering the characteristics of the relevant products in this case, market situation (excess capacity, substitutability of alternative products, bargaining power of the users, etc.), remedial measures taken by the parties, and the response by the JFTC. In addition, it was also pointed out that the JFTC, to ensure objectiveness of the response, could conduct surveys and/or hearings to users of/suppliers to the party of concern or competitors. Questions raised were on handling of the non-compliance of the remedial measures by the party(ies), criteria for substitutability, period allowed from receiving the request of prior consultation to issuing a reply, and substantive details of the hearings conducted to competitors by JFTC.

(f) Session 6: Case Study 3 “PS Japan – Dai-Nippon Ink Chemical” (2005)

Description of the case preceded the questions, with the lecturer explaining the characteristics of the relevant products (applications, grades, types, etc.), scale and structure of the relevant market, market situation (rate of operation, production cost, existence of imports), items for consideration (excess capacity, new entry, imports, substitutability of alternative products), and the final response by the JFTC. Questions in response were regarding: the existence of any thresholds that would prevent interlocking directorates; ways in applying the law for divestiture of production facility only; treatment of debts outstanding at the time of business acquisition; and evaluation methods for fixed assets.

(g) Session 7: Introduction on the Draft M&A Guidelines in Thailand

With the drafting procedure for provisions on M&A and its interpretation in the TCA now under way, an official from the TCB presented the substance of the draft Guideline. In the presentation, there were various points explained about the draft, including: the effort by the OTCC that carried out a comparative study amongst the various merger guidelines in developed countries and concluded that the thresholds (e.g. pre-merger market share of 25%) would be reminiscent of that in Taiwan, which is more or less similar to Thailand in terms of economic size. Also under consideration were the sales volume criteria of 5 billion Bahts for non-financial sector. Another threshold on stockholding would be based on studies on stockholding structure in Thailand, which is likely to be reflected and materialized as 50%. Threshold for total asset threshold was put for further consideration.

(h) Session 8: Comparative Studies and Discussions on the Importance of M&A Guidelines

In this session, based on the merger regulation in Japan and the draft M&A Guideline in Thailand presented in the previous session, participants from both sides, Japan and Thailand, exchanged their opinions on the Thai Guidelines. Confirmed preconditions for the discussion on respective thresholds are: (i) theoretical possibility in Japan to regulate cases that would substantially restrict competition without meeting the notification criteria, in contrast to difficulty in Thailand to regulate cases that do not meet the criteria (on market share, sales volume, etc.), at least with TCA Section 26; (ii) possibility for mergers which could bring about monopoly or unfair trade practices to be still approved, if it meets the public interest, as provided in Section 37, unlike any provision in Japan; and (iii) confirmation that the Thai's criteria on sales volume and market share and such which are to be prescribed in the Guideline serves not only as a "notification criteria" but also as criteria for *prima facie* illegal (whereas in Japan, only the criteria for notification requirements and for safe harbors are prescribed, but none is set as illegality inference).

Following the above confirmation, comments were made from the Japanese lecturers and the TA Team regarding individual thresholds. As for the threshold on "total asset," important issues pointed out includes the desirability in principle of incorporation of such objective values for total asset in merger investigation, and the importance of appropriateness of the thresholds, since the increased burden that would ensue companies with too low a threshold, and ineffective surveillance resulting from too high a threshold, are both not optimal. As for threshold on "market share," the

Japanese participants noted that: because the value was extremely dynamic and variable, it may bring both the companies and the authority confusion; because market definition method may also affect the share, though figure did play as a reference it was never included in the notification requirements in Japan; and it was important to not only look at the absolute value of pre- and post-merger market share, but also at the significance of the change in the market share after the merger. On “stockholdings,” explanations were on: the change in Japan to replace the criteria from stockholding ratio to voting rights ratio; the importance of ensuring connectivity between the various thresholds (ex. voting rights ratio by the stockholders) in the Guideline and the Corporation Law in Thailand; and allowance for ex post notification for stockholdings owes to the fact that there is a prior consultation procedure, and that even if the conduct was found to be illegal such stockholdings could be forced for divestiture ex post facto, in contrast to business acquisitions. As for “asset acquisitions,” it was noted that: the problems with consistency of asset evaluation is avoided in Japan, since for a total acquisition of whole of a company the data on total assets in the nearest financial statement is used, and for partial acquisitions the use of data on sales volume as an alternative; the desirability of having the thresholds flexible and not fixed, so that it could be changed appropriately depending on the economic situation.

1.5.2 Evaluation/Point of Focus

The TA Consultant Team conducted a questionnaire survey to the participants on the 4th workshop. While 27 participants responded the questionnaires, all the respondents answered that the way of selecting the topics for the workshops was “Good” or “Excellent.” Approximately 92% of the respondents answered that information delivered to the participants “prior” to the Workshops was “Good” or “Excellent.” About 89% of the respondents answered that the contents of the program as a whole “Excellently” or “well” matched to their expectation. The detailed results of the questionnaires are as follows.

(1) Methodology to select the topics for the Workshops (Single Answer: SA)

	Number of Respondent	(%)
Excellent	11	40.7%
Good	16	59.3%
Fair	0	0.0%
Poor	0	0.0%
No-good	0	0.0%
NA	0	0.0%
Total	27	100.0%

(2) Adequacy of information prior to the Workshops (SA)

	Number of Respondent	(%)
Excellent	7	25.9%
Good	18	66.7%
Fair	1	3.7%
Poor	1	3.7%
No-good	0	0.0%
NA	0	0.0%
Total	27	100.0%

(3) Did the contents of the program as a whole match to your expectation? (SA)

	Number of Respondent	(%)
Excellent	11	40.7%
Good	13	48.1%
Fair	2	7.4%
Poor	0	0.0%
No-good	0	0.0%
NA	1	3.7%
Total	27	100.0%

(4) Which slot(s) of the program was (were) the most beneficial? (Multiple Answers)

The “Introduction of M&A Guidelines (2004) [2]” was selected by 37% of the participants as the most beneficial slot in the Workshop. This is followed by the “Introduction of M&A Guidelines (2004) [1]” (29.6%), the “Introduction on the Draft M&A Guidelines in Thailand” (33.3%), and the “Introduction of Japanese Competition Policy – M&A –” (25.9%).

(5) How do you evaluate materials for the Workshops (SA)

	Number of Respondent	(%)
Excellent	11	40.7%
Good	13	48.1%
Fair	1	3.7%
Poor	0	0.0%
No-good	0	0.0%
NA	2	7.4%
Total	27	100.0%

2. Advocacy Activities

2.1 Current Advocacy Activities by DIT

2.1.1 Radio Broadcasting

DIT is broadcasting radio programs as one of media to inform of its activities to the general public. In 2003, one AM station and two FM stations were used for broadcasting 15-minutes weekly interview/talk program covering the TCA, competition regulation, unfair trade and consumer protection. The programs were sent to entire Thailand through AM network. In 2004, DIT has shifted the target listeners to business sector and urban consumers in Bangkok Metropolitan area and started to use two FM stations with the target listener strata. The daily broadcasting contents cover 10-15 minutes interview/talk program, 30-seconds spot CM and documentary program for 2-3 minutes. In 2005, 15-second spot CM started to be aired, replacing other programs, through FM stations in Bangkok and major cities in all over Thailand. The main contents of the spot CM is introduction of the TCA and hotline for consumers.

Table 4-2-1: DIT Radio Broadcasting Programs in 2003 - 2005

Year	Radio Wave	Program	Remarks
2003	AM 1107 KHz FM 101.5 MHz FM 92.5 MHz	Title: "Open the competition world" -Interview/talk (10-15 min) program with DJ+DIT official, Mon-Fri (3 times/day)	Cost: Bht 2,550,000 (4months)
2004	FM 96.0 MHz FM 89.5 MHz	Title: "We do take care of consumers" -Interview/talk (10-15 min) program with DJ+DIT official, Mon-Fri (1 time/day) -Documentary (2-3 min), Mon-Fri (1 time/day) -Spot(30sec), Mon-Fri (1 time/day)	Cost: Bht 1,000,000 (6 months)
2005	10 FM stations all over Thailand	15 seconds spots announcing TCA and consumers' hotline at DIT.	Total: 10,000 times in one year

Source: DIT

There were 21 programs broadcasted in 2003 as listed on the table. The contents are regarding basic knowledge of the TCA and related subjects, explained by DIT staff as a response to questions made by DJs. The contents for 2004 programs were in the same line with 2003.

The Study Team had a chance to listen to the aired 15-minutes radio program at 16:30 on December 15 2004, in which Mr. Somsak Kiatchailak, Senior Trade Technical Officer of DIT was making explanation on trade regulation by responding to the DJ through telephone interview. The issues covered were outline of the TCA and "dominant position in the market". Mr. Somsak appealed to the listeners that trade law is closely related with everyone's daily life, and needed to be given more attention. Depending on the subject covered, DIT staff in charge takes part in the program.

Table 4-2-2: Interview/talk Radio Programs Aired in 2003

1. To know more about Trade Competition Act (TCA)
2. Introduction of activities based on TCA 1999
3. Regulations based on TCA
4. Definition of dominant position in the market
5. Trade business activities prohibited in the market
6. Is a merger of corporations violation under TCA?
7. Regarding unfair non-trade practices
8. Regarding unfair trade practices
9. Problem of tied product sale
10. Collusive tendering in international and domestic biddings
11. Wholesale and retail business: past development, present and future
12. Impact of discount stores
13. New type wholesale and retail business
14. Trade Competition Act relevant to consumers and general public
15. Effectiveness and benefit of TCA
16. Free trade and TCA
17. Explanation on TCA
18. Trade Competition Laws of 51 countries in the World
19. Trade Competition Law in Korea
20. Role of universities and Trade Competition Act
21. Bringing up more professionals in trade competition laws

Source: DIT

The radio broadcasting is a suitable media for widely informing to general public and consumers. One of important functions of DIT is to monitor consumer prices in the market, in particular the price of daily necessary commodities, by reviewing items for surveillance every month. For consumer protection, DIT provides “hotline” for claims by any consumer who faced unfair trade practices such as high price settings or compulsory sales, by any trader of goods and services. A radio program is an effective tool for the consumer protection function of DIT to act as an advocator to consumers through controlling “unfair trade practice” through the legal and administrative authority. Since trade competition regulations are quite new in Thailand, it is also effective for announcing its function to the general public through radio. On the other hand, for explanation of legal and regulation details, radio media has its own limit, and other media, e.g. web-site, can be more suitable. In this regard, DIT seems to have changed to use radio as a media mainly for consumers through 15-seconds spot CM to enhance awareness, while detailed explanation of contents of TCA were to be shifted to use web-site pages.

2.1.2 Newsletter

Since March 2002, newsletter (in Thai language) on website has been released on monthly or semi-monthly basis, and the number of issues released is 55 as of May 2005. The title of the newsletter is "Open the competition World". The newsletter is distributed only on electronic media and no hard copy is distributed except for within DIT where about 30 copies are distributed for every issue. The followings are objectives and major contents of the newsletter.

- Objectives:
- 1) To increase source of knowledge within the organization.
 - 2) To promote the role of competition law and policy in Thailand.
 - 3) To encourage DIT staffs to be alert in gaining knowledge and also to sharpen their learning skill.

- Contents:
- 1) Studying competition cases internationally and translating into Thai language.
 - 2) Summarizing competition theories and concepts drew from conferences/seminar/meetings.

Table 4-2-3: Number of Newsletters released

Year	Number of issues
2002 (started March)	20 (semi-monthly)
2003	10
2004	13
2005 (up to May)	12
Total	55

Source: DIT

The newsletter consists of 2-3 pages, briefly explaining background, results and JFTC decision on above cases. In the past, two Japanese cases below were introduced on the newsletter.

1. The merger between Japan Airline (JAL) and Japan Air System (JAS): The national interest is the first priority. (JAL Case) --- July 2, 2002 Volume 10.
2. The abuse of dominant bargaining power in Japanese convenience store business. (Lawson Case) --- December 2, 2002, Volume 20.

2.1.3 Advocacy Seminars by DIT

DIT started to conduct seminars since 2003, targeting the general public, to advocate TCA and its implementation. The seminars were held once a year in 2003 and 2004, while in 2005, DIT plans to hold four seminars, twice in Bangkok and twice in major cities in regions, in addition to the seminar conducted under this project. The seminars organized by DIT are outlined as below.

Seminar in 2003

- 1) Organizer: DIT/MOC
- 2) Topics: Guidelines on Wholesale and Retail Business
- 3) Date: September 19, 2003
- 4) Venue : Sofitel Central Hotel
- 5) Participants: 480
- 6) Participants from: Government (including MOC, Consumer protection bureau)
NGO (Retail association, Chamber, FTI, TDRI)
Law Offices
Manufacturers (Suppliers)
Wholesale and retail (discount store, department store, supermarket, convenience store, specialized store)
News media
- 7) Speakers: OTCC, academics, special committee members
- 8) Distribution material: B5-size, 41pages (wholesale/retail guidelines, present situation of wholesale and retail business in Thailand, TCA1999(in Thai and in English)

2003 Seminar Program

08:00-09:00	Registration
09:00-09:15	Opening address by DG of DIT
09:15-09:45	Special Presentation Retail business policy under fair trade by: Dr. Adisai Potharamik, Minister for Commerce
09:45-10:00	Coffee Break
10:00-10:30	Structure of Thai Retail Business and 1999 TCA by: Mr. Siripol Yodmuangcharoen, Director General, DIT
10:30-12:00	Guideline in Wholesales and Retail Business by: Special Sub-committee for Wholesale and Retail Business
12:00-13:00	Lunch Break
13:00-15:00	Wholesales and Retail Business by: Special Sub-committee for Wholesale and Retail Business, Representatives of Wholesale and Retail Business, Manufacturers and Experts Chair: Mr. Krairut Bunyakiat, PCIC Ltd.
15:00-15:15	Coffee Break
15:15-16:00	Closing

Seminar in 2004

- 1) Organizer: TCB/DIT
- 2) Topic: Market Definition
- 3) Date: September 28, 2004
- 4) Venue: Narai Hotel
- 5) Number of Participants: 220
- 6) Composition of Participants:
 - Government (MOC, Consumer Protection Bureau, BOI, Ministry of Industry)
 - NGO (Chamber of Commerce, FTI, TDRI, Construction Association)
 - Law Office
 - Business Society
 - Universities and Education Institutions
- 7) Speakers: OTCC, TDRI, Business Society
- 8) Distribution Material: A4-size, 50 pages (Market Mechanism, Market definition, TCA1999 (in Thai language) , Introduction of web-site)

2004 Seminar Program

08:00-09:00	Registration
09:00-12:30	Opening and Lecture (1) TCA in Thai by: Mr. Siripol Yodmuangcharoen, DG DIT (2) TCA in Foreign countries by: Dr. Duenden Nikhomborirak, TDRI
12:30-13:30	Lunch Break
13:30-17:00	Lecture (3) Theory of Market Definition by: Duenden Nikhomborirak, TDRI (4) Rule of Market Definition and Implementation by: Mr. Pen Imbue, TCB (5) Market Definition from Business Aspect by: Mr. Khachapuum Siritchanachai, President, David and Luis Co.Ltd

Note: Coffee Breaks: 10:30-10:45 and 15:00-15:15

Seminars in 2005

DIT plans to hold four seminars as listed below, with DIT's own resources. For those seminars, the speakers are invited from DIT, universities and chamber of commerce at each region. The participants are from government covering 24 regional offices, private sector and law offices/experts.

- Seminars in Bangkok: twice with 180 participants
- Regional Seminars: Changmai and KhonKhen with 120 participants

2.2 Advocacy Seminar

2.2.1 Outline of Activities

(1) Advocacy Seminar Program

ADVOCACY SEMINAR

“Trade Competition Law: Benefit for Society”

Date: 27th May, 2005 (Friday)

Organizers: Department of Internal Trade (DIT), Ministry of Commerce and
Japan International Cooperation Agency (JICA)

Program of Seminar	
09:00 -10:00	Registration
10:00 -10:30	Opening Session <ul style="list-style-type: none">• Welcome Speech: Mr. Mikiharu Sato, Resident Representative, JICA Thailand Office• Opening Speech: Mr. Siripol Yodmuangcharoen, Director-General, DIT
10:30-11:00	Keynote Speech (1) “Trade Competition Act in Thailand” <ul style="list-style-type: none">• Speaker: Mr. Siripol Yodmuangcharoen, Director-General, DIT
11:00-11:15	Coffee Break
11:15-12:15	Keynote Speech (2) “Japanese Experience in Trade Competition Policy” <ul style="list-style-type: none">• Speaker: Mr. Isao Kasubuchi, Director, Inter-Enterprise Trade Division, Japan Fair Trade Commission (JFTC)
12:15-12:30	Question and Answer
12:30 -13:30	Break
13:30-15:30	PANEL DISCUSSION: “How Competition Law Benefits: in the context of business operator and the consumers?” Moderator: Mr. Manut Soiploy, Senior Expert on Trade Measures, DIT Panelists: <ol style="list-style-type: none">1. Mr. Isao Kasubuchi , JFTC2. Mr. Korrakod Padungjitt, Secretary General of Thailand Iron & Steel Industry Club, The Federation of Thai Industries3. Mr. Viroj Na Bangchang, Chairman, The Consumer Force Association of Thailand4. Ms. Pornapa L. Thaicharoen, Attorneys at Law, Baker & Mc. Kenzie
15:30-15:45	Coffee Break

15:45-16:30	Question and Answer Session
16:30-17:00	Concluding Remarks <ul style="list-style-type: none"> • Representative from JICA: Mr. Masayuki Ishida, Team Leader • Representative from DIT: Mr. Manut Soiploy, DIT

(2) The Major Contents of Advocacy Seminar

The Advocacy Seminar was subtitled as “Trade Competition Law: Benefit for Society”, organized by JICA and DIT, was opened with addresses by Mr. Mikiharu Sato, Resident Representative of JICA Thailand Office and Mr. Siripol Yodmuangcharoen, Director General of DIT. Following the opening address, Mr. Siripol continued to cover his speech on “Trade Competition Act in Thailand”. Then the keynote speech, titled as “Japanese Experience in Trade Competition Policy” was delivered by Mr. Isao Kasubuchi, Director of Inter-Enterprise Trade Division, JFTC. The keynote speech lasted for about one hour, followed by Q and A session.

In the afternoon, a panel discussion was held, with panelists being invited from Thai’s private sector, a consumer group and a law office, with a moderator from DIT, while Mr. Kasubuchi of JFTC participated as panelist as well. The panel discussion was lively and informative. The followings are brief contents of each session.

1) Mr. Siripol Yodmuangcharoen, DIT: Opening Address and Speech

This Seminar was organized for the purpose of better understanding by the business sector and the consumers regarding the Trade Competition Act enacted six years ago. Thai economy, nowadays, has become larger and is growing rapidly, and is facing with global competition. The FTA talks with several countries also contribute to bringing in more competitive business environment. The participants from business sector might already be facing severe competition, not only domestically but also globally.

On the other hand, competition brings benefit to consumers by reduction of costs and quality improvement realized through technical innovation induced by competitive environment. In this respect, competition gives consumers benefit. The objective of a competition law is to lay down competitive environment where private sector is induced to provide high quality and low cost products.

The countries in Europe, US, Japan and Australia have a long history in competition law and regulation, and also in its implementation. In Thailand, since enactment of the TCA six years ago, its implementation is yet to be effective. We need to make use of the TCA more effectively to stimulate our economy, in order to embrace the coming closer collaboration with foreign economy, particularly through advancement of FTA negotiations.

For today's seminar we have an honorable participation by Mr. Sato of JICA, Mr. Kasubuchi of JFTC, and Mr. Ishida of UFJ Institute. For panel discussion, we have invited a lawyer, a consumer representative and a steel industry representative, and all are expected to give their respective views. I would like to continue with brief explanation on the background for the TCA.

Trade competition laws in advanced countries have long history, for example, Antitrust legislation in the US. In Thailand our TCA is only six years old. When our TCA was enacted, there was a false claim that it was made under pressure from foreign governments and international organizations. The real reason is the shift in Thai economy's scale and business practices. It is evident that as observed from DIT, which is in charge of domestic trade and retail business, the current business practice is quite different compared with 30 years ago. In the old days, with limited number of suppliers and consumers, there was less chance for market mechanism to function for better pricing. However, the domestic market has evolved, in the past 10 years, to the level where a competitive environment has become necessary. DIT has prepared the draft TCA due to the needs in the market for trade and retail business.

Since TCA is still new law, some clauses require further clarification, for example, the details are not yet made clear for act of unfair trade practices. In the US, the Antitrust legislations were made to control monopoly of the very large market where limited number of corporations dominated. The Thai market is not so large a scale compared to the US. Our TCA has been prepared fitting to the domestic market size, by adjusting situation of the domestic suppliers, traders, retailers and consumers, to establish a fair market system for those players.

Among Thai domestic industries, many firms are yet to develop the scale of economy needed for competition in the international market. When the TCA was being prepared, experts in competition law were quite limited. For the cases brought in to DIT, e.g., unreasonable pricing or abuse of dominant position, the legal solution

could not be implemented due to lack of legal framework. DIT could only provide solution by administrative arbitration. But now with effective TCA, we are provided with a legal framework, and its implementation system development is our keen subject.

Today, we receive the technical assistance from JICA and JFTC, in order to have our system to function effectively. For details of the TCA, explanation material has been prepared and distributed to the participants. I hope all participants make use of this opportunity.

2) Keynote Address by Mr. Kasubuchi of JFTC

In his keynote address, Mr. Kasubuchi covered; history of Antimonopoly Act (AMA) of Japan, Competition Policy in the World, Recent Topics in Retail Business Regulation, and International Cooperation in Asia. In the past 50 years since its enactment, Japanese AMA has evolved its function in parallel with the Japanese economy, starting off from post-war depression to the recent development. The lecture contents are intended to share Japanese AMA case as a good reference for Thai in implementing the TCA. The main points of the lecture are given in the box. (Power-point presentation)

Japanese Experience in Trade Competition Policy
Presentation by Mr. Kasubuchi of JFTC

1 History of Antimonopoly Act of Japan

(1) Before World War II

- Concentration of economic power to large conglomerates and cartel organizations
- National policy for strengthening of economic control

(2) After World War II (1945-)

- Occupation under USA and alliance
- Democratization of Japanese economy
- Dissolve of Conglomerates and economic de-concentration
- Enactment of Antimonopoly Act (1947): US Antitrust Law as a model

(3) In 1950s

- Claims against AMA by Business sector for its too strict regulation
- Relaxation of AMA (1951, 1953)
- Introduction of Depression Cartels and Rationalization Cartels (1953)
- Introduction of Cartel Exemption Systems based on respective laws (1950-)

(4) In 1960s

- Japan's high economic growth era
- Limited interest in competition policy

(5) In 1970s

- The first oil crisis (1974)
 - Inflation of commodity prices, follow-up cartel
 - End of high economic growth
- Amendment to strengthen AMA (1977)
 - Introduction of surcharge system, etc

(6) In 1980s

- Facility disposal cartel for structurally-depressed industries
- Trade friction with foreign partners
- Japan-US Structural Impediments Initiative (SII) started (1988): targeting Japanese business practice

(7) 1990s to date

- Amendment to strengthen AMA
 - Quadrupling the surcharge rate (1991)
 - Increasing upper limit of penalty for corporations (1993): 5 mill -> 100 mill Yen
- Abolition of Depression/Rationalization Cartels and other exemptions (1999, 2000)
- Further amendment of AMA (2005)
 - Increase of surcharge rate, introduction of leniency program and compulsory measures for criminal investigations

2. Competition Policy in the World

- Globalization of corporate activities
- Needs for harmonizing competition policy
 - Securing fair international competition
 - Preventing unjust activities by multi-nationals
 - Promoting international business
- International cooperation at various levels: OECD, ICN, East Asia

3. Citizen's Awareness for Competition Policy

- Recognition of importance of competition policy in 1990s
- Public opinion for business competition: Good 73%, Bad 15% (2001 poll)
- Newspaper reports of on-the-spot investigation by JFTC
- Lawsuit by local residents for damage made by bid-rigging

4. Why Do We Need Competition?

- Competition makes business strong
"Cartels were not found in successful industries.... Cartels were common in declining industries in Japan. The legal cartel has brought lack of competitiveness rather than competitive edge." (Prof. Michael Porter and Prof. Hirotaka Takeuchi, "Can Japan compete?")
- Competition brings consumers' benefit
High quality and low cost products by competition -> Rational choice of goods

5. Antimonopoly Act of Japan

(1) Regulation Contents

- Unreasonable restraint of trade
- Private monopolization
- Unfair trade practices
- Business combination (M&A)

(2) Enforcement Agency

- Japan Fair Trade Commission
Independent administrative commission
Headquarters and 8 local offices
Number of officials: 706 (2005)
- Enforcement by JFTC
Cease-and-desist orders
Surcharge payment orders

6. Recent Topics

- New rule making in distribution sector -

(1) Background

- Troubles between large-scale retailers and suppliers
- Use of buying power by large-scale retailers
- Abuse of dominant bargaining position

(2) Current Regulations

- Notification for Specific Unfair Trade Practices in the Department Store Business (1954)
- Targeting: department stores and super markets and etc.
- Prohibition of 7 kinds of practices

(3) Notification for Specific Unfair Trade Practices by Large-scale Retailers Relating to the Transaction with Suppliers

- Widening target retailers
Definition of Large-scale Retailers:
(1) Annual sales (10 bill Yen over), or
(2) Store space area
- Prohibition of 10 kinds of practice
(1) Unjust return of unsold goods
(2) Unjust coercion to ex-post discount
(3) Unjust coercive consignment trade

- (4) Coercion to supply of goods at excessive low price for sales promotion, etc
- (5) Unjust refusal to receive special order goods
- (6) Coercion to purchase of goods
- (7) Unjust use of suppliers' employees
- (8) Unjust Acceptance of suppliers' economic benefit
- (9) Unbeneficial treatment in case of rejecting unreasonable demands
- (10) Unbeneficial treatment in case of reports to JFTC

7. International Cooperation in Asia

- Closer economic relation among East Asian countries
- Importance of mutual understanding among competition authorities
- East Asian Conference on Competition Policy (May 3-5)

3) Panel Discussion

The followings are record of speech by each panelist, by order of speech.

Mr. Manut Soiploy, DIT (Moderator)

Since the TCA was prepared in a short period of time, in the face of the needs created by rapid change in Thai economy under globalization, some part of the details are not yet made clear. For example, the definition of market domination, under section 25, was initially 25%, then changed to 33%, then concluded at the OCC as 50% and 1 billion Baht in sales. But this final conclusion of the OCC was rejected by the Cabinet and no decision has been made so far. The unfair trade practice, under section 29, could in theory be applied to overseas case, however, in practice it cannot be effective. There are still needs in adjusting to the real condition while ensuring consistency with the international agreements such as the WTO and FTAs.

Ms. Pomapa L. Bangchang, Baker and McKenzie (Legal expert, with Power-point presentation)

1999 TCA has the three main characteristics: 1) It aims to achieve free and fair competition in the market, 2) It covers all industry, 3) It covers both private and state-owned companies (except for oil resource related industry and agriculture cooperatives). The five important sections are: Section 25 (Abuse of dominant position), Section 26 (M&A), Section 27 (Cartel), Section 29 (Unfair trade Practices, Restriction of other business), Section 30 (Monopoly: 75%). Being in monopolistic situation itself is not a violation, but it is so in the use of the dominant position for unfair trade practice. As a legal procedure, the corresponding section for violation has to be made clear, and the violation is considered as a criminal act. The definition of monopolistic condition has not yet passed the Cabinet, while the sales amount as the definition seems to be controversial.

The unfair trade practice, under Section 29, is applied in case of damage caused by unfair act which affected negatively to the competitive market. In other words, if there is no mal-effect, it is not a violation of TCA. As for example of unfair trade practices, tying arrangement and exclusive distribution are typical. In case of Louis Vuitton, it forced the distributors to limit selling the competitors' brand, however, the act of maintaining the image of its own brand to the distributors is not considered as a violation. The computer software case indicated that with the dominant market share (90%), it is crucial whether or not the sales practice limited the other competitors' similar program.

In Thailand, unfair trade practice is often found in forms of; rebate system (food and daily goods), package sales (tying popular and unpopular videos), reciprocal dealing (e.g. the buyers of poultry products condition the producer to buy fertilizer through them), unfair licensing fee for franchise system. The penalty for those acts is maximum 6 million Baht and 3 years in jail, while probation is applied for the first offence. The company representative is also subject to the punishment, and the level of penalty seems to be severe compared to other criminal acts.

Mr. Korrakod Padungjitt, Federation of Thai Industries (FTI) (Private Sector)

The private sector has been paying keen attention to the TCA, since its enactment 6 years ago. As seen from the industrial sector, most of Thai industry has not reached internationally competitive scale, despite its dominant share in domestic market. We hope that our industry will be competitive in the global market, supported by the TCA. On the other hand, there are firms feeling uneasy about applications of the TCA, since it is not yet clear what kind act is a real violation. The penalty of 6 million Baht is quite high for unintentional violation. A consultation system by the government is necessary, since if the private sector does not recognize the criteria, and some might violate without recognition.

As a representative of steel industry, although our group is considered as large in Thai market, compared with giant steel manufacturers in the world, we are small scale. Japan used to have four giant manufacturers, which are merged into two super-giants, counted as among the top three in the world. Our group's share in Thai market is about 40%, but among the world competitors, our group cannot be ranked within the top 100 manufacturers. We are facing severe global competition and survival under the changing environment is a vital issue. The TCA is not yet recognized as a positive policy in our industrial circle.

Mr. Viroj Na Bangchang, The Consumer Force Association of Thailand

(Consumers group representative)

I have been involved in consumers' protection activities in the past 27 years. I would like to present my view as a representative from a consumer group, regarding the present market condition and TCA.

There was a case called "beer and whiskey" 4 or 5 years ago. In this case, the popular whiskey producer forced the retailers to sell their unpopular beer in proportion to the amount of whiskey. The retailers had to increase the price of whiskey and give discount on unpopular beer, in order to have both of them sold. The consumer group brought this case to the DIT. However, DIT could not take action since the rules and regulations are not yet completed for implementation.

The two cable TV companies are merged into one and we have only one company to provide cable TV service, and DIT assigned broadcasting committee for the fair pricing. In mobile phone business, Telecom Asia possesses 50% of the Thai market. Likewise, Chan possesses 66% of drinking water, Honda 75% of motorcycle, Toyota 36%, and other players with more than 40% market share exist for sectors such as cement, tile, pipe, automobile tires. Due to those monopolistic market conditions, we have a doubt whether fair and free competition exists. Those business sectors might be making large profit at cost of consumers' loss.

Mr. Kasubuchi of JFTC

One of the panelists said that interpretation of some of the sections of the TCA is difficult. In Japan, we are faced with the same problem, so that JFTC has prepared "Guidelines" to give precise meanings and applications for some of issues. At present there are 20 guidelines available, e.g. Distribution Systems and Business Practices Guidelines, M&A Guidelines, and sector-wise guidelines like Power and Gas Guidelines. In order to clarify kinds of act in violation, "Violation Cases" is also prepared as a reference material. In the process of guideline preparation, the draft guidelines are made open to the public to welcome public comments, for about one month. Numerous opinions are collected and JFTC, on its own judgment, finalizes the guidelines. Such guidelines are also prepared in other countries.

As for service to the private sector, a consultation service is available to judge each case for violation, in case with doubts. There are more than one thousand consultations per year in the form of telephone, interview, and written communications.

Occasionally, consultation cases are used as reference to other cases to help judgment.

The Commission member of JFTC is five, and its decision is made by majority. In case there is a member who has relevancy with a case, conflict of interest, that member is not allowed to vote in decision. However such case is quite rare, since the background of the committee members are either government or academics, and no member is from the private sector.

2.2.2 Evaluation

Initially, the seminar had been planned for 150 participants. However, participants from the private sector increased, and the total number of participants was counted as 164, excluding JICA TA Team and guests counting 13. As for the evaluation by the participants, 86% of the respondents indicated positive remarks. The written comments by the participants highly evaluated the organizers' initiative, while indicating needs in further effort by the Thai authority for TCA to be effective.

(1) Profile of the Participants

As shown on the table below, the participants from the government sector counted 43, non-governmental sector counted 121, and the total was 164. Among the government agencies, Consumer Protection Bureau and Small and Medium Enterprise Bureau and DIT Regional Offices sent participants besides DIT. There were 94 participants from business sector, after limiting their participation to one person per firm.

Participating Organizations and Numbers

Government Sector	Central Government Offices: - Department of Internal Trade (33) - Consumer Protection Bureau (2) - Small and Medium Enterprises Promotion Office (3) - Central Bank(1) Regional Government Offices: - DIT Regional Offices (4) <div style="text-align: right;">Total: 43</div>
Non-government Sector	Business Sector: - Board of Trade of Thailand (1) - Federation of Thai Industry (4) - Other Business Associations (14) - Business Operators (94) Experts and Others : - Law Firms (5) - Academics: Faculty of Law (10) - Consumer Power Association (2) - Mass Media (1) <div style="text-align: right;">Total: 121</div>
	Total Number of Participants: 164
	Including JICA TA Team, Guests and Panelists: 177

Grand Total: 150

(2) The results of Questionnaires

Among 164 participants, 79 returned the questionnaires. (47%) The profile of respondents is 77% private sector, reflecting the total participants' structure. As for evaluation of the seminar, 49% answered as "Very useful", and then 37% answered as "Useful", totaling 86% as positive reply. 38 participants (44%) filled in the written comments either in Thai or English. Some of typical sample answers are listed below as a reference.

The Results of Questionnaires

Total replied: 79 participants (out of 159)

Summary of Results

	Q-1: Profile			Q-2: Knowledge of TCA				Q-3: Evaluation of Seminar				Q-4: Comments	
	1	2	3	1	2	3	4	1	2	3	4	In Thai	In English
	Government	Private	Professional/N GO	Know Very well	Partly knew	Title only	Did Not know	Very useful	Fairly useful	Acceptable	Not at all useful		
Total replied	14	61	4	6	41	27	5	39	29	11	0	35	3
In %	18%	77%	5%	8%	52%	34%	6%	49%	37%	14%	0%	44%	4%

Representative Written Comments

No.	Language	Profile	Comments
1	Thai	Pro/N GO	Agree that people should have chance to be informed to find point of balance between business and consumers for the sake of being equal and justice.
2	Thai	Govt	In the issue of rules and regulations to force business and private sectors, public hearing should be done first to carefully consider the effect.
3	Thai	Private	There should be public relations for all people or entrepreneurs in various businesses to know the limit and usefulness of law and there should also be central organization to help consult and solve problems for justice of every party; by this way there will be more touchable usefulness. Perhaps different organizations and associations can help doing so on case by case basis with some independent organizations' assistance.
4	Thai	Private	Got some knowledge from this matter after following up this Act of Legislation for a while but never saw its use clearly from the recent problems. The overseas businesses in Thailand have got competitions among themselves until there is such monopoly in that smaller businesses have got such disadvantages. Those concerned people Thai shareholders whose companies may face the loss from their investment. If Japanese law assigns JFTC to cover taking care of Thailand too, it will be better and will help protect Japanese businesses in Thailand from having problems.
5	Thai	Private	The Act of Legislation has been announced for use since 1999 but not yet forced 100 % being used. There is such effect in practice against the law directors, consumers and entrepreneurs. There is weakness yielding the uses for advantages.
14	Thai	Private	The seminar document was very good and the contents were appropriate with the conducting time. And as the concerned document will give such information of the cases or the means in overseas case consideration, I think there should be such presentation on complaints or case consideration in Thailand, to be concluded in the seminar, too. And if the guideline has already been done, I propose that the seminar be arranged again.
15	Thai	Govt	There should have been more internationally comparable information in the seminar topic.
16	Thai	Private	Would like to have next seminar on spreading knowledge of Competition Law of Thailand if there are interesting points on situation of opening up the Free Trade Agreement (FTA) of Thailand at present and in the future.
17	Thai	Private	Points on direction of law usage and business behavior at present and in the future should have been given more in order to know practical ways. There should have been some speakers who are from the court or the organization which has got the power of the law usage.
18	Thai	Private	There should be Seminars on – consumer product trading competition and – the Act of Legislation on trading competition in details again, and they should include the process of the investigation in case of petitions.

31	Thai	Govt	If there is document filing in disks or cds, it will help organizations , especially of the government sector , use or spread more on its contents. The seminar had been started quite late and decreased the chance of listening to the lecturer (s). The translator did very good job in brief, appropriate and understood lecture.
36	English	Private	I do appreciate the good intention of the organizaers both Thai and Japanese side. This seminar is very useful and very informative. Hope JICA and people and organizations concerned will hold and arrange this kind of seminars, even in other fields. Again, thank you very much
37	English	Private	There should be more info on what would be future implementation of the law, and significant change from the present policy.
38	English	Private	Of course, the trade competition law would benefit consumersand support fair trade. (only if it is enforced and fully supported by related authorities) Therefore, DIT sould expedite the process to complete this Act. In this issue, DIT should work more independently. Thank you JFTC and JICA for support.

2.3 Web Site Development

In addition to Advocacy Seminar, a website development for Trade Competition Bureau is was planned to be part of the assistance in this TA. Since a website can provide detailed information to the general public with specific interest, encompassing both the consumers and the business sector, it is a more appropriate media for those who have serious interest to competition regulation. It has been agreed, between the DIT and the TA Team, to provide technical assistance for expanding function of competition related website.

2.3.1 Current DIT Web Site

The current website in Thai language is providing “Promotion of competition” as one of the sections indicated on the top page of DIT. This section can be improved with more information regarding introduction of laws and regulations, benefit for the society and economy, and cases, including Japan, as references in Thai language.

It is possible to create a top page with an independent atmosphere, within the MOC website. Because of a limitation in budget as well as capacity, data base and both sides communication network, which requires large capacity and costs, might be difficult to be attached with the website.

It was found that MOC’s web server has sufficient capacity to expand its website to cover trade competition issues. The current website in Thai language is indicated on the next page.

Figure 4-2-1: DIT web-site homepage

	Introduction of DIT	Management Staff	Bulliton Board	Q&A	News	Announcement
DEPARTMENT OF INTERNAL TRADE (DIT)						
	ACTIVITIES				PR NEWS	
Policy and Plan	(image photo)				(Recent news about consumers' event held in July 2004, by selling products at low price with support of department stores and supermarkets)	
Monthly Report						
Laws under DIT						
Agriculture Products						
Promotion of Competition						
Public Announcement by Committee						
Difference between DIT and Consumer Protection Committee						
PRODUCTION STATISTICS	COMMODITY PROCES				PRICE OF STEEL WIRE/SHEET	
- Paddy(rice with husk) 04/05 (seasonal) - Paddy(rice with husk) 04(unseasonal) - Fertilizer (corn) 04/05 - Cassaba 04/05	-Retail price of fresh food products in Bangkok (daily) -Wholesale price of important agriculture products (daily) -Rice Price -Comparison of fresh food products prices -Comparison of prices on animal feed and agriculture products				-Price of steel sheet (2004.12) -Price of steel wire (2004.12)	
IMPORTANT NOTICE	-Retail price of consumer products in Bangkok (2003-04) -Monthly average price of major commodity in Bangkok (past 12yrs) -Monthly average price of major commodity by products (past 12yrs) -Automobile selling price (as of 2004.7.28)					
-unit for quantity -Regulation for commodity quantity and price -Gas products guarantee plan -Mechanism for fresh products						
SERVICES	CONTROL OF GOODS AND SERVICES				RECRUITMENT OF GOVERNMENT STAFF 2005 (1st)	
-Library -Internet registration and information -Download form -Telephone number -Information center -Disclosed documents -List of plastic manufacturers -List of car manufacturers -Fair trade of gasoline -Price level of consumer goods (new!)	-Designation of importance for goods and services under control by DIT (update) -Protected goods and services and their control criteria -Goods prohibited to indicate their prices -Goods and services under control of DIT and its regulation -Protected goods and services and their criteria				CLAIM CENTER	
					-Claim report form	
					MEMBER	
					WEBSITE SERVICE	
DELEGATION OF AUTHORITY	NOTICE BY COMMITTEE FOR GOODS AND SERVICES				VOTE	
-Delegation of authority to regional officials -Delegation of orders	-Regulation on control period, follow-up of prices by central committee for especially designated goods and services -Notice by sub-committee for improving information collection environment				How do you evaluate DIT Internet? -Very good -Fair -Not good	
LINK						
-Government Offices -State Enterprises -Newspapers -Telephone - Television						

Promotion of Competition
Report on the Current Trade Competition Condition - No.1 2004.9 - No.2 2004.10 - No.3 2004.11
Contact to TCB
Structure, Role, Authority
Member List of Committee and Subcommittee under Trade Competition Act 1999
TCA 1999: Decree and Public Announcement
Newsletter (monthly) "World of Trade Competition"
Guideline for Unfair Trade Practice for Wholesale and Retail Business
Abstract of Decisions made by TCC
Brief Report on Actions taken under TCA
Terminology for TCA, Economics and Industry
Study Plan for Unfair Trade in Other Countries
Seminars and Training Programs

Public Announcement by Committee
Trade Competition Committee
TCC Public Announcement: Appointment of sub-committee for studying "dominant market position"
TCC Public Announcement: Appointment of Export Commission for Motorcycle Industry
TCC Public Announcement: Appointment of Export Commission for Wholesale and Retail Business
Central Committee on Goods and Services
Committee for Advance Trading of Agriculture Products
Committee for Agriculture Product Market
Committee for Farmers' Relief and Criteria

Difference between DIT and Consumer Protection Committee	
DIT	Consumer Protection Bureau
1. Governing Law: Goods and Service Act (1999) and Weights and Measures Act (1999)	1. Governing Law: Consumer Protection Law (1979)
2. Coverage: - Fair Price - Production Amount - Goods with limited limited supply	2. Coverage: - Consumers protection from advertisement, lottery, contract, dangerous goods - Direct sales - Legal support for consumers claims
3. Hot line for claim Tel No. 1569	3. Hot line for claim Tel No. 1166

-Designation of importance for goods and services under control by DIT (update)		
Definition: - Sensitive List (SL) - Priority Watch List (PWL) - Watch List (WL)		
Year 2003		
Year 2004		
	Controlled Goods	Services
	- Jan 2004	- Jan 2004
	- Feb 2004	- Feb 2004
	- Mar 2004	- Mar 2004
	- Apr 2004	- Apr 2004
	- May 2004	- May 2004
	- Jun 2004	- Jun 2004
	- Jul 2004	- Jul 2004
	- Aug 2004	- Aug 2004
	- Sep 2004	- Sep 2004
	- Oct 2004	- Oct 2004
	- Nov 2004	- Nov 2004
	- Dec 2004	- Dec 2004
	(Goods)	(Services)
Sensitive List (SL)	Gasoline, Diesel, Plastic bag, Fertilizer, Cable, Zinc, Steel, Steel Plate/Wire	none
Priority Warch List (PWL)	PVC pipe, Pellet, copy paper, plywood, canned food, canned & bottled beverage	Car repair service, Movie theater tariff
Watch List (WL)	beef, egg, prawn, vegetable, fish, milk, coffee, edible oil, soy sauce, flour, soap, detergent, pesticide, paper, elec appliances, automobile, truck battery, cement, glass, nail, paint, drug, fodder, mobile phone, etc (all 85 items)	electric appliance repair, cleaning, barber, taylor, utility installation, copy parking, courier, gym, hair salon, video/CD rental, hotel, rental book etc (18 items)

2.3.2 New TCC Web Development

Recognizing significance of collaborative work with the DIT Team, the JICA TA Team shared the process of website development from the very initial stage of formulation of fundamental website concept and objectives. The two teams took careful consideration on designing realistic website maintenance framework within the TCB after the initial complete startup of the website, as well as website design itself.

(1) Objectives and Basic Concept

The initial objective of this site is to formulate a continuous information base within the TCB for the advocacy activities on the competition policy, providing policy and legal information to the public. In the near future, inclusion of data collecting functions from the industries/consumers and information sharing function within the authority, will also be considered.

The basic concept is to create an independent Home Page of the TCC to generate and promote general awareness in the area of competition policy/legislation. The international network is also taken into account in the concept. In order to strengthen the international network among foreign investors and/or researchers as well as authorities, the interface is designed identical between English pages and Thai pages.

The prior target of this web is considered to be industries. The legal experts and academicians are also considered a very important core target at the initial stage.

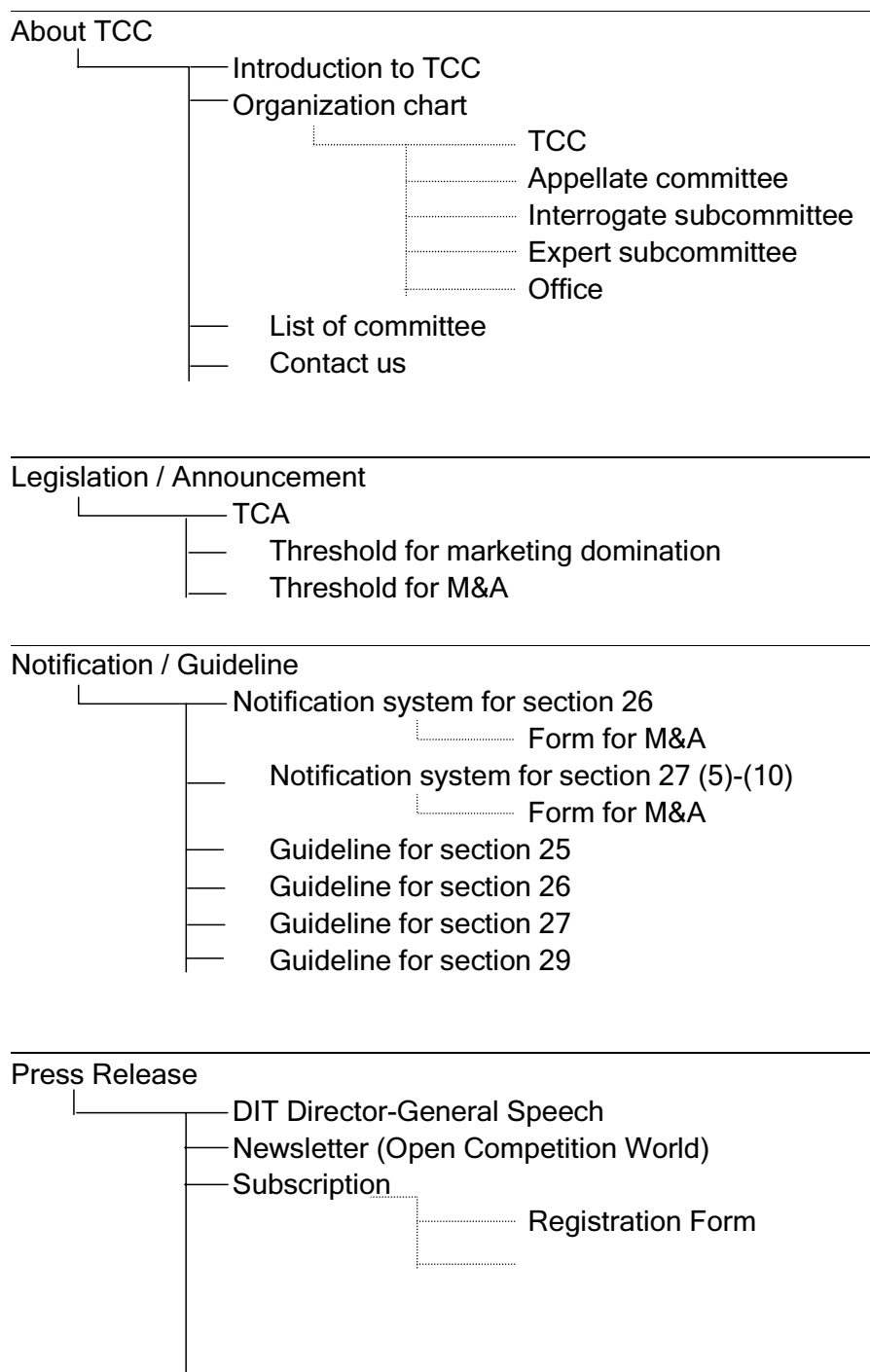
Table 4-2-4: Target Group for the TCC Web

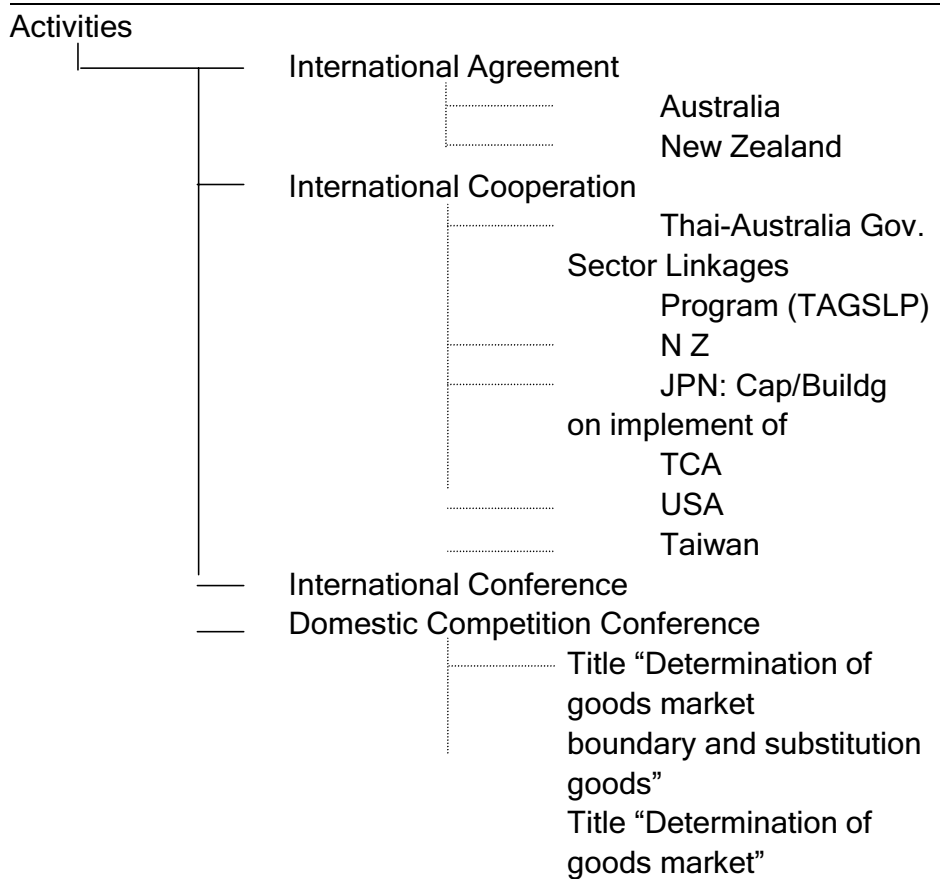
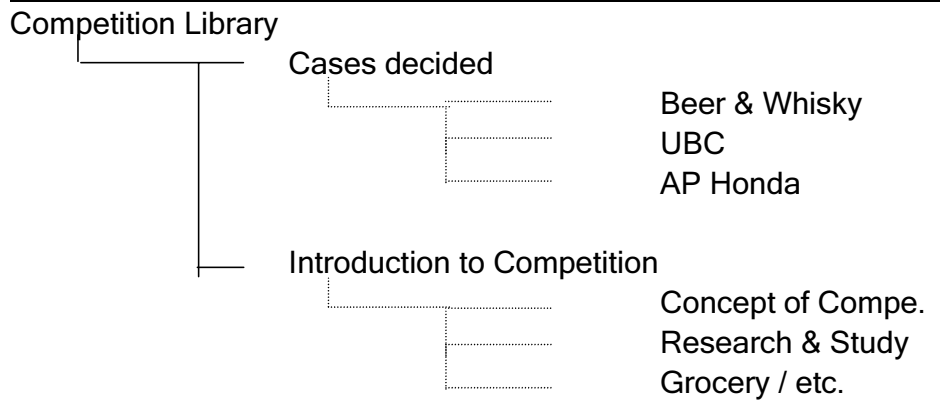
	1	2	3
1 Prioty	Business Associations	Business Society	
2 GP	Lawyers	Judges	Prosecuters
3 GP	Academics	Students	
4 GP	Foreign Competition Authorities	Thai Gov. Authorities	
5 GP	Investers	Foreign Companies	
6 GP	General Public		

(2) Structure

The key categories are; i) About TCC, ii) Legislation/Announcement, iii) Notification/Guideline, iv) Press Release, v) Competition Library, vi) Activities, vii) FAQs, viii) Information Channel, ix) Contact us, x) Link, and xi) What's New?. The simple search function is also included. The following chart is the directory tree for each category.

Figure 4-2-2: Sitemap OTCC Website (Thai)





FAQs	Under construction
Giving suspicious information Channel	
Contact us	Contact information Subscription
Link	
What's New?	
Search --- Simple search	

Source: UFJI

(3) Schedule

- i) Launch of the project : June 15, 2005
- ii) GUI version completion : July 19, 2005
- iii) Beta version completion : August 25, 2005 (tentative schedule)
- iv) Home Page completion : September 15, 2005 (tentative schedule)

The training program for users and administrators are to be arranged after completion of home page.

3. Study Visit in Japan

From February 20 to 22 of 2004, Mr. Siripol Yodmuangcharoen, Director General of DIT, Ms. Porntip Poovarodom, Senior Trade Technical Officer of DIT and Mr. Surinthorn Sunthornsanan, Trade Technical Officer of DIT visited Japan and studied the structures and systems of competition policy enforcements by Japan Fair Trade Commission. Detailed schedule of the study visit, see the following chart “Study Visit in Japan Program.”

Table 4-3-1: Program of Study Visit to Japan

Date	Visits/Meetings	Questions/Points of Interest	Place	Stay
Feb 20 (Sun)	Depart from BKK in the morning			Tokyo
	Arrive at NRT in the evening			
Feb 21 (Mon)	9:30-10:30: Briefing/Program Orientation at JICA		JICA Tokyo	
	10:30-11:30: Transfer JICA Tokyo - JFTC			
	Lunch; Arrive at JFTC			
	13:00-14:00: (General Introduction) by Int'l Affairs Division (1) Power and Structure of JFTC (including the role of regional offices), (2) Enforcement issues of AMA		JFTC 2 nd meeting room on 11F	
	14:00-15:30: (Investigation procedures) (1) Initiation of investigation, (2) Investigation procedures			
	15:30-16:30: (Hearing procedures) by Decision and Lawsuit Office			
16:30- : (Division Tour) Library, Hearing Court, Investigation Bureau, Economic Affairs Bureau, Trade Practices Department, Etc.	To see working practices of JFTC officials and ask a few questions.	JFTC building		
Feb 22 (Tue)	10:00-10:30: Courtesy Call to Chairman Takeshima		Chairman's Office	
	10:30-12:30: (Trade Practices Department) (1) Designation of Unfair Trade Practices, (2) Premiums and Representations Act and Subcontract Act, (3) Prior Consultation System		2 nd meeting room on 11F	
	Lunch			
	13:30-14:00: Audit of a Hearing Case		Hearing court on 19F	
	14:00-16:30: (Economic Affairs Bureau) (1) MA Regulations, (2) Coordination with Regulation Authorities, (3) Economic Survey		2 nd meeting room on 11F	
	16:30-17:00: (Review) by Int'l Affairs Division	General questions and discussions		
Feb 23 (Wed)	Departure: TG6001 Dept. NRT at 17:35		JICA Tokyo	
	Arrival BKK at 22:55			

V. Market Survey

V. Market Survey

1. Overview of the Market Structure

1.1 Structure of Thai Economy

The production structure of Thai Economy has been dramatically changing in the last 5 decades. Whereas agricultural sector accounted for 45% of the gross domestic products (GDP) in 1951, it contributes only 10% in 2003 (Figure 5-1-1). On the other hand, the share of service surpassed that of agriculture in 1952 and it accounts for 53% of the GDP in 2003, while the share of manufacturing finally exceeded that of agriculture in 1980 and now it accounts for 37% of the GDP. Not surprisingly, the rapid growth of Thai economy since the second half of the 1980s has been driven by these two sectors (Figure 5-1-2). Although the Thai economy experienced negative growth in 1997 and 1998 due to the economic and financial crisis, it already shows a steady upward trend since 2001. One can observe that the underlying cause of this recovery after the crisis was the revitalization of manufacturing sector rather than service sector, and this was mainly driven by increase in exports brought about by the depreciation of the currency.

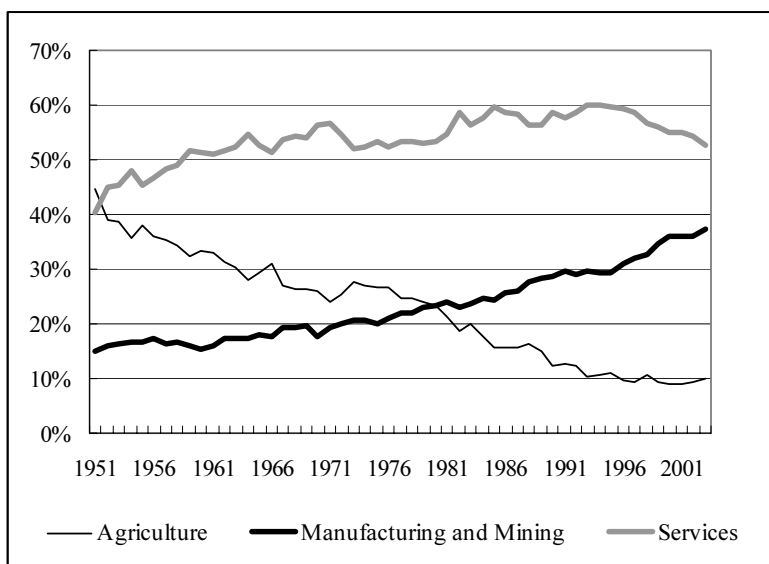
Although the agriculture's contribution to GDP has been constantly declining in Thailand since the 1950s, its contribution to employment still remains important (Table 5-1-1). The share of people engaged in agricultural sector accounted for 42.3 % in 2004, whereas manufacturing sector accounted for only 15%. Given this structural disparity between production and employment, there is still a significant gap in terms of GDP per capita in agricultural sector and manufacturing sector. The 5-1-1 shows that "wholesale/retail trade and repair services" accounts for the largest number of employment in service sector, followed by "hotel and restaurants service."

Foreign trade dependency ratio¹⁸ of Thai economy significantly rose since 1980s, reflecting change in trade policy, such as introduction of export promotion policy and liberalization of tariffs and non-tariff barriers. The ratio was less than 40% in the 1970s, whereas it reached approximately 124% in 2003. One can easily imagine that current competitive conditions faced by domestic producers in Thailand are totally different from those few decades ago, and the role of competition policy in the domestic market is also inevitably different from what it used to be. Especially, trade liberalization without sound competition policy could damage domestic industries that are not prepared for fierce competition with imported products, while effective

¹⁸ Trade dependency ratio = (Exports + Imports) / GDP.

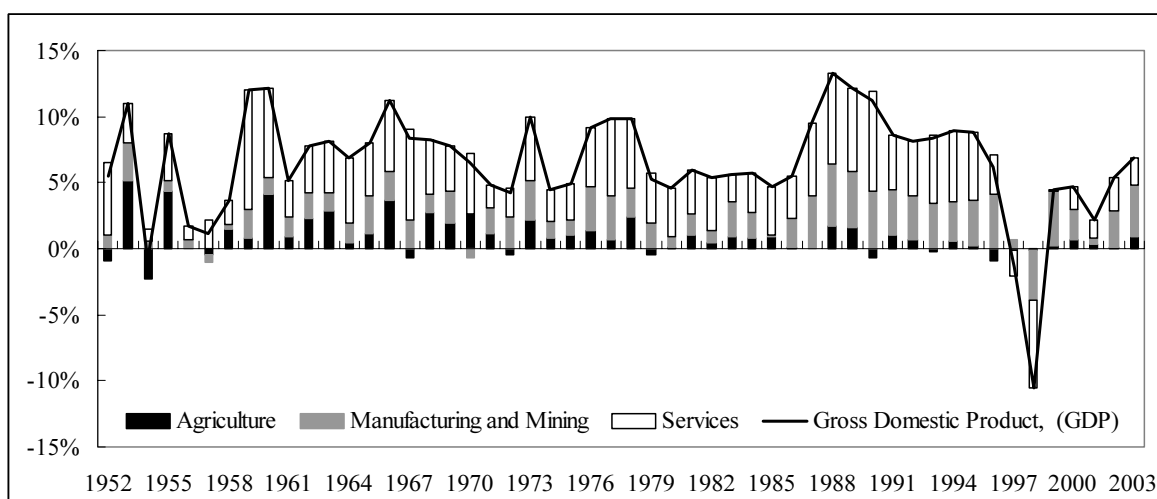
competition policy is also essential for inducing technological/managerial innovation of Thai exporters and thus strengthen their international competitiveness in the international market.

Figure 5-1-1: Composition of Gross Domestic Product by Sector (1951-2003)



Source: National Economic and Social Development Board, National Income of Thailand 1951-2003, available at: http://www.nesdb.go.th/econSocial/macro/macro_eng.php. Note: Data of year 2003 is provisional.

Figure 5-1-2: Real GDP Growth Rate and Contribution to Change by Sector (1951-2003)



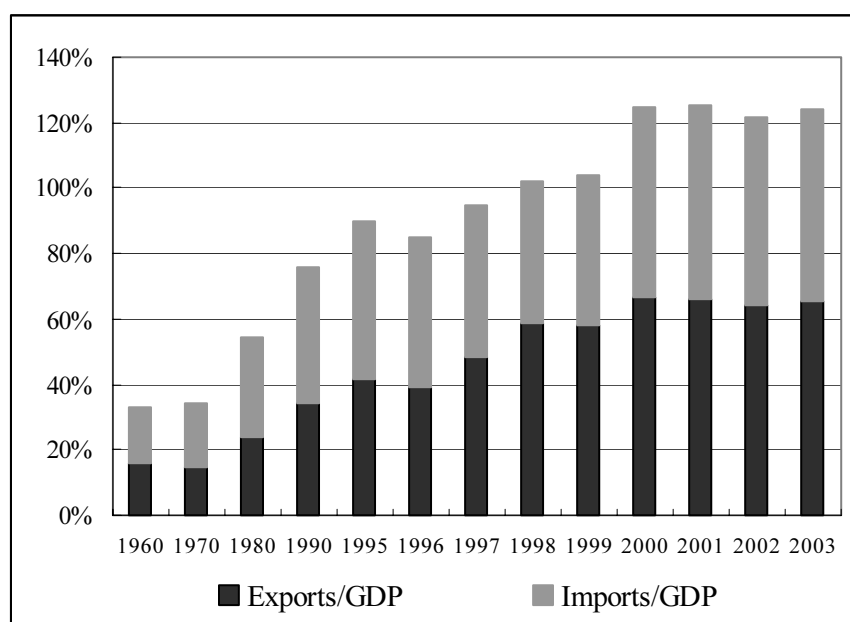
Source: National Economic and Social Development Board, National Income of Thailand 1951-2003.

Table 5-1-1: Composition of Employed Persons by Sector (3rd Quarter, 2004)

	Number of Employed Persons (Thousand)	Share (%)
Agriculture	15,115.4	42.3%
Manufacturing and Mining	5,348.5	15.0%
Services	15,247.5	42.7%
Electricity, gas and water supply	98.7	0.3%
Construction	1,878.1	5.3%
Wholesale and retail trade, repair of motor vehicles motorcycles and personal motor vehicles, motorcycles and personal and household goods	5451.59	15.3%
Hotel and restaurants	2,206.4	6.2%
Transport, storage and communication	1,067.5	3.0%
Financial intermediation	303.4	0.8%
Real estate, renting and business activities	633.7	1.8%
Public adman. and defense, compulsory social security	1,015.0	2.8%
Education	1,082.4	3.0%
Health and social work	535.1	1.5%
Other community, social and personal service activity	712.6	2.0%
Private households with employed persons	239.0	0.7%
Extra-territorial organizations and bodies	0.8	0.0%
Unknown	23.1	0.1%
Total	35,711.3	100.0%

Source: National Statistical Office, Labor Force Survey (table 2), available at: http://www.nso.go.th/eng/stat/lfs_e/lfse.htm.

Figure 5-1-3: Trade Dependency Ratio (1960-2003)



Source: National Economic and Social Development Board, National Income of Thailand 1951-2003.

Note: Exports and imports include both trade in goods and services.

1.2 Market Structure of Manufacturing and Service Sectors

Among manufacturing industries, food products and beverages (18.3%), motor vehicles (9.3%), wearing apparel (7.8%), furniture and other manufacturing industries (7.7%), and refined petroleum products (6.5%) have a relatively large share in GDP in 2003 (Table 5-1-2). However, the share of each industry within manufacturing sector has undergone to change before and after the crisis. Industries whose shares in GDP have risen constantly since 1996 include chemicals and chemical products, rubber and plastic products, and electrical machinery and apparatus. On the other hand, industries whose shares have been declining include tobacco products, wearing apparel, and basic metals. Among service industries, wholesale/retail trade and repair services (29.3%), public administration, defense, and education services (19.2) account for almost half of total GDP in service sector (Table 5-1-3). These are followed by transportation, postal and telecom services (14.9%), hotels and restaurants (9.6%), and financial services (6.5%). Industries gaining their share in GDP include energy services, transportation, postal and telecom services, while construction service and financial services have been losing their share since 1996.

As for manufacturing sector, a more detailed market structural analysis can be conducted by using “manufacturing industry survey¹⁹” published by National Statistical Office of Thailand (Table 5-1-4). Number of firms is relatively larger in food products and beverages, fabricated metal products, rubber and plastic products, suggesting that relatively fierce competition exists in these market. Value added per employee is extremely high in refined petroleum products, tobacco products, followed by office/accounting/computing machinery, chemicals and chemical products, and printing and publishing industries. Statistics on inward foreign direct investment (FDI) also tells us that foreign investors have hardly entered into these industries with high profitability (Table 5-1-5). The high profitability and low FDI penetration ratio in these markets would imply that there might be technological, regulatory, or monetary barriers to entry the market in these industries, and thus competition less severe. While it is very useful to grasp an overview of market structure of each industry, it is very difficult to evaluate the degree of competition using “industry” level statistics.

¹⁹ This survey only covers establishment with more than 10 employees.

Table 5-1-2: Composition of GDP in Manufacturing Sector (1996-2003)

	1996	1997	1998	1999	2000	2001	2002	2003p
Food Products and Beverages	17.6%	18.8%	20.7%	21.6%	17.3%	17.6%	17.7%	18.3%
Tobacco Products	2.1%	2.5%	2.3%	2.1%	2.0%	1.9%	1.9%	1.7%
Textiles	6.5%	6.3%	7.2%	6.6%	6.5%	6.3%	6.1%	5.5%
Wearing Apparel	11.1%	11.4%	10.8%	10.3%	9.8%	9.4%	8.8%	7.8%
Leather Products and Footwear	3.4%	3.6%	3.8%	3.9%	3.9%	4.2%	3.7%	3.3%
Wood and Wood Products	0.6%	0.5%	0.4%	0.4%	0.4%	0.5%	0.5%	0.4%
Paper and Paper Products	1.6%	1.7%	2.1%	2.1%	2.1%	2.1%	2.1%	2.0%
Printing and Publishing	1.1%	1.0%	0.9%	1.0%	0.9%	0.9%	0.9%	0.8%
Refined Petroleum Products	7.2%	8.8%	9.8%	8.3%	7.3%	7.5%	7.0%	6.5%
Chemicals and Chemical Products	3.3%	3.7%	4.1%	4.2%	5.2%	4.9%	4.6%	5.1%
Rubber and Plastic Products	2.6%	2.6%	2.9%	2.7%	3.2%	3.2%	3.5%	4.0%
Other Non-metallic Mineral Products	5.1%	4.7%	3.8%	4.1%	3.9%	4.2%	4.3%	4.3%
Basic Metals	1.4%	1.3%	1.1%	0.9%	1.0%	1.0%	1.1%	1.0%
Fabricated Metal Products	2.2%	2.3%	2.6%	2.7%	2.8%	2.8%	2.8%	2.6%
Machinery and Equipment	4.1%	3.7%	3.5%	3.5%	3.9%	4.1%	4.1%	4.0%
Office, Accounting and Computing Machinery	3.5%	4.1%	5.4%	5.7%	6.0%	5.6%	5.3%	5.0%
Electrical Machinery and Apparatus	1.0%	1.2%	1.5%	1.5%	1.5%	1.6%	1.6%	1.7%
Radio, Television and Communication Equipment and Apparatus	6.2%	5.8%	5.8%	5.2%	6.8%	5.0%	5.9%	6.5%
Medical, Precision and Optical Instruments, Watches and Clocks	1.1%	1.3%	1.2%	1.2%	1.2%	1.2%	1.2%	1.0%
Motor Vehicles	7.1%	4.9%	1.8%	3.7%	4.8%	6.4%	7.5%	9.3%
Other Transport Equipment	1.1%	1.3%	0.7%	0.7%	0.9%	0.8%	1.1%	1.2%
Furniture; Manufacturing n.e.c.	9.8%	8.3%	7.6%	7.7%	8.5%	8.9%	8.6%	7.7%

Source: National Economic and Social Development Board, National Income of Thailand 1951-2003.

Note: Mining and Quarrying are not included.

Table 5-1-3: Composition of GDP in Service Sector (1996-2003)

	1996	1997	1998	1999	2000	2001	2002	2003p
Energy (Electricity, Gas, Water)	3.9%	4.3%	5.4%	5.0%	5.4%	5.9%	5.9%	6.1%
Construction	12.5%	9.8%	6.8%	6.4%	5.6%	5.5%	5.6%	5.6%
Wholesale and Retail Trade, Repair Services	27.9%	29.3%	30.1%	30.8%	31.3%	30.3%	29.2%	29.3%
Hotels and Restaurants	9.1%	8.9%	8.8%	9.8%	10.2%	10.2%	10.4%	9.6%
Transportation, Postal and Telecom	12.5%	13.3%	13.8%	14.5%	14.6%	15.1%	15.2%	14.9%
Financial Services	12.0%	11.1%	9.0%	6.0%	5.4%	5.4%	5.8%	6.5%
Real Estate, Renting and Business Activities	5.7%	5.7%	5.9%	6.0%	6.0%	5.8%	5.8%	5.7%
Public Admin., Defense, Education, etc.	14.4%	15.4%	17.9%	18.8%	18.9%	19.0%	19.3%	19.2%
NPO, Recreational Services, and Other Services	2.2%	2.3%	2.3%	2.6%	2.7%	2.7%	2.9%	3.1%

Source: National Economic and Social Development Board, National Income of Thailand 1951-2003.

Table 5-1-4: Summary of Statistics on Manufacturing Establishments by Division of Industry (Year 2000, Thousand Baht)

Code	Division of industry	Number of establishments	Number of employees	Remuneration	Gross output	Value added	Ratio of value added	Value added per employees	Remuneration per employees
15	Food Products and Beverages	3,102	388,805	35,564,506	629,074,735	102,159,303	16.2%	262.8	91.5
16	Tobacco Products	198	11,883	2,412,405	41,308,279	32,917,423	79.7%	2,770.1	203.0
17	Textiles	1,358	232,594	21,504,214	329,256,530	58,318,599	17.7%	250.7	92.5
18	Wearing Apparel	1,581	145,148	12,891,322	74,714,245	21,700,150	29.0%	149.5	88.8
19	Leather Products and Footwear	756	105,613	8,538,793	50,960,510	14,727,501	28.9%	139.4	80.8
20	Wood and Wood Products	797	51,965	3,919,986	35,807,790	8,906,999	24.9%	171.4	75.4
21	Paper and Paper Products	487	44,093	5,534,621	98,677,867	22,476,913	22.8%	509.8	125.5
22	Printing and Publishing	796	44,221	6,202,478	40,289,477	13,666,655	33.9%	309.1	140.3
23	Refined Petroleum Products	48	7,986	1,896,362	276,272,894	29,131,971	10.5%	3,647.9	237.5
24	Chemicals and Chemical Products	903	86,013	13,576,461	317,037,042	47,002,183	14.8%	546.5	157.8
25	Rubber and Plastic Products	1,684	189,278	19,143,649	212,540,349	46,496,490	21.9%	245.7	101.1
26	Other Non-metallic Mineral Products	1,802	128,442	14,963,462	147,962,230	48,687,593	32.9%	379.1	116.5
27	Basic Metals	476	38,177	5,611,682	139,088,797	17,572,448	12.6%	460.3	147.0
28	Fabricated Metal Products	2,090	102,915	9,922,246	115,262,612	31,910,796	27.7%	310.1	96.4
29	Machinery and Equipment	880	82,990	11,133,829	139,420,932	28,994,265	20.8%	349.4	134.2
30	Office, Accounting and Computing Machinery	35	60,686	10,749,181	169,570,488	41,925,932	24.7%	690.9	177.1
31	Electrical Machinery and Apparatus	450	112,965	14,918,774	141,352,102	38,682,872	27.4%	342.4	132.1
32	Radio, Television and Communication Equipment and Apparatus	241	153,417	19,683,949	257,061,210	72,898,227	28.4%	475.2	128.3
33	Medical, Precision and Optical Instruments, Watches and Clocks	119	28,180	3,108,004	31,012,654	5,713,099	18.4%	202.7	110.3
34	Motor Vehicles	938	101,617	18,099,358	473,574,714	49,930,964	10.5%	491.4	178.1
35	Other Transport Equipment	179	24,509	2,772,550	25,761,486	4,714,112	18.3%	192.3	113.1
36	Furniture; Manufacturing n.e.c.	1,671	161,212	12,838,677	96,307,361	28,125,809	29.2%	174.5	79.6
37	Recycling	16	1,418	156,876	1,516,698	168,950	11.1%	119.1	110.6
	Total	20,608	2,304,124	255,143,382	3,843,831,001	766,829,252	19.9%	332.8	110.7

Source: National Statistical Office (2001), Manufacturing Industry Survey.

Note: Establishments with 10 persons or more. Remuneration includes fringe benefits, employer's contribution to social security.

Available at: http://www.nso.go.th/eng/stat/manufact/tab1_44.htm.

Table 5-1-5: Number and Percentage of Establishments by Foreign Investment
(Year 1999)

Code	Division of industry	Number of establishments	No. of Foreign Investment	Percentage of Foreign Investment
15	Food Products and Beverages	3,265	279	8.5%
16	Tobacco Products	205	5	2.4%
17	Textiles	1,371	137	10.0%
18	Wearing Apparel	1,629	181	11.1%
19	Leather Products and Footwear	728	64	8.8%
20	Wood and Wood Products	865	25	2.9%
21	Paper and Paper Products	477	38	8.0%
22	Printing and Publishing	779	34	4.4%
23	Refined Petroleum Products	47	12	25.5%
24	Chemicals and Chemical Products	906	329	36.3%
25	Rubber and Plastic Products	1,708	236	13.8%
26	Other Non-metallic Mineral Products	1,825	64	3.5%
27	Basic Metals	465	121	26.0%
28	Fabricated Metal Products	2,116	169	8.0%
29	Machinery and Equipment	856	140	16.4%
30	Office, Accounting and Computing Machinery	46	38	82.6%
31	Electrical Machinery and Apparatus	412	146	35.4%
32	Radio, Television and Communication Equipment and Apparatus	248	144	58.1%
33	Medical, Precision and Optical Instruments, Watches and Clocks	124	47	37.9%
34	Motor Vehicles	947	106	11.2%
35	Other Transport Equipment	193	25	13.0%
36	Furniture; Manufacturing n.e.c.	1,621	237	14.6%
37	Recycling	18	3	16.7%
	Total	20,851	2,583	12.4%

Source : National Statistical Office (2000), Manufacturing Industry Survey,

Note : Establishments with 10 persons or more.

Available at: http://www.nso.go.th/eng/stat/manufact/tab1_44.htm.

1.3 Market Structure from Viewpoints of Competition

In this section, we try to grasp an overview of competitive conditions in manufacturing and service sectors, by utilizing data on concentration ratio provided by the DIT. Table 5-1-6 shows that concentration ratio (CR4) reaches 100% in the markets of export handcraft industrial goods, service provider of international communication of supporting, financial, banking information service, and tour guide service. The ratio is also high in the markets of communication services (99.7%), energy sectors (from 40 to 79%), and insurance service (40.8%). This implies that markets with relatively high concentration ratio mainly belong to service sector in Thailand. However, again, one cannot easily conclude that the degree of competition is high enough in manufacturing sector, since this statistics is also too aggregated to

evaluate the degree of competition in each product market. More detailed market analysis should be conducted in order to evaluate markets from the viewpoint of competition policy.

Table 5-1-6: Market Structure of Manufacturing and Service Sector (2002)

TSIC Classification	Total Income (Million Baht)	No. of Firms	CR4 (%)
3. Manufacturing			
30 Export handcraft industrial goods	45,087,916	2	100.00
31 Food, beverage and tobacco	987,037,153,614	5,278	9.30
32 Textiles, wearing apparel, leather and leather products	454,063,900,804	6,713	7.60
33 Wood and wood products, incl. Furniture	122,485,807,635	2,826	8.72
34 Paper and paper products, printing and publishing	235,132,414,554	4,633	18.90
35 Chemicals & chemical, petroleum, coal, rubber and plastic products	1,892,369,288,410	6,350	36.54
36 Non-metallic mineral products, except products of petroleum and coal	220,325,162,098	1,870	20.15
37 Basic metal industries	317,008,043,181	1,754	18.73
38 Fabricated metal products, machinery and equipment	2,252,930,777,177	10,177	13.06
39 Other manufacturing industries	251,651,200,137	2,988	29.41
4. Electricity, Gas and Water supply			
40 Service providing	3,611,474,009	46	78.94
41 Electricity and gas	125,897,022,315	72	40.43
42 Water supply	1,696,090,886	39	69.87
5. Construction	401,223,800,014	32,098	10.22
6. Wholesale and Retail Trade, Restaurant and Hotel			
61 Wholesale trade	2,847,785,282,206	58,762	4.97
62 Retail trade	1,553,354,379,769	42,529	9.82
63 Restaurant and hotel	150,404,403,999	7,790	15.20
7. Transport, storage and communication			
70 Service provider of international communication of supporting data	109,190	4	100.00
71 Transport, storage for goods and communication	343,140,280,548	11,268	41.42
72 Communication (Telegram, Telephone)	126,294,213,641	82	99.67
73 Tour guide service	1,018,226	1	100.00
8. Financial service, Insurance Real estate and Business			
80 Financial, banking information service	75,593,854	4	100.00
81 Financial facilities	557,469,972,927	4,908	38.79
82 Insurance	115,162,702,552	1,011	40.77
83 Real estate service and businesses	412,656,326,496	35,134	15.41
9. Community service, Social service and Individual service			
91 Government administration and defense	4,387,295	1	100.00
92 Health service (cleaning, garbage collection)	11,490,690,998	1,054	34.34
93 Social service and related community service	65,326,743,629	1,798	19.33
94 Recreation and culture service	78,746,749,292	3,314	17.45
95 Individual service and household service	85,444,212,443	8,616	5.22

Source: Data provided by DIT.

Note: Compiled by Office of Business Development using financial statements provided by business entities in 2002. The classification is based on TSIC, which is different from classification (ISIC) in other tables in this report.

Note 2: This statistics only includes companies registered to Office of Business Development.

2. Detailed Market Survey on Maritime Transport Services

As a part of this Capacity Building Program, a detailed market survey on maritime transport services was conducted in cooperation with a local research institute (CA International Information, hereinafter “CAII”). In this section, the methodologies and some key-findings of the survey are summarized.

2.1 Methodologies for the Market Survey

The main objective of this market survey is to share with DIT Team the methodologies and procedures of a detailed market survey, which is essential for law enforcement. In addition to that objective, an actual case study on maritime transport services (including the market for road transportation service of containers) in Thailand, to grasp the market structure and to identify problems in the concerned market from the viewpoints of competition policy. The target sector was determined by the DIT Team, and scope of work was concertedly designed by the TA Consultant team and the DIT Team during the second field survey.

In this survey, both quantitative (e.g. statistical and financial analysis) and qualitative approach (e.g. interview with the experts and stakeholders, and regulatory analysis) were adopted. As for the interviews, total number of interviewees counted 101, including shipping companies (liners), shipping agents, freight forwarders, and firms providing road transport service for containers.

The contents of research assigned to CAII covered:

- 1) Introduction: Overview of the Maritime Transport Services
- 2) Market Structure: Global Perspectives
- 3) Market Structure in the Thai Market

The following sections summarized some key-findings in the final report submitted by the CAII.

2.2 Overview of Maritime Transport Service Industry in Thailand

In 2004, 93.6% of Thai trade volume (import + export) and 66.3% in its trade value were transported by sea. Major countries of destination of Thai exports by sea transport include Singapore, China, and Japan, while major countries of origin of Thai imports include Japan, China, and Saudi Arabia. Most of the Thai liners are conventional ships and tankers rather than container ships. The number of Thai

container ship was only 17 (5.2% of total Thai vessels more than 100 ton gross) with 219,000 Dead Weight Tonnage (6.0% of total DWT). Besides, there are some Thai ships that are registered under foreign flags. As of January 2004, 11 ships are registered under Panama flag (accounted for 50,110 DWT), and 1 ship is registered under Bahamas flag (accounted for 16,900 DWT).

In Thailand, there are two major ports for container shipping, the Leam-Chabang Port and the Bangkok Port (Klongtoey). In 2004, containerized trade for both import and export passed through these ports account more than 75% of total volume (Table 5-2-1).

Table 5-2-1: Volume of Trade by Types of Cargo Passed through the Major Port

	Import Volume (ton), 2004				Export Volume (ton), 2004			
	Conventional	%	Containerized	%	Conventional	%	Containerized	%
Leam-Chabang	108,732	1.0%	10,815,551	99.0%	1,450,045	6.8%	20,026,525	93.2%
Bangkok	1,980,835	24.9%	5,966,965	75.1%	91,183	1.2%	72,266,306	98.8%

Source: CAII.

2.3 Market Structure of Maritime Transport Service in Thailand

Total number of maritime transport related services providers in Thailand is 217 (Table 5-2-2). As of 2003, the market consists of 18 shipping companies of which 5 were container shipping carriers. The biggest container shipping carriers is Regional Container Lines Public Co., Ltd with the revenue of approximately 1.8 billion Bahts and market share of 46.5% in 2003 (Table 5-2-3). This was followed by Siam Paetra International Co. Ltd. (36.4%), Jutha Maritime Public Co., Ltd. (14.0%), Cots Shipping (Thailand) Co., Ltd. (1.6%), Pacific Seatran Lines Co., Ltd. (1.5%). Except for Cots Shipping (Thailand) Co., Ltd, these are all joint venture companies with foreign investors.

Table 5-2-2: Market Size and Share of Maritime Transport Service Market
(2003)

Types of Business	Number of Companies	Total Revenue (Million Bahts)	Share (%)
Shipping Company (Container Shipping Carrier)	18* (5)	10,213.1 (3,963.5)	23.4%
Shipping Agent	78	25,770.2	59.1%
Freight Forwarder	121	7,624.8	17.5%
Rental Service with Crew	0	0	0%
Total	217	43,608.1	100.0%

Source: CAII.

Note: *Including those of conventional and bulk cargos.

Table 5-2-3: Container Shipping Carriers and Their Market Shares (2003)

Rank	Company Names	Share Holding (%)		Revenue (Million Bahts)	Share (%)
		Thai	Foreigner		
2	Regional Container Lines Public Co., Ltd.	85.4%	14.6%	1,844.5	46.5%
4	Siam Paetra Intl. Co., Ltd.	70.0%	30.0%	1,441.2	36.4%
5	Jutha Maritime Public Co., Ltd.	96.4%	3.6%	556.3	14.0%
13	Cots Shipping (Thailand) Co., Ltd.	100.0%	0.0%	63.4	1.6%
14	Pacific Seatran Lines Co., Ltd.	51.0%	49.0%	58.2	1.5%
	Total			3,963.5	100.0%

Source: CAII.

The concentration ratio of top 4 service providers (CR4) and Hirschman-Herfindahl Index (HHI) by type of business in 2003 are shown in the Table 5-2-4. It can be said that both shipping market and shipping agent market in Thailand are oligopolistic. Among others, the container shipping market is especially highly concentrated market with the CR4 of 98.5% and HHI of 3,617. This highly concentrated structure suggests that there might be anti-competitive conducts/behaviors in the market, as well as in the related market such as container road transport service, which is operated not only by independent trucking companies, but also by subsidiaries of these container shipping companies.

Table 5-2-4: CR4 and HHI by Type of Business (2003)

	CR4(%)	HHI
Container Shipping Company	98.5%	3,689.5
Shipping Company (Including Container Shipping Co.)	81.1%	1,952.8
Shipping Agent	84.5%	2,848.3
Freight Forwarder	51.9%	832.9

Source: CAII.

2.4 Market Behaviors in the Maritime Transport Services in Thailand

According to the results of interview with stakeholders, the following key findings were identified.

- 1) The procedure for ship registrations in Thailand is relatively complicated and time consuming. In addition to the current oligopolistic structure in the shipping market and the initial fixed cost for obtaining container ships, this inefficient regulatory burden such as administrative paper work would further enhance the difficulty for new market entrants to enter into the market. Compared with foreign liners, local shipping companies cannot enjoy economies of scale due to the small number/capacity of ships they have, as well as to the lack of global operational network and IT technology enabling efficient and timely service for their clients.
- 2) While there is a standard nominal freight rate in the market, both Thai and foreign freight rates are changeable, depending on several factors such as cargo quantities, distance of transport, bargaining power against the customers, destination, season, and so on. Most of large exporters in Thailand usually sign 1 or 2 year(s) contract of affreightment with foreign liners, by establishing a special fixed freight rate agreed between them through negotiations. The customers of Thai shipping companies mainly consist of local small and medium sized enterprises, who do not have enough bargaining power against the mega foreign liners and who do not prefer the annual contract due to budgetary constraints.
- 3) Generally, both Thai and foreign liners provide the road transport service of containers as a part of their service, so as to satisfy the customers' needs. The liners usually have their affiliated company for road transportation, or they hire other logistics companies. The fee for the road transport generally does not differ among the liners, since an association of container road transporter usually fixes the standard price.

VI. Recommendations

VI. Recommendations

1. Continuation of Further Capacity Development²⁰ Programs

While recognizing the needs and necessity for increase in the number of officials in the authorities, it is still effective to conduct capacity development programs in order to further substantiate the knowledge and experiences of current officials.

1.1 Utilization of the Program Formulation Process

The process that JICA TA Team/DIT Team developed through the Project can serve as the foundation of further task to formulate effective capacity development programs. The matrix worksheet referred in the previous section can be utilized as a planning instrument in:

- designing a series of sessions instead of ad-hoc-base one shot session
- identifying the priority of the subject theme for sessions through multi-unit discussion
- reviewing and evaluating the results of each session for subsequent session(s)

1.2 Internal Knowledge Sharing Activities

As there are already officials with extensive knowledge and experiences in the authority, it is recommendable that certain coordination will be made internally to activate mutual knowledge feedback activities not only to share the knowledge but also to construct the standardized foundation as the TCB. These activities can also be undertaken through the Process in the previous section (1). The following points may be considered:

- activities will be more effective when designed periodically
- stocktaking process
 - a) individual officials' knowledge
 - b) previous workshop programs by international assistance
 - c) updated information from the participating officials to the major conferences/meetings/seminars

It is also an effective way to share information through internal network system, such as intranet. Thus, besides developing the website as a part of advocacy activities, it is useful to consider internal use of servers.

²⁰ : The Capacity Building has to be enhanced to the Capacity Development stage; thus, in this section, the term "Capacity Development" is used instead.

2. Continuous and Extended Information Support Base

For collecting all necessary information efficiently and successfully for particular cases, TA Consultant Team recommends TCB to take five steps described below to achieve this goal.

2.1 Collecting/Compiling Annual Data on Market Concentration in Oligopolistic Markets

It is recommended to periodically collect/compile market information such as production volume and sales value at least in oligopolistic sectors, in order to monitor the market structure and to be prepared for TCA-related investigations. Considering time and human resource constraints, the number of sectors covered in the database can be started with few prioritized sectors in the initial stage, and then the coverage can be extended step by step. TA Consultant Team also recommends TCB to deploy a full-time official/staff to maintain the database in the bureau.

2.2 Enhancing Accessibility to DBD's Firm Database by TCB for TCA Enforcement

It is recommended to have more efficient and frequent communication between the TCB and the Department of Business Development (DBD) where the companies' annual data is reported, in order for TCB to efficiently collect/compile data necessary for developing above-mentioned database within the TCB. Recognizing the fact that publicly available information for competition authority is quite limited in Thailand, it might be also useful to consider a possibility of re-designing DBD's notification format to further collect supplementary data necessary for TCB investigation.

2.3 Maintaining Information Library within TCB

It is also useful for TCB to regularly collect/maintain other publicly available information necessary for promptly conducting market analysis when necessary. The information would include:

- Online newspaper search database (e.g. Bangkok Post)
- Trade statistics (e.g. trade volume, trade value, tariff rates, etc.)
- Annual security report of major company in oligopolistic sectors
- Statistics, in-house magazines, press release, and/or newspaper published by industry groups
- Other private reporting services/database (e.g. AC Nielsen)

If necessary, additional budget for obtaining the above information should be requested in near future.

2.4 Hiring Economists for Analyzing Particular Cases and Formulating Guidelines

It is essential for a competition authority, whose goal is to maintain and promote free and fair competition in the market, to have knowledge on economics to analyze cases from the economic perspectives. In fact, many competition authorities including JFTC have been hiring economists to implement competition laws and regulations in a consistent manner. TA Consultant Team recommends for TCB to actively hire officials with the level of master's degree or PhD in economics, especially in the field of microeconomics or industrial organization, as a substantial part of workforce to conduct market analysis as well as to make suggestions in formulating related guidelines.

2.5 Minimizing Risk of Information Leakage before Site Inspections

It is very efficient way to outsource a part of the market analysis to private research and consulting firms/institutes. For example, outsourcing a part of general market analysis for formulating a new guideline would be very useful for TCB, considering time and human resource constraints. However, to some extent, there would be a risk of information leakage if TCB tries to outsource a part of market analysis or interview survey concerning "a particular case" to outside firms/institutes, before conducting site inspections. It is therefore recommended to limit outsourcing activities to general research.

3. Extending Advocacy Activities

3.1 Comprehensive Designing of Activities

Recognizing several existing activities, such as radio & TV programs beside symposiums, more comprehensive designing with interrelations among those activities should be considered. Keeping track of participants, listeners, or other related personnel is also important to scale and expand interested parties in the society/market.

Consideration to organize monitor groups as a system is to be taken to this end. As referred in the system conducted by JFTC, activities of consumer/retailer monitors has increased public awareness in the area of competition policy as well as collecting updated information of business situation and/or complaints.

The table below summarizes kinds of advocacy activity tool and corresponding target groups and the contents to be delivered. It is recommended to use this kind of comprehensive picture to set up strategy in advocacy activities.

Table 6-3-1: Tools and Targets of Advocacy Activities

Tool	Targets	Contents Delivered
Radio and TV	Consumers and Small and Medium Enterprises (SME)	About TCA, Consumer Protection and Consultation (hotline)
Seminar	Other government offices, Private Organizations, Business and Professionals	Policy statement, Exchange of views among relevant organizations, Network and Appeal to society
Website	Enterprises (Domestic and Foreign), Professionals	Detailed explanation of the TCA, Guidelines contents, Cases in Thai, Foreign Cases, Activity of TCC, Activity of OTCC
Consumer Monitoring	Consumers and SME	Knowledge dissemination, Feedback from market
Lectures	University and High school	Enterprise activity and Basic knowledge of Competition Policy

3.2 Organizing Counterparts in the Business Community

It is recommended that advocacy activities necessarily be strengthened for industry and business community as well as consumers.

In order to stimulate communication with industrial and business society, as a place to have exchange of views and opinions between those organizations and the competition authority, it is recommended to establish a focal point or a committee to serve those purposes. And a certain public comment system is also to be considered to generate attention to the focal point. The public comment opportunities can serve not only to this end but also to invite practical and significant comments when formulating

new guidelines and/or policy.

In Japan, Japan Federation of Economic Organization has “Economic Law Committee”, consisting of member enterprises. The Committee gathers periodically, participated mainly by legal experts from the member enterprises. The Committee provides occasion to learn new regulation by inviting JFTC officials, and collect opinions from members in order to consolidate them into one voice. The recent example is that opinion addressed to the JFTC regarding the amendment of the AMA. The opinion statement by the Federation is made public. It is recommended that DIT to as relevant private organizations to establish the counterpart organizations.

3.3 Utilization and Further Development of Web-site

In order to support advocacy activities, the website is an effective tool. It is recommended to have the contents of the website to cover more substantial and detailed information. It is also recommended to have opportunities to monitor needs of interested parties, such as consumers, businesses, and the professional society. It is also important that substantiation of Q&A through the website on inquiries of individual cases and complaints

Not only as an advocacy activity but also as an efficient way to gain the opinions/complaints, the website is effective. Enhancements to the website developed in the Project are recommended (i.e. substantiation of database function). As the operational training is essential to make it work effectively, the necessary effort has to be taken to design operational rules and training programs.

4. Recommendations on Legal Issues

4.1 Recommendations on Investigation Procedure

[Current Situations]

Currently, TCC conducts its investigations of anti-competitive cases as follows; First, OTCC initiates preliminary consideration of anti-competitive cases based on reports received from public or on its own discretion, and issues a report and a recommendation to TCC on whether to initiate formal investigations or not [Sec. 18 (5)]. OTCC has neither power to collect nor to take goods for investigations. Second, TCC usually appoints a Specialized Subcommittee to consider and make recommendations on the concerned cases [Sec. 12]. TCB works as a secretariat of the subcommittee.

Third, formal investigations with access to suspected companies and seizures of related documents could be possible at this stage. Fourth, TCC considers the report from the subcommittee and, if it found a violation of any section of TCA, submits to the public prosecutor the opinion for prosecution [Sec. 16]. However, TCC has a power to issue a written order to suspend or cease the concerned business conducts [Sec. 31].

[Recommendations]

JICA TA Team recommends Thai Competition Authorities to provide procedure rules at each respective stage and to make them public.

4.1.1 Recommendation 1 – Preliminary Consideration by the OTCC

It is necessary to make sure that the OTCC does not make contacts with suspected parties before the formal investigations and the decisions to initiate formal investigations should be issued without absolute proofs.

Sec. 18 (5) required the OTCC to carry out its preliminary consideration of TCA violations. The main purpose of the preliminary consideration is to consider whether the case is worth initiating a formal investigation or not. The power of OTCC at this stage does not include the power to access the suspected companies and to make seizures. In case of Japan, JFTC has a division which is responsible only for research and analysis of complaints. The division, which also does not have a power to make seizures, makes a report to the Commission regarding initiations of formal investigations.

The biggest difference between the OTCC and the JFTC at this stage is the required details in their reports. In case of Japan, the Commission does not require detailed information more than complaints and publicly available information, such as market data, annual security reports and news reports. The Commission usually makes its decision to initiate a formal investigation based on strong probabilities and does not require absolute proofs. On the other hand, in Thailand, the Commission seems to require OTCC stronger proofs to initiate formal investigations than those required in Japan.

In order to show absolute proofs, it is necessary to make contacts with officials of suspected companies directly. However it causes serious dangers for distractions to evidences by contacted officials. Therefore, it is necessary to make sure that the

OTCC does not make contacts with concerned parties before the formal investigations and the decisions to initiate formal investigations should be issued without absolute proofs.

4.1.2 Recommendation 2 – Procedural Rules for Investigations by Specialized Sub-committees

JICA TA Team recommends to provide procedural rules for specialized sub-committee’s investigations and to make it public not only for defendant companies but also to establish legal stability.

The TCA provides, “the Commission shall appoint one or more specialized sub-committees”[Sec. 12] and “the specialized subcommittee has the duty to consider and give opinions to the Commissions on ... the matter concerning the conduct indicative of market domination, a merger of businesses, the reduction or restriction of competition.” [Sec. 13] Based on the above sections, the Commission usually appoints a specialized subcommittee after it received preliminary consideration reports from OTCC. However, there has not yet been any uniform written procedure for the considerations by specialized subcommittee.

Since Sec. 13 gives specialized subcommittees “the power to issue a written summons requiring the persons concerned to give statements or furnish documents or any other evidence ...” and the Commission makes its decision based on the opinion of the subcommittee; protections of due process of the laws are quite important not only for defendant companies but also for establishing legal stability. Therefore JICA TA Team recommends to provide procedural rules for specialized subcommittee’s investigations and to make it public.

4.1.3 Recommendation 3 – Procedural Rules for Considerations by the TCC of Sub-committee’s Reports

In addition to procedural rules for specialized subcommittee’s investigations, JICA TA Team also recommends to formulate procedure rules for considerations at the TCC.

The Commission has the power “to give orders under Section 30 and Section 31 for suspension, cessation, correction or variation of activities by business operators,” [Sec. 8 (6)] and can submit to the public prosecutor the opinion for prosecution [Sec.

16]. Because of the importance of the considerations at the TCC and its impacts to the whole investigations, as in the case of considerations by specialized subcommittee, it is essential to provide protection of due process of the laws and to make it public both for defendant's protections and for legal stability.

4.1.4 Recommendation 4 – Procedural Rules for Issuance of a Written Order under Sec. 30 and Sec. 31.

JICA TA Team recommends to establish administrative procedures for issuing a written order under Sec. 30 and Sec. 31 and to make it possible for the TCC to enforce the TCA more efficiently with fewer burdens of proof.

Because of lack of administrative procedures to issue an order “to suspend, cease or vary” the market share [Sec. 30 & Sec. 31], TCC currently has no choice but to use criminal procedures which requires detailed and absolute evidence. The heavy duty of proof under criminal procedures causes some difficulties for preliminary considerations by the OTCC and also for considerations by specialized subcommittees and the TCC.

In case of Japan, JFTC usually use administrative procedures instead of criminal procedures, because of two main reasons; first, JFTC would like to avoid heavy burden of proof and, second, it has quite heavy an impact in Japanese society to be guilty under criminal procedures and there exists strong resistance from Japanese society against using criminal procedures for competition cases. JICA TA Team recommends to establish administrative procedures for issuing a written order based on Sec. 30 and Sec. 31 and to make it possible for the TCC to enforce the TCA more efficiently with fewer burdens of proof.

4.2 Recommendations on Thresholds

[Current Situations]

Currently two thresholds are under considerations, those are, thresholds for the definition of dominant positions [Sec. 25] and those of prohibited business mergers [Sec. 26].

[Recommendations]

4.2.1 Recommendations for Thresholds on Sec. 25 (Definition of Dominant Position)

The market share and sales volume criteria for dominant positions should not be so strict that the Commission and the courts could not implement the TCA flexibly in line with the business situations of the time.

The definitions of dominant positions are different from country to country. Even among countries with long and active history of competition policy enforcement such as Japan, U.S. and EU, each competition authority adopts different definitions. However, it is quite rare to make a definition of dominant position by using specific figures of market shares as legally binding rules. In U.S. and EU, sometimes courts made a definition of dominant position with some figures of market shares, but neither competition authorities show specific percentages of market share as definitions.

Findings of dominant positions depend not only on the suspected company's size and its market share but also on the comprehensive situations of the concerned markets. A company with less than 40% market share could be defined as dominant in one market, although courts could find another company with 60% market share not being dominant in another market.

Therefore, JICA TA Team recommends that the market share and sales volume criteria for dominant positions should not be so strict that the Commission and the courts could not implement the TCA flexibly in line with the business situations of the time.

4.2.2 Recommendations for Thresholds on Sec. 26 (Thresholds for Mergers and Acquisitions)

JICA TA Team recommends that the guidelines for merger regulations should not be so strict that OTCC could not receive notifications of any anti-competitive mergers and not be able to implement the merger regulations flexibly in line with the business situations of the time.

Countries with long implementation history of competition policies have two criteria for merger investigations, those are, notification thresholds and safe harbor for

merger investigations. Usually, the former works as a threshold for notifications and does not relate to any anti-competitive investigation and the latter mainly deals with the competitive analysis of the concerned mergers. The former includes usually total assets, sales volumes and/or shares of acquired stocks, and the latter is composed of market shares, HHI and other competition related indexes (e.g. history of competition in the concerned market, numbers of competitors and technological innovations, etc.).

In case of Thailand, Sec. 26 requires the Commission to “specify the minimum amount of number of market shares, sales volume, capital, shares or assets in respect of which the merger of business.” Therefore, the guidelines currently under considerations include the above two aspects together, those are, notification thresholds and investigation safe harbor. As in the case of definition of dominant positions, it is difficult to make clear standards for merger regulations, which require comprehensive and thorough analysis on the concerned markets.

Therefore, the guidelines for merger regulations should not be so strict that the OTCC could not receive notifications of anti-competitive mergers and not be able to implement the TCA flexibly in line with the business situations of the time. Also it is important to note that some mergers by low market share companies could cause anti-competitive effects because of coordinated conducts with their competitors in related markets. Coordinated conducts could not be regulated neither under prohibitions on monopoly nor on cartels.

4.2.3 Recommendations on the Relationship between the Definition of Dominant Positions and the Thresholds for Merger Regulations

The substance of definition of dominant position and the thresholds for merger regulations should be coordinated. In particular, since monopoly prohibition is ex post regulation and the merger regulation is ex ante and also the business conducts targeted by the latter would include abuses of dominant positions, it is important to note that the latter should not be stricter than the former, theoretically.

5. For Competition Policy (Industrial Development Policy and Competition Law)

Economic development of Thailand is considered as one of successful cases in Asia. Thai economy, being started with agriculture base, is now enjoying more than 70% of its export revenue from industrial products. However, there is an opinion that

is an observation, mainly from the consumers' side, that major industrial sectors are dominated by limited number of large enterprises, e.g. steel, cement and food supply. The anxiety for fair market competition has been expressed.

J. O. Haley²¹ pointed out that objectives of competition policy have two aspects, economic and political aspects, in "Competition Policy and Economic Development in APEC Countries"²². The economic objective is to achieve higher efficiency and optimum allocation of resources, and political objective is for prohibition of economic concentration and democratization in economy. He discussed that APEC countries, including Thailand, are required to make it clear that their competition policies to have one or two of these objectives²³. However, an industrial development policy is not considered as part of the competition policy, but to the contrary, a government intervention is positioned as an obstacle for competitive market environment.

On the other hand, if we take a look at Japanese historical experience, there was a period that competition policy was weakened relative to industrial development policy, in which government intended to protect and encouraged gaining international competitiveness. There is a claim that some subsectors of industry, e.g. automobile and electronic industries, gained international competitiveness as a result of such tilt. But there is a fact that those industries went through fierce competition among domestic competitors, and with imported products gradually entering in with liberalization policy for opening the market, only by being technologically innovative could enterprises have survived. Furthermore, those industries under long-lasting government protection tend to lose competitive edge to the international market.

Industrial development is a high priority policy for any developing country in Asia, and governments have armed itself with strategy in developing particular industrial subsectors with sets of policies to give chances to gain international competitiveness. On the other hand, it must be emphasized that competition policy is a policy for increasing total efficiency of national economy and economic democratization, which particularly works for consumers' interest. It must be fair to say that competition policy is not designed to cover industrial policy which is supposed

²¹ John. O. Haley, Professor, Washington University

²² Iyori et al, Chuo University Press, June 2002 (in Japanese)

²³ ref. page 4-5, Chapter for "Competition Policy in APEC Countries", said literature

to be handled by economic and industrial development policy by the respective authorities in charge. As the Japanese historical experience suggests, evolution of competitive policy is recognized as a dynamic process; however, the competition authorities are to be aware of their role as a counter-balancing to economic development “and” fair market creation.

Annex

Annex

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ANNEX I

Documents Related to Findings of Baseline Survey

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7 Acts under DIT's Responsibility

7 Acts under DIT's Responsibility

1. Price of Goods and Service Act, B.E. 2542 (1999)
 2. Competition Act, B.E. 2542 (1999)
 3. Agricultural Futures Trading Act, B.E. 2542 (1999)
 4. Weights And Measures Act, B.E. 2542 (1999)
 5. The Announce of the National Executive council No 58 (Only the Part for regulating Warehouse business, including Silo and cold Storage Business), B.E. 2515 (1972)
 6. Commodity Control Act, B.E. 2495 (1952)
 7. The Rice Trading Act, B.E. 2489 (1946)
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ANNEX I - 2

Center of Complaints

Department of Internal Trade



Center of Complaints
Department of Internal Trade
Ministry of Commerce

Vision: Efficient Center to develop the roles of consumers in order to protect their own rights involved of price and quantity of goods and services

Foundation: It was formed in 1994 to implement the tasks according to the Price of Goods and Services Act and the Business Competition Act. The Center has an information line available to business and consumers to explain their rights and obligation under the legislation.

Authorities:

1. To administrate fairly the system of price and quantity of goods and services and also promote and develop the roles of consumers in order to protect their own rights.
2. Giving legal advice and recommending appreciate government departments or agency.
3. Negotiate with the seller or service for refunds.
4. Providing domestic trade information.

Complaints:

1. Phone Complaints;

- Hotline **1569** 24hrs 10 lines
- Fax 0-2547-5356, 0-2547-5359

2. Electronic Complaints;

- E-mail compro@dit.go.th
- Website <http://www.consright.com>
<http://www.dit.go.th>

3. Post Complaints;

- Mail box P.O. Box 156 Nonthaburi 11000
- Postcard P.O. Box 156 Nonthaburi 11000

4. Office;

- Ministry of Commerce
Department of Internal Trade
Center of Complaints 3 rd floor
44/100 Sanam Bin Nam - Nonthaburi Rd.
Muang, Nonthaburi 11000

Table 1. Number of complaint cases in 2003 and Jan-Oct 2004

Year	Give advise	Complaints	Total/Cases
2003	623	741	1,364
2004	1,902	1,285	3,187

ANNEX I - 3

List of the Products and Services
Under TCA's Supervision and Survey

List of the Products and Services
Under TCA's Supervision and Survey

1. Coffee
2. Flour
3. Beer
4. Vegetable Oil
5. Powder Milk
6. Liquor
7. Vinegar
8. Seasoning
9. Condensed Milk
10. UHT drinking Milk
11. Soft Drink
12. Juice
13. Canned Food
14. Instant Food
15. Soybean Milk
16. Feeds
17. Motorcycle
18. Truck
19. Battery (Automobile)
20. Car
21. Pick-up truck
22. Tire
23. Fuel
24. Cooking Gas
25. Fertilizer
26. Plastic
27. Plastic Products
28. Plastic Straw for UHT Box
29. Pesticides
30. Calcium Carbide
31. Formic Acid
32. P.V.C

33. Glass
34. Cold Roiled Coil Iron
35. Iron Wire
36. Cement
37. Asbestos Tile
38. Concrete Tile
39. Structural Steel
40. Zinc
41. Floor Tile
42. Hot Roiled Coil Iron
43. Painting
44. Electric Wire
45. Aluminum
46. Plywood
47. Battery
48. Shampoo
49. Gymsum
50. Toothpaste
51. Detergent
52. Student Uniform
53. Student Shoes
54. Medicine
55. Insecticide
56. Pen
57. The Internet
58. Computer Game
59. Compact Disk
60. Paper Pulp
61. Toilet Paper
62. Craft Paper
63. Print Paper & Newsprint
64. Sanitary Napkin
65. UHT Box
66. Wholesale & Retail

67. Finance & Banking Business
68. Telecommunication Business
69. Freighter Business
70. DVD Player
71. Movie Theatre
72. Cable TV

ANNEX II

Documents Related to Sector Study

Call for Preliminary Proposal (Short Proposal)
for
“The Market Survey on Maritime Transport Services in Thailand”

December 17, 2004
JICA TA Consultant TEAM

Through this Call for Preliminary Proposals, UFJ Institute Ltd., as the JICA¹ TA Consultant Team² for *Technical Cooperation for the Study on Capacity Building for Implementation of the Trade Competition Act in the Kingdom of Thailand*, is inviting “Preliminary Proposals (short proposal)” for “The Market Survey on Maritime Transport Services in Thailand.”

1. Research Topics

Please see the “ANNEX” attached to this letter.

2. Definitions

“Maritime Transport Services” in this study only covers international freight transport services. It does NOT include internal (domestic) waterway service, and any kind of “passenger” maritime transport service.

3. Contents of Preliminary Proposal

The Preliminary proposal (in English) of 4-6 pages should include,

- (1) Possibility of conducting this study
- (2) Methodology for this study (Brief explanation on how to collect/compile the necessary information, such as web searching, literature survey, interview (possible interviewees), mailing survey, etc.)
- (3) Rough estimate broken down by item (personnel expense, direct costs, taxes, etc.)
- (4) Past experiences on related works/researches (1 page maximum)
- (5) Names of project manager(s)/researcher(s) who will be engaged in this study
- (6) Contact information

¹ Japan International Cooperation Agency

² Technical Assistance Consultant Team

4. Deadlines

Submission deadline for

Preliminary Proposal:	17:00 pm, December 27 (Mon), 2004
→ Preliminary selection	By the end of December
(Full Proposal)	January 12, 2005
→ Final selection	In few days after the submission deadline

Submission deadline for repots

Interim Report	February 25, 2005
Final Report	March 18, 2005

5. Review and Selection of the Proposals

Appropriate institute(s) will be selected by the end of December 2004, as candidate(s) for the next selection with Full Proposal. TA Consultant Team may make its determination with respect to any proposal based solely on the written submission.

6. Submission Format

Preliminary Proposal with 4-6 pages must be submitted electronically (either PDF or MS Word file) to competition@ufji.co.jp AND aratak@ufji.co.jp, by the abovementioned deadline.

7. Confidentiality

Confidentiality will be maintained. JICA TA Consultant Team maintains strict confidentiality with respect to all business confidential information.

8. Contact Person

For more information, you can contact the following person.

Arata KUNO (Mr.)

JICA TA Consultant, *Capacity Building Program for Implementation of Thai Trade Competition Act*
Analyst, Trade Policy Unit, Frontier Strategy Department, UFJ Institute Ltd.

Mobile Phone in Thailand: 06-047-6621 (Until December 21st)

(Office in Japan)

UFJ Institute Ltd.

Address: 1-11-7 Shimbashi, Minato-ku Tokyo 105-8631, Japan

Phone: +81-3-3289-7101, Fax: +81-3-5537-8038

E-mail: competition@ufji.co.jp, aratak@ufji.co.jp URL: <http://www.ufji.co.jp/eng/index.html>

The Market Survey on Maritime Transport Services in Thailand

Research Topics

1. Introduction: Overview of the Maritime Transport Services

(Importance, and Significance of Maritime Transport Services in the Global Economic Activities)

2. Market Structure: Global Perspectives

2.1 Elements of Maritime Transport Services

2.1.1 Types of Ship

(e.g., Container Ship, General Cargo Ship, Bulk Cargo Ship, Ore Carrier, Bulk Carrier, Tanker, Reefer Cargo Ship, LNG/LPG Carrier, etc.)

2.1.2 Major International Sea Routes for Maritime Transport

(e.g., In terms of number of containers, sales volume, number of ships, etc.)

2.2 Business Structure/Entities related to Maritime Transport Services

(e.g., Shipping Companies, Shipping Agent, Freight Forwarder, Rental service of vessels with Crew, Exporter/Importer, Marine Insurance Companies, Terminal Handling Service Companies, Maritime Cargo Handling Service, Storage and Warehouse services, Road Transport Service as an Element of Maritime Multimodal Transport)

2.3 Major Global Alliances in the Maritime Transport Industry and Their Practices

(e.g., Types of alliances (consortium, conference, rate agreement, etc.), and names of major global alliances.)

2.4 Global Top 20 of Maritime Transport Service and Their Market Share

2.4.1 Market Size by Type of Ship

2.4.2 Global Top 20 Companies by Type of Ship and Their Market Share

(Including name, nationality, sales volume, number of ship, etc.)

2.4.3 Market Size by Type of Business

(For Shipping Companies, Shipping Agent, Freight Forwarder, Rental service of vessels)

2.4.4 Global Top 20 Companies by Type of Business and Their Market Share

(Including name, nationality, sales volume, number of ship, capacity etc.)

2.5 International Rules Affecting Competition in Maritime Transport Market

(e.g., WTO/GATS, Other International Laws/Agreements/)

2.6 Role of Competition Policy in Maritime Transport Services in Major Countries

(e.g., Major cases, and anti-trust exemption of competition policy for this sector, etc.)

3. Market Structure in the Thai Market

3.1 Market Structure in Thailand

3.1.1 Definition of Market

(As for the type of ship, this section focuses on container shipping market. As for the type of business, this section focuses on shipping companies, shipping agent, freight forwarder, rental service of vessels with crew, unless otherwise specified.)

3.1.2 Market Size, and Market Trends by Type of Business

3.1.3 Names and Number of Companies by Type of Business

3.1.4 Market Concentration by Type of Business

(e.g., Share of main operators, concentration ratio, Hirschman-Herfindal Index (HHI))

3.1.5 Characteristics of Distribution Channel/Business Structure in Thai Market

(Comparison with other major countries)

3.1.6 Barriers to Enter into the Market

(Technologies, economy of scale, regulations, etc.)

3.2 Business Practices and Competition Situation in Thailand

3.2.1 Prices of Container Shipping Service between Ports in Thai and Major International Ports

(e.g., Major Thai Ports = Lam Chabang Port, Bangkok Port)

3.2.2 Cost Structure of Container Shipping Service

(e.g., Financial status, cost price, profitability, and their trends)

3.2.3 Behaviors in the Market

(e.g., Price negotiation, price fixing, tying)

3.2.4 Competition Situation in Road Transport Service as an Element of Maritime Multimodal Transport (Only those for container transportation)

- (a) Competition AMONG integrated (multimodal) maritime transport companies (such as shipping company)
- (b) Competition BETWEEN maritime multimodal transport companies and other road transport companies which can handle container transportation
- (c) Substitutability of services between maritime transport companies and road transport

companies

3.3 Other Laws and Regulations in this Sector Affecting the Competition

3.4 Issues/Obstacles to be Addressed

(For service providers, clients, and competition authorities)

3.5 Recommendation

(From viewpoints of both competition policy and maritime transportation policy)

ANNEX III

Documents Related to Guideline Workshops

ANNEX III - 1

Documents Used for Identifying Cases for Case Studies

Overviews of JFTC Important Case Laws

Type of cases	Year	Point of issues	
Private Monopolization			
Pachinko machines manufactures case*	1997	Restrictions of new market entries through patent pools among Pachinko makers	
Nippon Medical Food Assn. Case	1996	Monopoly and restrictions of new market entries by a collusion between a testing institute and a leading comp. in a medical food	
Paramount Bed Case	1998	Exclusions of competitors and dominance of bidders through contacting with administrative bodies	
Hokkaido news paper case*	2000	Exclusions of a new market entry by registering trademarks	
Unreasonable Restraint of Trade			
Newspaper sale route case	1993	Scope of entrepreneurs for collusion	
Toshiba Chemical case	1995	Express agreements among leading makers and un-expressed agreements to follow the above agreement	
Kyowa-Exeo case	1994	Un-expressed agreements for bid rigging	
Kubota and others case	1999	Agreements on the ratio of quantities of orders received	
Maruzen and others case	1996	Agreements on the markup prices of foreign books	
Tokyu Department and others case	1996	Riggings on seasonal gifts	
GL machine makers case	1997	Agreements on a prospected receiver of an order among machine makers	
Mie Prefecture Bus Assn. Case	1990	Elimination measures by JFTC - reorganizations of concerned organizations	
Unfair Trade Practice			
General	Toshiba Elevator Techno case*	1993	Impediments of fair competition - safety standard and impediment of fair competition
Concerted Refusal to Deal (Art.1)	Rockman Construction Execution Entrepreneurs case	2000	Refusals to deal among construction entrepreneurs with special construction technologies
Other refusal to deal (Art. 2)	Zennoh (National Federation of Agricultural Co-operative Associations) case	1990	Refusals to deal and dealing on restrictive terms of cardboard sales by Zenno
Discriminatory pricing (Art.3)	Kitaguni Newspaper case*	1957	Discriminatory pricing of newspapers between two geographic areas
Discriminatory treatment on transaction terms (Art. 4)	Auto Glass East Japan case	2000	Discriminatory treatments against a trader importing glasses
Discriminatory Treatment in a Trade Association (Art. 5)	Hamanaka dairy farming assn. case	1957	Discriminatory treatments to limit uses of common facilities by farming assn.
Unfair Low Price Sales (Art.6)	Maruetsu-Hello mart case	1982	Unfair low price sales of milk by retailers
	Tokyo public slaughter case	2000	Levels of unfair low price sales
	Damage suit by private greeting card makers*	1998	Unfair low price sales of greeting cards by governments

Overviews of JFTC Important Case Laws

Customer Inducement by Unjust Benefits (Art. 8)	Nomura Securities case	1991	Customer inducements through unjust benefits (loss compensation) by a securities company
Tie-in sales (Art. 10)	Microsoft case*	1998	Tie-sales of worksheet software and others
	Toshiba Elevator Techno case*	1993	Tie-sales of elevator machines and their maintenance services
Dealing on exclusive terms (Art. 11)	Toyo rice cleaning machine company case*	1984	Impediments of fair competition by exclusive agent systems
Resale price restriction (Art.12)	NTT docomo case	1997	Fixing of agents' prices at the level of its own branches by mobile phone companies
	Nike Japan case	1998	Resale price restrictions of sport shoes by account systems
	Ezai case	1991	Resale price restrictions and customer
	Sony computer entertainment case*	2001	Resale price restrictions of software and prohibitions of used sales
	Haagen-Dazs case	1997	Resale price restrictions of high class ice-
Dealing on restrictive terms (Art.13)	Fujiki case*	1998	Refusals to deal for not to implemente personal selling
	Tohoku cellular	1997	Restrictions of agents to display cellular prices by telecom companies
	Hobby Japan	1997	Restrictions of parallel imports by exclusive import agencies of trading card games
	Asahi Denkka case	1995	Restrictions to supply products after the concerned technology licenses are expired
Abuse of dominant bargaining position (Art. 14)	Lawson case	1998	Restrictive conducts against suppliers by a headquarter of convenience stores
	Zennoh (National Federation of Agricultural Co-operative Associations) case	1990	Abuse of dominant position to deal with cardboard sales by Zenno
Interference with a competitor's transaction (Art. 15)	Kanagawa cement producers assn. case	1990	Interference with non-member's transaction by cement producers assn.
	Radio Meter Trading Corp. case	1993	Interference with parallel imports by exclusive import agents

Overviews and Issues of Cases Selected by TCB

*Selected cases are useful to understand, in particular, the following issues, which are important concepts/tools to implement Competition Policies.

Type of cases	Year	Point of issues
Private Monopolization		
Private Monopolization		
Pachinko machines manufactures case*	1997	<p>[Overview of the case] Restrictions of new market entries through patent pools among Pachinko makers. [Monopolization] Dominance not of one company, but of an association composed of ten makers whose CR 10 was about 90% [Conducts/Behaviors] Exclusion by using the license of patent pool</p>
Paramount bed case	1998	<p>[Overview of the case] Exclusions of competitors and dominance of bidders through contacting with administrative bodies [Monopolization] Dominance of one company [Conducts/Behaviors] Building and strengthening market dominance through unfair interventions to "terms of reference" of a local government's bidding.</p>
Unfair Trade Practice		
Unfair Trade Practice		
Unfair Low Price Sales (Art.6)		
Tokyo public slaughter case	2000	<p>[Overview of the case] Tokyo public slaughter provided its service with the low price, which was under its competitor. [Legal character of accused] A public entity sponsored and operated by Tokyo prefecture [Low price without reasonable reasons] Lower than its competitor in Tokyo, but higher than those in other prefectures</p>
Damage suit by private greeting card makers*	1998	<p>[Overview of the case] Post office of Japan sold new year greeting cards at a low price. [Legal character of accused] Post office was operated by government in Japan [Definition of product market] Card generally/greeting cards/greeting cards with prize contests?</p>
Tie-in sales (Art. 10)		
Microsoft case	1998	<p>[Overview of the case] The accused forced computer makers to sell word processing software with spreadsheet one. [tying product/tied product] Excel was a tying product and Word was a tied. [Market power in tying product] Excel had a No. 1 share in spreadsheet software market. [Unfair effects to tied product market] Word became the best seller word processing software instead of Ichitaro, which was No.1 before.</p>

Overviews and Issues of Cases Selected by TCB

Unfair Trade Practice			
Dealing on exclusive terms (Art. 11)	Toyo rice cleaning machine company case*	1984	<p>[Overview of the case] The accused maker forced wholesalers (1) not to deal with products of its competitors and (2) not to sell its products to other wholesalers.</p> <p>[Unfair exclusive dealing] Vertical restraint and not per se illegal [Market power/foreclosure] Needs for an economic power in one product to be able to use as leverage to affect intrabrand sales</p>
Dealing on restrictive terms (Art.13)	Hobby Japan	1997	<p>[Overview of the case] The accused (exclusive import agencies of trading card games) restricted parallel imports.</p> <p>[Reasonable restrictions of parallel import] Promotion/advertisement fees, maintenance [Intellectual property and parallel import] Patentee is required to show its intent not to allow sales outside of the country in which the products sold</p>
Interference with a competitor's transaction (Art. 15)	Kanagawa cement producers assn. case	1990	<p>[Overview of the case] The accused (1) forced retailers not to deal with non-members of its associations and (2) stop dealing with those who violated the restriction.</p> <p>[Market definition] Limited area as geographic market [Unfair trade practice] Forcing retailers not to deal with outsiders</p>
Unreasonable Restraint of Trade			
	Triple transport fare		
	Kubota and others case	1999	<p>[Overview of the case] The accused allocated respective market shares. [Communication of intent] An agreement exists [Market definitions] direct sales with/without sales through wholesalers [Substantial restraint] Agreement on respective market shares</p>
	Maruzen and others case	1996	<p>[Overview of the case] The accused agreed on the markup prices of foreign books. [Communication of intent] An agreement exists. [Market definition] Foreign book sales to 6 major universities. [Substantial restraint] Common restraint among wholesalers (CR 50%). Note: the rest of the competitors will follow their markup prices</p>
Merger and Acquisition			
	Guideline (2004)		

Overview of the Recent Important Cases by JFTC

#	# of cases	Name of the case	Contents	Violated Articles	Date
Unfair Trade Practices (Abuse of Dominant Positions)					
1	16 (Re) 30	Mr. Max Corp. Case	The accused forced its suppliers the following conducts; <ul style="list-style-type: none"> To pay the amount, which is over those agreed at the contracts, To return the products, which is sold under the contract without any condition of returns. To send their staffs for the preparations of its opening/closing sales. 	Sec. 19 (Art. 14 of General Designations Art. 1 & 6 Special Designations on Departments)	2004.10.22
2	16 (Re) 31	Karakami Corp. Case	The accused hotel forced its suppliers the following conducts; <ul style="list-style-type: none"> To buy the ticket for staying its accommodations, To ask to join its own parties and to stay its accommodations 	Sec. 19 (Art. 14 of General Designations)	2004.10.28
3	16 (Re) 32	Konan Trading Corp. Case	The accused forced its suppliers the following conducts; <ul style="list-style-type: none"> To provide money for its sales programs without any rational reasons; To send staffs for its opening sales 	Sec. 19 (Art. 14 of General Designations Art. 6 of Special Designations on Departments)	2004.11.11
4	16 (Re) 2	Posful Corp. Case	The accused paid its suppliers the amount as payments less than those agreed on contracts without any fault of suppliers.	Sec. 19 (Art. 2 of Special Designations on Departments)	2004.3.25
5	16 (Re) 3	Sanyo Marunaka Corp. Case	The accused forced its suppliers to discount the amount of payments after making contracts and to send staffs for its own sales activities.	Sec. 19 (Art.1, 2, 6 of Special Designations on Departments)	2004.3.26
Unfair Trade Practices (Dealing on Exclusive Terms)					
6	15 (Re) 21	J-Phone Corp. Case	The accused forced retailers to exhibit the price of mobile phone at the level it decided.	Sec. 19 (Art. 13 of General Designations)	2003.7.28
Unfair Trade Practices (Interference with a competitor's transaction)					
7	15 (Re) 27	Yonnex Corp. Case	The accused sold shuttles for badminton. It indicated to its suppliers who imported shuttles to stop dealing if they would not stop imports.	Sec. 19 (Art. 15 of General Designations)	2003.10.24
8	14 (Re) 7	Mitsubishi Techno Service Case	The accused dealt with the company maintaining elevators made by Mitsubishi Electronic (the company is not belong to Mitsubishi group) as follows; <ul style="list-style-type: none"> To delay the deliveries of elevator parts even though it had the concerned stocks. To increase the prices of parts, without any rational reasons, for the clients with which it had maintenance contracts, 	Sec. 19 (Art. 15 of General Designations)	2002.6.11
9	14 (Re) 23	ALC Tokyo Association Case	The accused forced entrepreneurs, which were not its members to notify the constructions which they wanted to receive the orders and to force them not to join bids for any other constructions.	Sec. 19 (Art. 15 of General Designations)	2002.12.26

Seminar Matrixes of Cases Selected by TCB

	Unit 1	Unit 2	Unit 3	Unit 4	Total	Substantial	JFTC Recom.	Reasons / Remark
Dominant Position	4	3	4	3	14	1. Principle & Criterion 2. Cases - Pachinko Machines Manufactures Case. - Paramount Bed Case. - Mr. Max Corp. Case.	Mr. Max Case	2 days - To understand the competition in the markets and the reasons to adopt criteria of private monopolization in Japan. - To learn about trade practices and how to prove the offenses. - To gain more knowledge about anti-competitive practices, its effects and analytical techniques.
Unfair Trade Practice	1	1	2	2	6	1. Guideline 2. Cases		4 days - Most of the complaints received by T-TCC are Unfair Trade Practices. - To study Japanese guidelines for creating the idea in order to adopt Thai's guideline. - To examine the evidence method in proving the offenses.
						Toyo Rice Cleaning Machine Case.	J-Phone case Green Group case	
						Tokyo Public Slaughter Case.	-	
						Damage Suit by Private Greeting Card Makers Case.	-	
						Tie-in Sales (goods+goods) Case.	-	
						Kanagawa Cement Producers Assn. Case	J-Phone case Green Group case	
						Mitsubishi Techno Services Case	J-Phone case Yonex case	
						Hobby Japan Case.	Yonex case	
M&A	3	4	3	4	14	1. Principle & Criterion 2. Cases - Horizontal Collusion in Banking Sector. - Vertical Collusion in any business.	-	2 days - To know the basic idea and factors to be considered for Japanese Merger guideline. - To learn the analytical technique and case studies of transnational Merger. - To learn about types of merger under AMA including Merger guidelines

	Unit 1	Unit 2	Unit 3	Unit 4	Total	Substantial	JFTC Recom.	Reasons / Remark
Collusion	2	2	1	1	6	1. Investigation Technique. 2. International Cartels / Leniency Program. 3. Cases - Triple Transport Fare Case. - Kubota Case. - Maruzen Case.	-	4 days - To understand JFTC's investigation and interrogation techniques. - To learn more about types of international cartels and its remedies. - To study how to prove the anti-competitive offenses.
Case/Others	5	5	5	5	20			

December 2, 2004

Summary of Cases Selected by JFTC

	Yonex Case	J-Phone Case	Mitsubishi Techno Service Case	Mr. Max Case
Firm to receive recommendation	YONEX K.K., Tokyo: Main Business: manufacturing and selling of sporting equipments	J-PHONE Co., Ltd., Tokyo Main Business: first-class telecommunications carrier (mobile communications service and ancillary business)	Mitsubishi Techno Service Main Business: Manitanance provider/parts supper of elevators/escalators.	Mr. Max Co., Ltd., Fukuoka Main Business: Discount Supermarket
Background Information	(a) Feather shuttlecocks authorized for formal badminton matches are pupolar in the market and have a strong market power; (b) Yonex was the top maker of authorized shuttlecocks; (c) Since 1993, retailers started to import foreign makers' shuttlecocks because of its cheeper price.	(a) J-Phone was the third largest mob. comm. service provider in Japan; (b) The concerned mob. phone was quite popular and J-Phone had a power in the market.	(a) Mitsubishi Techno is a subsidiary of Mitsubishi Electronics Corp. which produce elevators/escalators, (b) Elevator/Escalator makers usually establish subsiriaries dealing with maintenance businesses of its own products, (c) Independent maintenance service providers provide their services at the cost below those of subsidiaries, (d) Maintenace of elevators/escalators requires special parts sololy provided from the makers.	(a) Mr. Max is one of the largest discount retailer in Kyushu Area of Japan. (b) Mr. Max dealt with more than 300 suppliers. The periodical deals with Mr. Max is quite important for the suppliers, therefore Mr. Max had a market power.
Outline of Violation	YONEX is unjustly hindering the business of import/sales companies as follows: (a)(i) YONEX is urging retailers to sell YONEX feather shuttlecocks and to switch from the imports to YONEX shuttlecocks, and (ii) In cases where client retailers sell the imported shuttlecocks, YONEX is urging the retailers to refrain from selling its shuttle. (b) YONEX is urging promoters and organizers of badminton competitions not to use imported shuttlecocks by hinting that, if they accept support from import/sales companies, YONEX will withhold its support for said competition.	(a) J-PHONE had made its agencies and retailers display in shops and on leaflets "reference price" or "assumed price" which J-PHONE designated as guides of selling prices to consumers (b) The concerned phone was new and popular models of J-PHONE branded mobile phones with camera. (c) Those phones were sold to consumers who newly sign on for mobile phone service in Kanto Koushin district.	The accused dealt with the company maintaining elevators made by Mitsubishi Electronic (the company is not belong to Mitsubishi group) as follows: To delay the deliveries of elevator parts even though it had the concerned stocks. To increase the prices of parts, without any rational reasons, for the clients with which it had maintenance contracts,	The accused forced its suppliers the following conducts; (a) to discount the amount agreed at the contracts; (b) to receive the unsold products, which is supplied under the contract without any condition of returns. (c) to send their staffs for the preparations of its opening/closing sales.

Summary of Cases Selected by JFTC

	Yonex Case	J-Phone Case	Mitsubishi Techno Service Case	Mr. Max Case
Outline of Elimination Measures	<p>(a) YONEX shall refrain from the activities mentioned above.</p> <p>(b) YONEX shall notify import/sales companies, client retailers, and promoters/organizers of badminton competitions not to conduct actions similar to those above mentioned in the future.</p> <p>(c) YONEX shall not engage in activities similar to these described in ithe above in the future.</p>	<p>(a) J-PHONE shall confirm that it ceased the above acts</p> <p>(b) J-PHONE shall notify the agents, retailers and consumers that it will refrain from the above measures in the future.</p> <p>(c) J-PHONE shall not act the same kind of acts as the above in the future.</p>	<p>(a) Mitsubishi Techno shall confirm that it ceased the above acts,</p> <p>(b) Mitsubishi Techno shall revise the internal manual that interfere with the free and fair competition in the concerned market.</p> <p>(c) Mitsubishi Techno shall notify the agents, retailers and consumers that it will refrain from the above measures in the future.</p>	<p>(a) Mr. Max should cease the acts mentioned in the above;</p> <p>(b) Mr. Max should inform its suppliers that it will refrain from any acts similar to the above in the future;</p> <p>(c) Mr. Max should refrain from any acts similar to those described above in the future.</p>

ANNEX III - 2

Documents for the Second Workshop

- Moot Court Practice -

Moot Court Practice

Students are divided into two groups: Group A and Group B. Group A is the Claimant in the Dispute, and Group B is the Respondent.

1) Preparations for Written Submissions

- (1) Each Group prepares written submissions. Group A prepares a submission challenging the measure of the Respondent in question and Group B prepares a submission defending the measure.
- (2) While both Groups prepare submissions, the Advisors visit both camps and give necessary advices and suggestions to both Groups.
- (3) Submissions should not be longer than 10 pages. They should be typewritten and double spaced on A4 sheets.
- (4) When submissions are completed, both Groups turn them in to the Advisors and to each other.
- (5) The Advisors and each Group study the submissions.

2) Oral Hearings and Debates

- (1) Group A sits on one side of the room and Group B sits on the other side and the Advisors sit facing both Groups.
- (2) The Advisors announce the opening of oral hearing and give necessary instructions.
- (3) Each Group is given the maximum of 15 minutes to present its view.
- (4) Each Group is given the maximum of 10 minutes to bring counter-arguments to each other.
- (5) The Advisors ask questions to both Groups and each group responds to them.
- (6) Both Groups are given a chance to make final statements. Final statements should not be more than 10 minutes.
- (7) Coffee break
- (8) The Advisors comment on the positions of each Group (or alternatively, the Advisors render a judgment declaring that one or the other party prevailed.)

ANNEX III - 3

Documents for the Third Workshop

- Role Playing Materials -

การสัมมนาเชิงปฏิบัติการครั้งที่ 3
– ข้อเสนอ Role Playing (Mission Letter) –

สถาบันวิจัย UFJ

[ข้อเท็จจริงส่วนกลาง]

(แผ่นเหล็กกล้าสเตนเลสรีดเย็น)

แผ่นเหล็กกล้าและแถบเหล็กกล้าสเตนเลสรีดเย็น แบ่งเป็นสเตนเลสประเภทโครเมียม-นิกเกิล ซึ่งประกอบด้วยเหล็กโครเมียม และนิกเกิลเป็นหลัก (ต่อไปนี้จะเรียกว่า “ประเภทนิกเกิล”) และสเตนเลสประเภทโครเมียมซึ่งประกอบด้วยเหล็กและโครเมียมเป็นหลัก (ต่อไปนี้จะเรียกว่า “ประเภทโครเมียม”)

(บริษัทผู้ต้องสงสัย)

ขอขยายแผ่นเหล็กกล้าและแถบเหล็กกล้าสเตนเลสรีดเย็นของบริษัทผู้ต้องสงสัย A บริษัทผู้ต้องสงสัย B บริษัทผู้ต้องสงสัย C บริษัทผู้ต้องสงสัย D คิดเป็นเกือบทั้งหมดของขอขยายแผ่นเหล็กกล้าและแถบเหล็กกล้าสเตนเลสรีดเย็นในประเทศ X ในการจำหน่ายแผ่นเหล็กกล้าสเตนเลสรีดเย็นของบริษัททั้ง 4 ข้างต้น มีวิธียาหน่ายแบบธุรกรรมขายผ่านร้านและแบบธุรกรรมตรง บริษัททั้ง 4 จำหน่ายแผ่นเหล็กกล้าและแถบเหล็กกล้าสเตนเลสรีดเย็นเกือบทั้งหมดด้วยวิธีการทั้งคู่นี้

* บริษัทผู้ต้องสงสัย A

เป็นบริษัทเจ้าภาพในการร่วมกันตกลงราคาขาย (cartel) แผ่นเหล็กกล้าสเตนเลสรีดเย็น เป็นผู้ผลิตแผ่นเหล็กกล้าสเตนเลสรีดเย็นรายใหญ่ที่สุดในประเทศ (ส่วนแบ่งตลาด 45%) อัตราการเดินเครื่องของโรงงานผลิตเท่ากับ 90% เงินทุนจดทะเบียนเป็นทุนในประเทศ 100%

* บริษัทผู้ต้องสงสัย B

เป็นผู้ผลิตแผ่นเหล็กกล้าสเตนเลสรีดเย็นอันดับสองในประเทศ (ส่วนแบ่งตลาด 30%) อัตราการเดินเครื่องของโรงงานผลิตเท่ากับ 70% เงินทุนจดทะเบียนเป็นทุนในประเทศ 100%

* บริษัทผู้ต้องสงสัย C

เป็นผู้ผลิตแผ่นเหล็กกล้าสเตนเลสรีดเย็นอันดับสามในประเทศ (ส่วนแบ่งตลาด 20%) อัตราการเดินเครื่องของโรงงานผลิตเท่ากับ 70% เงินทุนจดทะเบียนเป็นทุนต่างประเทศ 51% ในประเทศ 49%

* บริษัทผู้ต้องสงสัย D

เริ่มเข้ามาในตลาดแผ่นเหล็กกล้าสเตนเลสรีดเย็นเมื่อ พ.ศ. 2543 (ส่วนแบ่งตลาด 1-2%) อัตราการเดินเครื่องของโรงงานผลิตเท่ากับ 30% เงินทุนจดทะเบียนเป็นทุนต่างประเทศ 100%

(การเปลี่ยนแปลงราคาของแผ่นเหล็กกล้าสเตนเลสรีดเย็น)

เม.ย. 2544: ราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็นในธุรกรรมขายผ่านร้านค้า

ม.ค. 2545: ราคาแผ่นเหล็กกล้าสเตนเลสรีดเย็น (ทั้งประเภทนิกเกิลและประเภทโครเมียม) ที่ซื้อจากผู้จำหน่ายบางราย เพิ่มสูงขึ้นอย่างละกิโลกรัมละ 20 เยน

ก.ย. 2545: ราคาแผ่นเหล็กกล้าสเตนเลสรีดเย็นที่ซื้อจากผู้จำหน่ายทุกราย เพิ่มสูงขึ้นกิโลกรัมละ 20 เยน (ประเภทนิกเกิล) และกิโลกรัมละ 10 เยน (ประเภทโครเมียม)

ก.พ. 2546: ราคาแผ่นเหล็กกล้าสเตนเลสรีดเย็นที่ซื้อจากผู้จำหน่ายบางราย ประเภทนิกเกิลเพิ่มสูงขึ้นกิโลกรัมละ 20 เยน และประเภทโครเมียมเพิ่มสูงขึ้นกิโลกรัมละ 10 เยน

(อื่นๆ)

ข้อเท็จจริงที่ไม่ได้ระบุไว้ในหนังสือแจ้งภารกิจ (mission letter) แต่ละฉบับ กล่าวคือ คุณสมบัติและวัตถุประสงค์การใช้งานของแผ่นเหล็กกล้าสเตนเลสรีดเย็น รวมทั้งแนวโน้มของวงการ ฯลฯ ให้เป็นไปตามคดีร่วมกันตกลงราคาขาย (cartel) แผ่นเหล็กกล้าสเตนเลสรีดเย็นในประเทศญี่ปุ่น

[TCB]

(เบื้องหลังการเริ่มตรวจสอบ)

เมื่อเดือนมีนาคม 2546 TCB ได้รับแจ้งจากผู้แจ้งเบาะแส X, Y ซึ่งไม่มีความเกี่ยวข้องกัน เกี่ยวกับข้อสงสัยในการร่วมกันตกลงราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็น จึงตัดสินใจเริ่มตรวจสอบ

(ข้อมูลเกี่ยวกับผู้แจ้งเบาะแส)

ข้อมูลที่ได้รับจากผู้แจ้งเบาะแส X, Y (ข้อมูลเบื้องต้น) มีเพียงข้อมูลที่ระบุไว้ในหนังสือแจ้งภารกิจในหัวข้อ [ข้อเท็จจริงส่วนกลาง] เนื่องจาก X เป็นผู้ให้ข้อมูลที่ใช้นามแฝง ดังนั้น TCB จึงไม่สามารถติดต่อได้ ขณะที่ Y เป็นบริษัทลูกค้าที่ซื้อแผ่นเหล็กกล้าสเตนเลสรีดเย็น ซึ่ง TCB สามารถติดต่อได้

(ข้อมูลเกี่ยวกับบริษัทผู้ต้องสงสัย)

สำหรับบริษัทผู้ต้องสงสัย TCB ไม่มีข้อมูลอื่นใดนอกจากข้อมูลที่ระบุไว้ในหนังสือแจ้งภารกิจในหัวข้อ [ข้อเท็จจริงส่วนกลาง] อนึ่ง TCB สามารถติดต่อกับบริษัทผู้ต้องสงสัยได้ แต่เสี่ยงต่อการทำลายหลักฐานข้อมูลที่เกี่ยวข้องต่างๆ

(ภารกิจ)

จรวบรวมข้อมูลที่ทำเป็นในการเสนอต่อ TCC ให้เริ่มตรวจสอบ อย่างไรก็ตาม เนื่องจากยังไม่ได้เริ่มวินิจฉัย (และยังไม่ได้เข้าตรวจค้น) จึงต้องระมัดระวังไม่ให้บริษัทผู้ต้องสงสัยซึ่งทำลายหลักฐานข้อมูลที่เกี่ยวข้อง นอกจากนั้น ในการขอข้อมูลที่จะยึดมั่นข่าจากผู้แจ้งเบาะแส จะต้องคำนึงถึงฐานะและสถานะของผู้แจ้งเบาะแสด้วย อนึ่ง ถ้าสมมติว่ามีระบบการต่อรองลดหย่อนผ่อนโทษ (เช่น ค่าปรับเพื่อยุติคดี ค่าปรับที่เป็นโทษอาญา ฯลฯ) จงพิจารณาว่าจะมีมาตรการดำเนินการอย่างไร

[บริษัทผู้ต้องสงสัย A]

(สถานะ)

เป็นบริษัทเจ้าภาพในการร่วมกันตกลงราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็น เป็นผู้ผลิตแผ่นเหล็กกล้าสเตนเลสรีดเย็นรายใหญ่ที่สุดในประเทศ (ส่วนแบ่งตลาด 45%) อัตราการเดินเครื่องของโรงงานผลิตเท่ากับ 90% เงินทุนจดทะเบียนเป็นทุนในประเทศ 100%

(การประชุมราคา)

บริษัททั้ง 4 ได้จัดการประชุมผู้รับผิดชอบการขายของบริษัททั้ง 4 เช่น การประชุมระดับผู้จัดการฝ่ายที่รับผิดชอบการขาย การประชุมระดับผู้จัดการแผนกที่รับผิดชอบการขาย ฯลฯ โดยมีบริษัท A เป็นเจ้าภาพตั้งแต่ที่ผ่านมามีอยู่แล้ว และมีการแลกเปลี่ยนข้อมูลเกี่ยวกับราคาขายแผ่นเหล็กกล้าและแถบเหล็กกล้าสเตนเลสรีดเย็นที่จำหน่ายด้วยธุรกรรมขายผ่านร้านและแผ่นเหล็กกล้าและแถบเหล็กกล้าสเตนเลสรีดเย็นที่จำหน่ายด้วยธุรกรรมตรงมาตลอด

กันยายน 2544

ตั้งแต่ พ.ศ. 2543 เป็นต้นมา สภาพตลาดแม้ว่าวัตถุดิบเหล็กกล้าดิบในระยะหลังจะมีราคาแพงทำให้มีต้นทุนสูง แต่เนื่องจากมีการแข่งขันรุนแรง จึงไม่สามารถผลักดันต้นทุนไปเพิ่มในราคาขายได้ ในขณะเดียวกัน บริษัท D ซึ่งเป็นบริษัทสัญชาติต่างชาติที่เข้ามาในตลาดเป็นรายใหม่ ได้เข้ามาในตลาดด้วยราคาต่ำใกล้เคียงกับการทุ่มตลาด และกำลังมีส่วนแบ่งมากขึ้นในตลาด เมื่อเดือนกันยายน 2544 บริษัท A ซึ่งรู้สึกวิตกกังวลกับภาวะเช่นนี้ ได้ทาบทามบริษัท B บริษัท C บริษัท D ที่ละแห่งให้ขึ้นราคาขาย และจัดประชุมระดับผู้จัดการฝ่ายขายของบริษัททั้ง 4 ขึ้น

การประชุมจัดขึ้นในเดือนตุลาคมปีเดียวกัน ในที่ประชุมดังกล่าว ได้มีการหารือเกี่ยวกับการจำกัดปริมาณการขายโดยมีวัตถุประสงค์เพื่อขึ้นราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็น เนื่องจากบริษัท D ได้แสดงเจตนาไม่เข้าร่วมกันตกลงราคาขาย การประชุมหลังจากนั้นจึงจัดขึ้น โดยมีตัวแทนจากบริษัท 3 รายที่เหลือเท่านั้น ในการประชุมของบริษัททั้ง 3 หลังจากนั้น ได้มีการพิจารณาถึงระดับราคาอย่างเป็นรูปธรรมและเวลาที่会上ราคาขาย การกำหนดส่วนแบ่งตลาดให้คงที่ การห้ามแย่งลูกค้า การแบ่งเขตพื้นที่ วิธีประกันผลบังคับใช้ (การเฝ้าติดตามยอดขายและราคา การลงโทษ) ฯลฯ และได้ตกลงกันขึ้นราคาทั้งประเภทนิกเกิลและประเภทโครเมียมจากราคาขายปัจจุบันที่โลกริมละประมาณ 25 เยนสำหรับส่วนที่จะทำสัญญาตั้งแต่เดือนมกราคม 2545 อนึ่ง สำหรับเวลาแถลงข่าวต่อสื่อมวลชน ได้ตกลงกันที่จะกำหนดเวลาให้หล้อมกันจากบริษัท A → บริษัท B → บริษัท C ตามลำดับ

เดือนพฤศจิกายน 2544 จากข้อตกลงในที่ประชุมผู้จัดการฝ่ายขายข้างต้น มีการจัดประชุมราคาโดยกรรมการบริหารของบริษัททั้ง 3 ข้างต้น (บริษัท A บริษัท B บริษัท C) ในที่ประชุมดังกล่าว ได้ตกลงกันขึ้นราคาทั้งประเภทนิกเกิลและประเภทโครเมียมจากราคาขายปัจจุบันที่โลกริมละประมาณ 20 เยนสำหรับส่วนที่จะทำสัญญาตั้งแต่เดือนมกราคม 2545 เป็นต้นไป จากข้อตกลงดังกล่าว แต่ละบริษัทได้ออกคำสั่งภายในเกี่ยวกับการขึ้นราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็นในธุรกรรมขายผ่านร้าน

พฤษภาคม 2545

เดือนพฤษภาคม 2545 บริษัททั้ง 3 เห็นว่าถึงแม้ผู้จำหน่ายบางส่วนจะยอมรับการขึ้นราคาขายตามข้อตกลงข้างต้น แต่ก็ยังไม่บรรลุวัตถุประสงค์เพียงพอ จึงจัดการประชุมระดับผู้จัดการฝ่ายที่รับผิดชอบการขายระหว่างบริษัททั้ง 3 ขึ้น ในที่ประชุมดังกล่าว ได้มีการพิจารณาถึงความจำเป็นในการขึ้นราคาขายแผ่นเหล็กกล้าและสเตนเลสรีดเย็นในธุรกรรมขายผ่านร้าน ระดับราคาอย่างเป็นรูปธรรมและเวลาที่จะขึ้นราคาขาย เป็นต้น และได้ตกลงกันขึ้นราคาประเภทนิกเกิลทีโลกรัมละประมาณ 20 เยน และประเภทโครเมียมทีโลกรัมละประมาณ 10 เยนสำหรับส่วนที่จะทำสัญญาตั้งแต่เดือนกันยายน 2545 เป็นต้นไป นอกจากนี้ สำหรับเวลาแถลงข่าวต่อสื่อมวลชน ยังได้ตกลงกันที่จะกำหนดเวลาไม่ให้ตรงกันอีกด้วย

เดือนมิถุนายน 2545 จากข้อตกลงในที่ประชุมผู้จัดการฝ่ายขายข้างต้น มีการจัดประชุมราคาโดยกรรมการบริหารของบริษัททั้ง 3 ในที่ประชุมดังกล่าว ได้ตกลงกันขึ้นราคาประเภทนิกเกิลทีโลกรัมละ 20 เยน และประเภทโครเมียมทีโลกรัมละ 10 เยนจากราคาขายปัจจุบันทีโลกรัมละประมาณ 20 เยนสำหรับส่วนที่จะทำสัญญาตั้งแต่เดือนกันยายน 2545 เป็นต้นไป อนึ่ง ในการประชุมครั้งนี้ กรรมการบริหารรับผิดชอบการขายของบริษัท A ซึ่งมีบทบาทเป็นเจ้าภาพ ได้กล่าวว่า “ถ้าไม่ขึ้นราคาครั้งนี้ แต่ละบริษัทน่าจะต้องขาดทุน ดังนั้น แต่ละบริษัทมีอิสระที่จะขึ้นราคาหรือไม่ก็ได้ แต่ถ้าขาดทุน พวกคุณก็แค่ต้องออกจากตำแหน่งเท่านั้น” จากข้อตกลงดังกล่าว แต่ละบริษัทได้ออกคำสั่งภายในเกี่ยวกับการขึ้นราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็นในธุรกรรมขายผ่านร้าน

มกราคม 2546

เดือนมกราคม 2546 จากการที่นิกเกิลมีราคาสูงขึ้นตั้งแต่เดือนตุลาคม 2545 เป็นต้นมา ผู้จัดการที่รับผิดชอบการขายของบริษัททั้ง 3 ข้างต้น ได้พิจารณาถึงความจำเป็นในการขึ้นราคาขายแผ่นเหล็กกล้าและสเตนเลสรีดเย็นในธุรกรรมขายผ่านร้าน ระดับราคาอย่างเป็นรูปธรรมและเวลาที่จะขึ้นราคาขาย การกำหนดส่วนแบ่งตลาดให้คงที่ การห้ามแย่งลูกค้า การแบ่งเขตพื้นที่ วิธีประกันผลบังคับใช้ (การเฝ้าติดตามยอดขายและราคา การลงโทษ) ฯลฯ และได้ตกลงกันขึ้นราคาประเภทนิกเกิลทีโลกรัมละประมาณ 20 เยน และประเภทโครเมียมทีโลกรัมละประมาณ 10 เยนสำหรับส่วนที่จะทำสัญญาตั้งแต่เดือนกุมภาพันธ์ 2546 เป็นต้นไป นอกจากนี้ สำหรับเวลาแถลงข่าวต่อสื่อมวลชน ยังได้ตกลงกันที่จะกำหนดเวลาไม่ให้ตรงกันอีกด้วย ในเดือนเดียวกัน ได้มีการประชุมราคาโดยกรรมการบริหาร ซึ่งได้รับรองเนื้อหาข้อตกลงในที่ประชุมผู้จัดการฝ่าย และแต่ละบริษัทได้ออกคำสั่งภายในเกี่ยวกับการขึ้นราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็นในธุรกรรมขายผ่านร้าน

อนึ่ง เอกสารที่แจกประกอบการอธิบายในการประชุมราคาทั้ง 3 ครั้งข้างต้น เมื่อประชุมเสร็จแล้วจะเก็บคืนทุกครั้ง รวมทั้งห้ามผู้เข้าร่วมประชุมจดบันทึกด้วย

(ภารกิจ)

สมมติว่า TCB จะเริ่มตรวจสอบ จงพิจารณาการแก้ต่างเรื่องความเคลื่อนไหวของราคาผลิตภัณฑ์ซึ่งมีการขึ้นราคาพร้อมๆ กัน อนึ่งสำหรับเรื่องการประชุมราคาว่าได้จัดขึ้นหรือไม่นั้น เนื่องจากไม่ทราบแน่ชัดว่าทาง TCB ทราบข้อมูลแล้วหรือไม่ ดังนั้น จงพิจารณามาตรการรองรับในทั้งสองกรณี นอกจากนี้ ถ้าสมมติว่ามีระบบการต่อรองลดหย่อนผ่อนโทษ จงพิจารณาว่าจะมีมาตรการดำเนินการ (โดยเฉพาะอย่างยิ่งต่อบริษัท C และบริษัท D) อย่างไร

[บริษัทผู้ต้องสงสัย B]

(สถานะ)

เข้าร่วมการร่วมกันตกลงราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็น เป็นผู้ผลิตแผ่นเหล็กกล้าสเตนเลสรีดเย็นอันดับสองในประเทศ (ส่วนแบ่งตลาด 30%) อัตราการเดินเครื่องของโรงงานผลิตเท่ากับ 70% เงินทุนจดทะเบียนเป็นทุนในประเทศ 100%

(การประชุมราคา)

เหมือนบริษัทผู้ต้องสงสัย A

(คำสั่งภายในบริษัท)

ธันวาคม 2544

จากข้อตกลงในการประชุมราคาเมื่อเดือนกันยายน 2544 ในเดือนธันวาคม 2544 บริษัทนี้ได้แจกจ่ายเอกสารที่มีชื่อว่า “นโยบายการขึ้นราคา: ธันวาคม 2544” ให้แก่พนักงานที่มีหน้าที่จำหน่ายภายในบริษัท ซึ่งมีคำสั่งการให้ขึ้นราคาที่จำหน่ายให้แก่ผู้จำหน่าย เอกสารดังกล่าวระบุว่า “เนื่องจากนโยบายของวงการ ได้ถูกกำหนดขึ้นดังต่อไปนี้ จึงแจ้งมาเพื่อทราบ (... ละไว้ ...) สำหรับบริษัทฯ เอง การขึ้นราคาในระดับทั้งวงการ เป็นสิ่งที่ต้องทำให้สำเร็จให้จงได้ ดังนั้น จากข้อตกลงในที่ประชุมกรรมการบริหาร จึงได้กำหนดนโยบายของบริษัทฯ ให้สอดคล้องกับของวงการ” อนึ่ง ที่หน้าปกของเอกสารฉบับดังกล่าว มีเครื่องหมาย DIT แสดงไว้ ซึ่งเป็นเครื่องหมายแสดงเจตนากรณีให้ระมัดระวัง TCB รวมทั้งมีข้อความว่า “ระมัดระวังการดูแลจัดการ (handling) อย่างเข้มงวด”

สิงหาคม 2545

จากข้อตกลงในที่ประชุมราคาเมื่อเดือนพฤษภาคม 2545 เมื่อเดือนสิงหาคม 2545 บริษัทนี้ได้แจกจ่ายเอกสารที่มีชื่อว่า “นโยบายการขึ้นราคา: สิงหาคม 2545” ให้แก่พนักงานที่มีหน้าที่จำหน่ายภายในบริษัท ซึ่งมีคำสั่งการให้ขึ้นราคาที่จำหน่ายให้แก่ผู้จำหน่าย เอกสารดังกล่าวระบุว่า “การแถลงข่าวเรื่องเวลาขึ้นราคา จะต้องใช้ความระมัดระวังอย่างเพียงพอไม่ให้ถูกจับได้ว่าที่จริงแล้วเป็นการขึ้นราคาด้วยกัน” อนึ่ง ที่หน้าปกของเอกสารฉบับดังกล่าว ก็มีเครื่องหมาย DIT แสดงไว้ รวมทั้งมีข้อความว่า “ระมัดระวังการดูแลจัดการ (handling) อย่างเข้มงวด” เช่นกัน

มกราคม 2546

จากข้อตกลงในที่ประชุมราคาเมื่อเดือนมกราคม 2546 ในเดือนเดียวกัน บริษัทนี้ได้แจกจ่ายเอกสารที่มีชื่อว่า “นโยบายการขึ้นราคา: มกราคม 2546” ให้แก่พนักงานที่มีหน้าที่จำหน่ายภายในบริษัท ซึ่งมีคำสั่งการให้ขึ้นราคาที่จำหน่ายให้แก่ผู้จำหน่าย เอกสารดังกล่าวระบุว่า “สำหรับนโยบายของวงการเกี่ยวกับการขึ้นราคา เพื่อไม่ให้เกิดความเดือนร้อนแก่บริษัทอื่น บริษัทฯ เองจึงต้องการระมัดระวังการดูแลจัดการ (handling) ให้มากขึ้นกว่าที่ผ่านมา เช่น เรื่องการจัดเก็บและแจ้งส่งเอกสารเกี่ยวกับการขึ้นราคา เป็นต้น ดังนั้น โปรดให้คำแนะนำสั่งการแก่พนักงานแผนกจำหน่ายต่างๆ ด้วย” อนึ่ง ที่หน้าปกของเอกสารฉบับดังกล่าว ก็มีเครื่องหมาย DIT แสดงไว้ รวมทั้งมีข้อความว่า “ระมัดระวังการดูแลจัดการ (handling) อย่างเข้มงวด” เช่นกัน

(ภารกิจ)

สมมติว่า TCB จะเริ่มตรวจสอบ จงพิจารณาการแก้ต่างเรื่องความเคลื่อนไหวของราคาผลิตภัณฑ์ซึ่งมีการขึ้นราคาพร้อมๆ กัน หนึ่งสำหรับเรื่องการประชุมราคาว่าได้จัดขึ้นหรือไม่ นั่น เนื่องจากไม่ทราบแน่ชัดว่าทาง TCB ทราบข้อมูลแล้วหรือไม่ ดังนั้น จงพิจารณามาตรการรองรับในทั้งสองกรณี นอกจากนั้น ถ้าสมมติว่ามีระบบการต่อรองลดหย่อนผ่อนโทษ จงพิจารณาว่าจะมีมาตรการดำเนินการ (โดยเฉพาะอย่างยิ่งต่อบริษัท C และบริษัท D) อย่างไร

[บริษัทผู้ต้องสงสัย C]

(สถานะ)

เข้าร่วมการร่วมกันตกลงราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็น เป็นผู้ผลิตแผ่นเหล็กกล้าสเตนเลสรีดเย็นอันดับสามในประเทศ (ส่วนแบ่งตลาด 20%) อัตราการเดินเครื่องของโรงงานผลิตเท่ากับ 70% เงินทุนจดทะเบียนเป็นทุนต่างประเทศ 51% ทุนในประเทศ 49% เนื่องจากเป็นบริษัทต่างชาติ จึงได้รับคำสั่งสำนักงานใหญ่ในประเทศต้นกำเนิดให้ปฏิบัติตามกฎหมาย (compliance) อย่างเคร่งครัด ดังนั้นเรื่องการจะเข้าร่วมกันตกลงราคาขายหรือไม่ นั่น ได้มีการพิจารณากันภายในบริษัทที่ถูกญี่ปุ่นแล้ว แต่เนื่องจากอยู่ในลำดับต่ำในวงการ หากไม่เข้าร่วมกันตกลงราคาขาย อาจจะถูกแย่งส่วนแบ่งตลาดไปได้ ดังนั้นจึงเข้าร่วมอย่างไม่กระตือรือร้นเท่าใดนัก

(การประชุมราคา)

เหมือนบริษัทผู้ต้องสงสัย A

(ภารกิจ)

สมมติว่า TCB จะเริ่มตรวจสอบ จงพิจารณาการแก้ต่างเรื่องความเคลื่อนไหวของราคาผลิตภัณฑ์ซึ่งมีการขึ้นราคาพร้อมๆ กัน หนึ่งสำหรับเรื่องการประชุมราคาว่าได้จัดขึ้นหรือไม่ นั่น เนื่องจากไม่ทราบแน่ชัดว่าทาง TCB ทราบข้อมูลแล้วหรือไม่ ดังนั้น จงพิจารณามาตรการรองรับในทั้งสองกรณี และจงพิจารณาข้อดีและข้อเสียของการให้ข้อมูลเรื่อง “การประชุมราคา” แก่ TCB และพิจารณาว่าในกรณีที่มีสภาพการณ์เช่นไรจึงจะสามารถให้ข้อมูลแก่ TCB ได้ และในกรณีนั้นจะสามารถให้ข้อมูลได้เพียงใด (หรือว่าไม่สามารถให้ข้อมูลได้ไม่ว่ากรณีใดๆ) นอกจากนั้น ถ้าสมมติว่ามีระบบการต่อรองลดหย่อนผ่อนโทษ จงพิจารณาว่าจะมีมาตรการดำเนินการอย่างไร

[บริษัทผู้ต้องสงสัย D]

(สถานะ)

เข้าร่วมการร่วมกันตกลงราคาขายแผ่นเหล็กกล้าสเตนเลสรีดเย็น เริ่มเข้ามาในตลาดแผ่นเหล็กกล้าสเตนเลสรีดเย็นเมื่อ พ.ศ. 2543 (ส่วนแบ่งตลาด 1-2%) อัตราการเดินเครื่องของโรงงานผลิตเท่ากับ 30% เงินทุนจดทะเบียนเป็นทุนต่างประเทศ 100% หนึ่ง แม้ว่าในตอนแรกบริษัท D จะเข้าร่วมประชุมราคาโดยบริษัททั้ง 4 แต่ก็ไม่ได้ขึ้นราคาตามนโยบายดังกล่าวเพราะต้องการเพิ่มส่วนแบ่งตลาด

(การประชุมราคา)

บริษัททั้ง 4 ได้จัดการประชุมผู้รับผิดชอบการขายของบริษัททั้ง 4 เช่น การประชุมระดับผู้จัดการฝ่ายที่รับผิดชอบ

การขาย การประชุมระดับผู้จัดการแผนกที่รับผิดชอบการขาย ฯลฯ โดยมีบริษัท A เป็นเจ้าภาพตั้งแต่ที่ผ่านมามีอยู่แล้ว และมีการแลกเปลี่ยนข้อมูลเกี่ยวกับราคาขายแผ่นเหล็กกล้าและแถบเหล็กกล้าสแตนเลสรีดเย็นที่จำหน่ายด้วยธุรกรรมขายผ่านร้านและแผ่นเหล็กกล้าและแถบเหล็กกล้าสแตนเลสรีดเย็นที่จำหน่ายด้วยธุรกรรมตรงมาตลอด

กันยายน 2544

ตั้งแต่ พ.ศ. 2543 เป็นต้นมา สภาพตลาดแม้ว่าวัตถุดิบเหล็กกล้าดิบในระยะหลังจะมีราคาแพงทำให้มีต้นทุนสูง แต่เนื่องจากมีการแข่งขันรุนแรง จึงไม่สามารถผลักดันต้นทุนไปเพิ่มในราคาขายได้ ในขณะเดียวกัน บริษัท D ซึ่งเป็นบริษัทสัญชาติต่างชาติที่เข้ามาในตลาดเป็นรายใหม่ ได้เข้ามาในตลาดด้วยราคาต่ำใกล้เคียงกับการทุ่มตลาด และกำลังมีส่วนแบ่งมากขึ้นในตลาด เมื่อเดือนกันยายน 2544 บริษัท A ซึ่งรู้สึกวิตกกังวลกับภาวะเช่นนี้ ได้ทาบทามบริษัท B บริษัท C บริษัท D ที่ละแห่งให้ขึ้นราคาขาย และจัดประชุมระดับผู้จัดการฝ่ายขายของบริษัททั้ง 4 ขึ้น การประชุมจัดขึ้นในเดือนตุลาคมปีเดียวกันในที่ประชุมดังกล่าว ได้มีการหารือเกี่ยวกับการจำกัดปริมาณการขายโดยมีวัตถุประสงค์เพื่อขึ้นราคาขายแผ่นเหล็กกล้าสแตนเลสรีดเย็น เนื่องจากบริษัท D ได้แสดงเจตนาจะไม่เข้าร่วมกันตกลงราคาขาย การประชุมหลังจากนั้นจึงจัดขึ้น โดยมีตัวแทนจากบริษัท 3 รายที่เหลือเท่านั้น

อนึ่ง จากการที่แสดงเจตนาไม่เข้าร่วมกันตกลงราคาขาย ทำให้บริษัททั้ง 3 ปฏิเสธไม่ยอมให้ข้อมูลเกี่ยวกับวงการ รวมทั้งยังถูกรุมแกล้งขยี้ให้แก่ลูกค้าของบริษัท D อีกด้วย ดังนั้นถึงแม้ว่าไม่ได้ร่วมกันตกลงราคาขาย แต่ผลประกอบการก็ไม่ค่อยกระเตื้องเท่าใด

(ภารกิจ)

เนื่องจากเป็นบริษัทต่างชาติ นอกจากจะได้รับคำสั่งสำนักงานใหญ่ในประเทศต้นกำเนิดให้ปฏิบัติตามกฎหมาย (compliance) อย่างเคร่งครัดแล้ว ยังเป็นบริษัทรายใหม่ที่เข้ามาในตลาด และมีอัตราการเดินเครื่องของโรงงานผลิตต่ำ จึงไม่ได้เข้าร่วมกันตกลงราคาจริงๆ

สมมติว่า TCB จะเริ่มตรวจสอบ จงพิจารณาการแก้ต่างเรื่องความเคลื่อนไหวของราคาผลิตภัณฑ์ซึ่งมีการขึ้นราคาพร้อมๆ กัน อนึ่งสำหรับเรื่องการประชุมราคาว่าได้จัดขึ้นหรือไม่นั้น เนื่องจากไม่ทราบแน่ชัดว่าทาง TCB ทราบข้อมูลแล้วหรือไม่ ดังนั้น จงพิจารณามาตรการรองรับในทั้งสองกรณี และจงพิจารณาข้อดีและข้อเสียของการให้ข้อมูลเรื่อง “การประชุมราคา” แก่ TCB และพิจารณาว่าในกรณีที่มีสภาพการณ์เช่นไรจึงจะสามารถให้ข้อมูลแก่ TCB ได้ และในกรณีนั้นจะสามารถให้ข้อมูลได้เพียงใด นอกจากนี้ ถ้าสมมติว่ามีระบบการต่อรองลดหย่อนผ่อนโทษ จงพิจารณาว่าจะมีมาตรการดำเนินการอย่างไร

[ผู้แจ้งเบาะแส X]

(สถานะ)

เป็นพนักงานของบริษัทผู้ต้องสงสัย B เข้าร่วมในการประชุมราคาในระดับผู้จัดการฝ่ายในฐานะผู้ช่วยของผู้รับผิดชอบ นอกจากข้อมูลเกี่ยวกับ “การประชุมราคา” แล้ว ผู้แจ้งเบาะแส X ยังมีข้อมูลเกี่ยวกับข้อเท็จจริงต่อไปนี้อีกด้วย อย่างไรก็ตาม ข้อมูลดังกล่าวนี้หากไม่มีคำถามที่เกี่ยวข้องมาจาก TCB ให้ถือว่า X ไม่ได้กระตือรือร้นที่จะให้ข้อมูลแก่ TCB

(การประชุมราคา)

เหมือนกับบริษัทผู้ต้องสงสัย A

(คำสั่งภายในบริษัท)

เหมือนกับบริษัทผู้ต้องสงสัย B โดยมีเอกสารภายในเรื่อง “นโยบายการขึ้นราคา” ทุกฉบับ

(การขึ้นราคาของนิกเกิล)

เดือนตุลาคม 2545 นิกเกิลซึ่งเป็นวัตถุดิบของเหล็กกล้าประเภทนิกเกิลมีราคาสูงขึ้น โดยคงราคาสูงไว้จนถึงเดือนมีนาคม 2546

(แนวโน้มอุปสงค์แผ่นเหล็กกล้าสเตนเลสรีดเย็น)

ตั้งแต่ พ.ศ. 2543 เป็นต้นมา สภาพตลาดแม้ว่าวัตถุดิบเหล็กกล้าดิบในระยะหลังจะมีราคาแพงทำให้มีต้นทุนสูง แต่เนื่องจากมีการแข่งขันรุนแรง จึงไม่สามารถผลักดันต้นทุนไปเพิ่มในราคาขายได้ ในขณะเดียวกัน บริษัท D ซึ่งเป็นบริษัทสัญชาติต่างชาติที่เข้ามาในตลาดเป็นรายใหม่ ได้เข้ามาในตลาดด้วยราคาต่ำใกล้เคียงกับการทุ่มตลาด และกำลังมีส่วนแบ่งมากขึ้นในตลาด หลังจากนั้น อุปสงค์ดังกล่าวค่อยๆ เพิ่มขึ้นทีละน้อยจนถึงเดือนกุมภาพันธ์ 2545 ตั้งแต่เดือนมีนาคม 2545 ถึงเดือนกุมภาพันธ์ 2546 อุปสงค์คงที่ไม่เปลี่ยนแปลง

(ภารกิจ)

หากบริษัททราบเรื่องการแจ้งเบาะแสดังกล่าว จะทำให้อยู่ในสถานะลำบากในบริษัท เมื่อคำนึงถึงการแจ้งเบาะแสให้แก่ TCB เป็นการแจ้งโดยใช้นามแฝงแล้ว จงพิจารณาข้อดีและข้อเสียของการให้ข้อมูลเรื่อง “การประชุมราคา” และเรื่อง “คำสั่งภายในบริษัท” แก่ TCB และพิจารณาว่าในกรณีที่มีสภาพการณ์เช่นไรจึงจะสามารถให้ข้อมูลแก่ TCB ได้ และในกรณีนั้นจะสามารถให้ข้อมูลได้เพียงใด อนึ่ง เนื่องจากการแจ้งเบาะแสด้วยนามแฝง ทาง TCB จึงไม่สามารถติดต่อมาได้ ให้ผู้แจ้งเบาะแส X ต้องแจ้งเบาะแสแก่ TCB อย่างน้อยหนึ่งครั้ง

[ผู้แจ้งเบาะแส Y]

(สถานะ)

เป็นบริษัทผู้ใช้แผ่นเหล็กกล้าสเตนเลสรีดเย็น เดิมบริษัท Y เคยซื้อแผ่นเหล็กกล้าสเตนเลสรีดเย็นจากบริษัทผู้ต้องสงสัย B เท่านั้น และมีอำนาจต่อรองราคาต่ำ ต้องจ่ายอมรับค่าของขึ้นราคาจากผู้ผลิต ผู้แจ้งเบาะแสรายนี้แจ้งเบาะแสแก่ TCB ด้วยชื่อจริง อย่างไรก็ตาม เรื่องการจัดประชุมราคาโดยบริษัทผู้ต้องสงสัยว่าจะได้จัดขึ้นจริงหรือไม่ ผู้แจ้งเบาะแสรายนี้ก็ได้แค่คาดเดาเท่านั้น ไม่ได้มีข้อเท็จจริงหรือหลักฐานที่แน่นอน

ผู้แจ้งเบาะแส Y มีข้อมูลเกี่ยวกับข้อเท็จจริงดังต่อไปนี้ อย่างไรก็ตาม ข้อมูลดังกล่าวนี้หากไม่มีคำถามที่เกี่ยวข้องมาจาก TCB ให้ถือว่า Y ไม่ได้กระตือรือร้นที่จะให้ข้อมูลแก่ TCB

(แนวโน้มอุปสงค์แผ่นเหล็กกล้าสเตนเลสรีดเย็น)

เหมือนกับผู้แจ้งเบาะแส X

(ความสัมพันธ์ระหว่างผู้จำหน่ายกับบริษัทผู้ต้องสงสัย)

การขึ้นราคา (ทั้งประเภทนิกเกิลและประเภทโครเมียม) เมื่อเดือนมกราคม 2545 เป็นการขึ้นราคาโดยผู้จำหน่ายประมาณครึ่งหนึ่ง ผู้จำหน่ายที่ไม่ได้ขึ้นราคา เป็นผู้จำหน่ายที่ซื้อจากบริษัทผู้ต้องสงสัยทั้ง 4 รายใดรายหนึ่ง ซึ่งไม่พบว่าเป็นผู้จำหน่ายที่ซื้อจากผู้ต้องสงสัยรายใดรายหนึ่งเป็นส่วนใหญ่

เดือนกุมภาพันธ์ 2546 ที่ประเภทนิกเกิลมีราคาเพิ่มขึ้นกิโลกรัมละ 20 เชน และประเภทโครเมียมมีราคาเพิ่มขึ้นกิโลกรัมละ 10 เชนนั้น เป็นราคาแผ่นเหล็กกล้าสเตนเลสของผู้จำหน่ายที่ไม่ได้ซื้อจากบริษัท D ราคาแผ่นเหล็กดังกล่าวของผู้จำหน่ายที่ซื้อจากบริษัท D ประเภทนิกเกิลมีราคาเพิ่มขึ้นกิโลกรัมละ 10 เชน ส่วนประเภทโครเมียมไม่เปลี่ยนแปลง

(ภารกิจ)

กรณีที่มีการร่วมกันตกลงราคาขายได้หยุดลง แม้ว่าจะมีข้อดีคือราคาซื้อจะลดลง แต่เมื่อใดที่บริษัทผู้ต้องสงสัยทราบเรื่องการแจ้งเบาะแสดังกล่าว ก็มีข้อเสียที่การเกิดขึ้นได้ (เช่น ไม่ทำธุรกรรมด้วย ส่งของให้ช้า ขึ้นราคา เป็นต้น) เมื่อคำนึงถึงสภาพการณ์ดังกล่าว จงพิจารณาข้อดีและข้อเสียของการให้ข้อมูลแก่ TCB และพิจารณาว่าในกรณีที่มีสภาพการณ์เช่นไรจึงจะสามารถให้ข้อมูลแก่ TCB ได้ และในกรณีนั้นจะสามารถให้ข้อมูลได้เพียงใด

Questions for People Giving the Clue(1-TC Brev.)

1. What is your name and address?
2. What is the kind of your business?
3. What is the relationship between you and the owner of the cold-rolled stainless steel business? Which part of the business do you involve to? (Distributor or direct consumer)
4. What kind of product do you purchase from the owner of that business?
5. Why do you suspect that the selling price has been made among owners of the cold-rolled stainless steel business? Please tell us the matter of fact that you have been suspecting.

In case where there are meetings,

- Number of the meetings
 - Participants
 - Resolutions, minutes, notes of all proceedings, meeting letters, emails or documents relating to the meetings
 - Time and place of the meetings
 - Leader, organizer, presiding chairman
6. Whom do you relate to or do any transaction with? How long is your relationship or the term of such transaction?
 7. Price
 - Who set the buying price? Is it possible to negotiate the price?
 - Has the buying price been different from the other buyers? (Past to present)
 - Are you informed of the change of price in advance if it happens? Which means were you informed of the change? (Please show evidence.)
 - Are there conditions for the purchase?
 - Please let us know the prices from 2001 until present.
 8. Manners in the market
 - Can you choose to buy the goods from any of business owners?
 - Are the prices in the market similar to or different from?
 - Trend of the market

Questions for the Suspected Company

1. What is your name and address?
2. What is the kind of your business? (Who is the manufacturer if you are distributor? What is the relationship between you and the manufacturer?)
3. What kind of goods do you produce?
4. What kind of industries are your goods produced for?
5. Have the markets been domestic markets or foreign markets?
6. Who are your customers?
7. Please let us know your channel for distribution. (Is it depending on the kind of goods or kind of customers or proportion of each channel?)
8. What are the volume of manufacture and volume of distribution per year? (Please show documents from last two years until present)
9. How much is approximately the annual selling value in the market? Do you know how much the total value in the market is?
10. How many are the business owners in this arena? Who are the business owners?
11. Who are the first, second and third market shareholders?
12. What factors do you consider to determine the prices? What are the factors of increasingly changing the prices?
13. Do you determine the selling prices in the price list or negotiate the selling prices at intervals? Do you have any conditions for the distribution? (Please give us documents in the past two years.)
14. How often has the price been adjusted? Why has it been adjusted?
15. Do you inform customers of the change of prices in advance? Which means do you usually prefer to use? If you inform the customers in advance, how many day do you do that before changing the prices?
16. Do you know the selling prices of the competitors in the market? Is there the adjustment of the prices?
17. Please let us know situations of the competition, manufacture and distribution in the past. How were the changes? Why were such situations changed?

18. Are there any cluster or associations between the business owners in the industry?

What is the objective of the circles or associations?

19. Is there a meeting among the business owners? What are topics in such meeting?

20. What do you anticipate the trend of the market? How about the demand, supply and price?

21. What do you think about the obstacle of entering into the market and situation in the market?

Company A (2-comp-A)

Questions	Answers
<p>1. Why are the selling prices of the cold-rolled stainless steels for nickel and chromium increased?</p>	<p>1. Raw material prices in the world market had been increased little by little for several times from 5 yen a kilo in 2000 to 10 yen a kilo in 2003; it is 100% of the increase. The cost of this part is 40% of the entire manufacturing cost.</p> <p>2. Profits had been decreased because</p> <ul style="list-style-type: none"> - The raw materials had been increased. - Company D entered into the market with the low prices nearly equal to anti-dumping. - The outcome of the selling prices has been declined since 2001.
<p>2. Please let us know the sources of the imported raw materials and the buying prices. Do you know where the competitors buy the raw materials and how much they cost ?</p>	<p>Most of them might buy the raw materials from the South Korea because the South Korea is the big manufacturer and it is the nearest place for delivering the raw materials to Thailand. If we buy the raw materials from other places, we will have the higher cost of delivery in regard to the distance despite of a little different price. In addition, we usually don't buy the high number of the raw materials in reserve on the ground that it is risky in the exchange rate and variation of the world market prices.</p>
<p>3. Is there any association for this industry?</p>	<p>Yes, it is for the following objectives:</p> <ul style="list-style-type: none"> - Research & development - Social welfare - Cooperating to the small members for technical knowledge
<p>4. How often does the association arrange meetings?</p>	<p>The association arranges one annual meeting but once in a while the association may arrange another meeting in the special occasion during the year; for example, the</p>

	association wishes to donate the charity to society or to protect the national gain. In the past, the association arranged a special meeting for tsunami disaster. The association consulted in such meeting to bring steels so as to support the construction of houses for the victims in the South.
5. Is there any minutes of the meetings?	No, there is not because it is unofficial meeting and cooperation. Then, members who wish to donate the charity informed the secretary of such meeting to bring said charity to the relevant organization.
6. Did you have any meeting in October 2001?	Yes, we had a meeting. It is a special meeting relating to consultation of joint importation of the raw materials for enhancing the power of negotiation and decreasing the buying prices, which is a method for declining the trade imbalance of the country.
7. Why did you authorize the representative of the sale department to represent in the meeting?	It is because the sales department is responsible for forecasting the domestic demand. This is to know the need of the raw materials and to prevent from the redundant raw materials in reserve because it will effect to the company's cash flow.
8. Was there any other issue in the meeting?	Yes, there were many issues. All issues related to determine the volume of importation of the raw materials.
9. Did you discuss on the domestic selling prices in the meeting?	No, we didn't because the selling prices of retail will comply with the manufacturing cost.
10. Why were the prices of nickel and chromium increased from the old prices of 25 yen a kilo in accordance with the contract in January 2002?	For increasing the selling prices by retail, the company will consider the following significant factors; for instance, <ul style="list-style-type: none"> - Cost of the raw materials - Decreasing the continuous loss of capital since 2000 The increased prices have been lower than the amount of

	the company's current loss.
11. Did you have any meeting of the association in November 2001?	Yes, we had a meeting. It is the association's annual meeting in order to consider the association's activities in year 2002; for example, <ul style="list-style-type: none"> - Guidelines of doing R&D in the steel industry - Guidelines of aiding the society - Outcome of business in the past year - Election of new chairman of the association replacing the present chairman who will expire his term in this year
12. What are the matters of the company's internal command?	The matters of the company's internal command relate to all departments of the company upon the necessity.
13. Did you have any meeting in May 2002?	Yes, we had a meeting. It is a special meeting relating to situation and importation of the raw materials because of the variation of the world market prices.
14. Did you give any information to the mass media? Why did you do that?	Yes, we did because we would like to let the distributors and consumers know our reasons and necessity.
15. Did you have any meeting in June 2002?	Yes, we had a meeting because there were the important and urgent matters for consideration i.e. problems on unexpected higher prices of the imported raw materials and variation of the prices by dint of the stockpile and speculation and also on account of the fact that China needs high number of such raw material for completing the construction of infrastructure and Olympics stadiums in due time.
16. Did you have any meeting in January 2003?	Yes, we had an annual meeting in order to: <ul style="list-style-type: none"> - Report the outcome of business in 2003 - Consider problems on the shortage of the imported

	raw materials and their higher prices on account of the fact that China needs a high number of such raw material for completing the construction of infrastructure and Olympics stadiums in due time.
17. Did you have any other meeting in the same month?	Yes, we did have for the purpose of compiling information on the overall situation of the imported raw materials before executive officers consider solving problems involving to such situation.
18. Are there any minutes in each meeting?	Yes, there are the minutes in case of the annual meeting.
19. How is the competition in this industry?	The competition in this industry is very high.
20. Is it high competition in the prices?	No, it is not so high because the manufacturing cost is not different but there is high competition in the marketing strategies.
21. Why are the increased prices not so different?	The increased prices are not so different because most of companies have the same source of raw materials.
22. What do you think why each business owner increased the price in the vicinity of time?	We think that the quantity of raw materials in reserve of the most companies is not so different.

Company B(3-comp-B)

Question: *Had you met Company ACD?*

Answer: Yes, we had sometimes meetings and they were informal meetings such as dinner, playing golf, etc. in the same way as other businesses.

Question: *How many times were the prices increased in total? Why were the prices continuously increased?*

Answer: From 2001 to 2003, the prices were totally increased for three times because of the previous loss crisis and lessen of the prices. After that, the volume of manufacturing goods was decreased and also the cost of major raw materials was so high. Moreover, the prices were adjusted in accordance with the market leader's acts.

Question: *Why did you increasingly adjust the prices in the same rate of 20 yen every time?*

Answer: Actually we intended to adjust the prices in the rate of 60 yen once but we were afraid that the consumers would receive an impact on the prices increasing too much. Then, we decided to adjust one after another in order to relieve such impact. Besides, we adjusted the prices nearly in the same rate of other companies because each company had almost the same rate of the manufacturing cost.

Question: *Why did you adjust the prices almost in the same time that other companies did?*

Answer: We adjusted the prices in accordance with the market leader's acts.

Question: *These documents are internal documents of the company or documents of the company's meetings relating the price increase, aren't they?*

Answer: No, they are not our company's documents. Any person could forge them. Neither has the company issued any order like these nor the company has any meeting for fixing the prices because we know it is illegal.

Question: *Do you limit the area of distribution in order to remain the market share of each company?*

Answer: No, we do not definitely limit any area of distribution. We normally do our business and we are able to do any business transaction without limiting the area of distribution. Nonetheless, we firstly take good care our habitual customers since most of them have executed the futures contracts.

Company C(4-comp-C)

Question: *Did you participate the meetings?*

Answer: We sometimes participated the meetings.

Question: *What were topics in the meetings?*

Answer: They were problems on export, effect of Free Trade Area (FTA), competition with foreign countries and new technologies. The participants are usually the executive officers.

Question: *Why were the goods prices increased almost in the same time and nearly in the same rate?*

Answer: We do not know when other business owners increase the goods prices. We increase the goods prices in respect of the higher manufacturing cost.

Question: *Some people informed us that you participated the meetings relating to fixing prices.*

Answer: As we told you that we participated the meetings but there was no topic about fixing the prices.

Question: *Nevertheless the conversation with Company A mentioned that there was topic about fixing the prices.*

Answer: We do not know because the Company A did not talk to us about such topic.

Question: *Do you have any regulations relating to the area of distribution in order to persuade customers?*

Answer: Our parent corporation gave us a policy on increasing the distribution total by the marketing strategies. Giving a discount to the customers who enter into the futures contract is one of the marketing strategies enabling to project the manufacture and also reducing the manufacturing cost. In contrary, we distribute the goods with normal prices to other customers.

Question: *Why do you frequently increase the prices?*

Answer: We increase the prices upon the higher manufacturing cost. Furthermore, we increase the prices because we usually sell the goods to the customers with low prices and low profits. Therefore, it is indispensable to increase the prices frequently but slightly when the manufacturing cost becomes higher. Because we are afraid of losing our customers, currently we provide various kinds of services to our customers; for instance, we provide the academic service to the customers so as to lessen the loss rate from the customers' manufacture. We pay lump sum for the research and development in this project every year. This is a reason why our manufacturing cost becomes higher.

Question: *Do you know the competition law?*

Answer: Yes, we do. The parent corporation has had the policy to comply with the competition law; in addition, we have to remain our company's reputation. As a result, we always comply with the competition law in all aspects.

Questions for Company D(5-comp-D)

Question: *When did Company D start the business?*

Answer: Company D entered into the cold-rolled stainless steel market since 2000.

Question: *Who is the majority shareholder of the company?*

Answer: Foreigners hold 100% of shares.

Question: *What is your company's market share?*

Answer: It is 1-2% of market shares.

Question: *Does your company have the potentiality to enhance the volume of manufacture? How many is that volume?*

Answer: Nowadays our company is running 30% of the entire capability.

Question: *Please let us know the information about the adjustment of the company's selling in the last five years.*

Answer: We adjusted the selling prices once in September 2002 because of the manufacturing cost.

Question: *Had the company fostered any senior executive officer or officer who is responsible for setting the selling prices/volume of the manufacture to participate the meetings concerning the cold-rolled stainless steel business with other company in the last five years?*

Answer: Yes, we had fostered some operating officers from time to time so as to exchange the general information of the market situation.

Information of “X” who gives the clue (6-x)

Question: *Whom is the person giving the clue? Where is he? How to contact him?*

Answer: He uses an alias; thus, he does not wish to give his own address, contact address and contact telephone number.

Information for TCB

1st - the prices of nickel and chromium were increased 20 yen/kilogram and 10 yen/kilogram, respectively in about August - September 2002.

2nd - the prices of nickel and chromium were increased 20 yen/kilogram and 10 yen/kilogram, respectively in about January - February 2003.

Information of Company Y (7-Y)

1. We are a consumer of the cold-rolled stainless steels and always buy them from Company B.

2. We are a small company and have no power to negotiate with Company B. When Company B increases the price, we have to buy the goods in such price. Furthermore we know that since 2000 even though the price of the raw materials (the raw steels) has been increased, the price of the cold-rolled stainless steels has not been adjusted because the competition of this business is so high and Company D, a foreign company, entered into the market with low price nearly equal to anti-dumping. This makes Company D have 1-2% of market shares.

3. We know that since January 2002 half of all distributors have increased the prices of both nickel and chromium and the other distributors, particularly who buy the nickel and chromium from Company ABCD have still not increased the prices thereof.

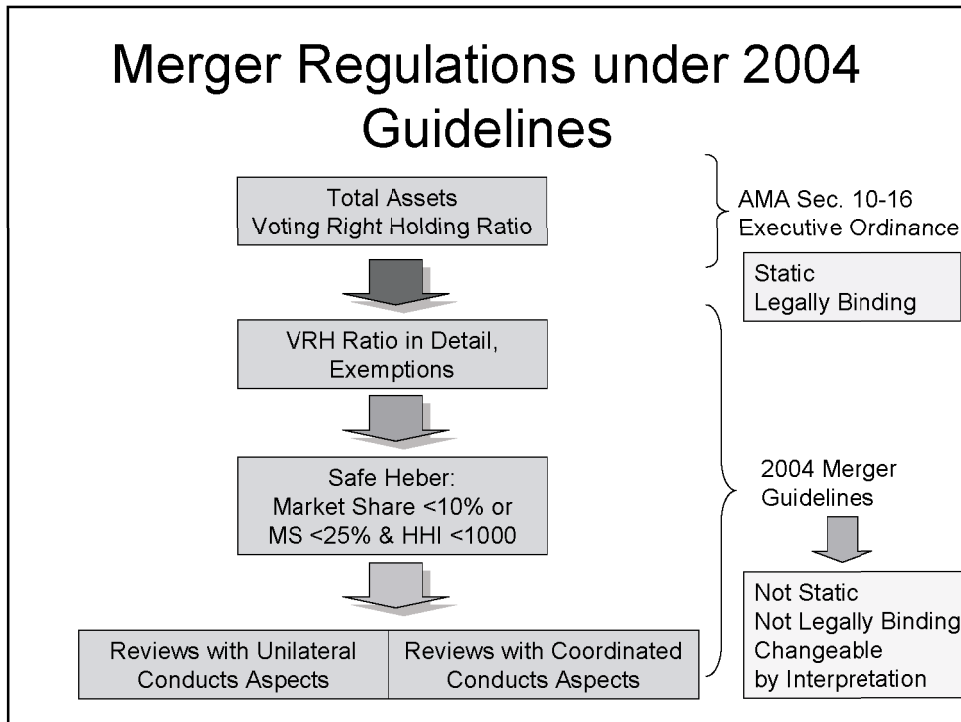
4. Since February 2003 the distributors of Company ABC have increased 20 yen/kilogram for nickel and 10 yen/kilogram for chromium while the distributors of Company D have increased 10 yen/kilogram for only nickel.

ANNEX III - 4

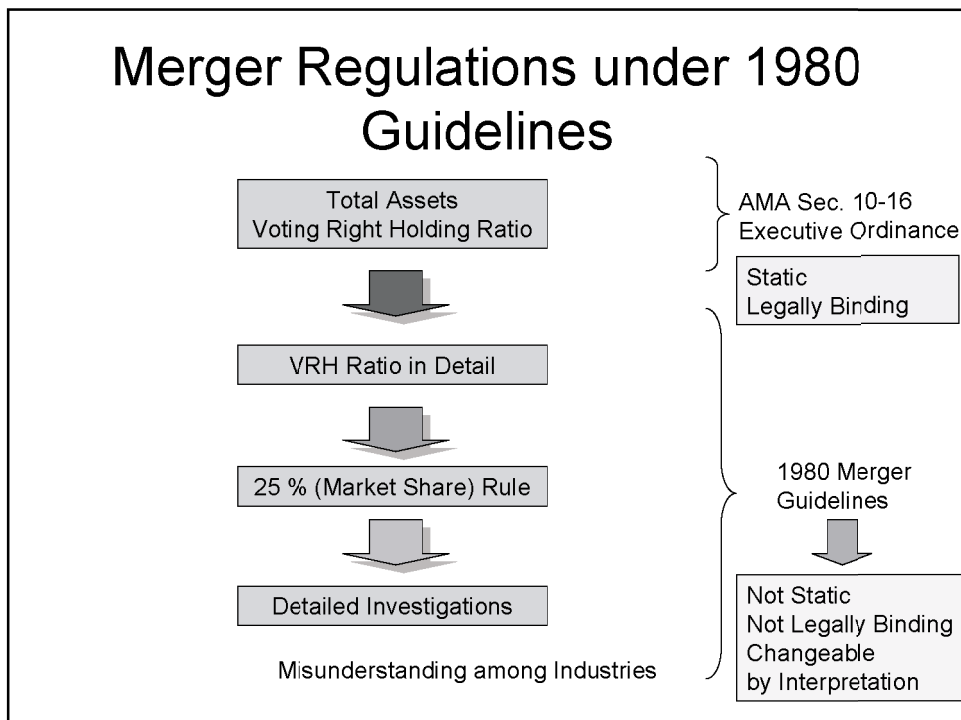
Documents for the Fourth Workshop

- Comparison of Merger Regulations -

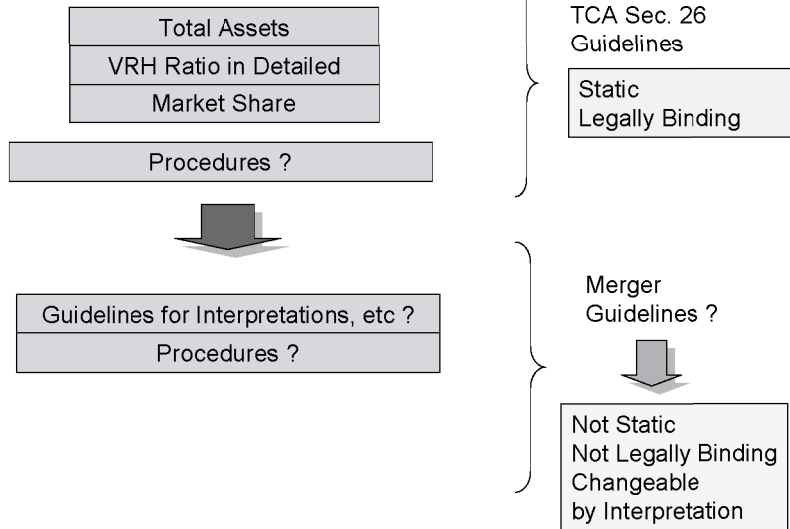
Merger Regulations under 2004 Guidelines



Merger Regulations under 1980 Guidelines



Prospected Merger Regulations in Thailand



ANNEX IV

Documents Related to Advocacy Activities

Overviews of ADVOCACY ACTIVITIES

	Target Group	Technical Assistance
SEMINAR	Regional Officials Other government officials Lawyers and experts Private sector Consumer group (?)	JFTC official for key note address Lecture in Thai language for basic issues - DIT - Expert Venue, preparation and management
MEDIA COMMUNICATION	Web site: General public with interest and computer access capacity	Web page development Contents development Link and location
	Radio program: public in general with and without interest	(limited experience by JFTC and TA Team)

Studies on the current activities:

- 1) Web-site
- 2) Newsletter
- 3) Radio broadcasting contents
- 4) TV program contents
- 5) Seminar 2003 for private sector

DIT Web site (as of 2004.12.14)

	Introduction of DIT	Management Staff	Bulliton Board	Q&A	News	Announcement
DEPARTMENT OF INTERNAL TRADE (DIT)						
	ACTIVITIES				PR NEWS	
Policy and Plan	(image photo)				(Recent news about consumers' event held in July 2004, by selling products at low price with support of department stores and supermarkets)	
Monthly Report						
Laws under DIT						
Agriculture Products						
Promotion of Competition						
Public Announcement by Committee						
Difference between DIT and Consumer Protection Committee						
PRODUCTION STATISTICS	COMMODITY PROCES				PRICE OF STEEL WIRE/SHEET	
- Paddy(rice with husk) 04/05 (seasonal) - Paddy(rice with husk) 04(unseasonal) - Fertilizer (corn) 04/05 - Cassaba 04/05	-Retail price of fresh food products in Bangkok (daily) -Wholesale price of important agriculture products (daily) -Rice Price -Comparison of fresh food products prices -Comparison of prices on animal feed and agriculture products -Retail price of consumer products in Bangkok (2003-04) -Monthly average price of major commodity in Bangkok (past 12yrs) -Monthly average price of major commodity by products (past 12yrs) -Automobile selling price (as of 2004.7.28)				-Price of steel sheet (2004.12) -Price of steel wire (2004.12)	
IMPORTANT NOTICE						
-unit for quantity -Regulation for commodity quantity and price -Gas products guarantee plan -Mechanism for fresh products						
SERVICES	CONTROL OF GOODS AND SERVICES				RECRUITMENT OF GOVERNMENT STAFF 2005 (1st)	
-Library -Internet registration and information -Download form -Telephone number -Information center -Disclosed documents -List of plastic manufacturers -List of car manufacturers -Fair trade of gasoline -Price level of consumer goods (new!)	-Designation of importance for goods and services under control by DIT (ups) -Protected goods and services and their control criteria -Goods prohibited to indicate their prices -Goods and services under control of DIT and its regulation -Protected goods and services and their criteria				CLAIM CENTER	
					-Claim report form	
					MEMBER	
					WEBSITE SERVICE	
DELEGATION OF AUTHORITY	NOTICE BY COMMITTEE FOR GOODS AND SERVICES				VOTE	
-Delegation of authority to regional officials -Delegation of orders	-Regulation on control period, follow-up of prices by central committee for especially designated goods and services -Notice by sub-committee for improving information collection environment				How do you evaluate DIT Internet? -Very good -Fair -Not good	
LINK						
-Government Offices -State Enterprises -Newspapers -Telephone -Television						

DIT Web site (as of 2004.12.14)

Promotion of Competition
Report on the Current Trade Competition Condition
- No.1 2004.9
- No.2 2004.10
- No.3 2004.11
Contact to TCB
Structure, Role, Authority
Member List of Committee and Subcommittee under Trade Competition Act 1999
TCA 1999: Decree and Public Announcement
Newsletter (monthly) "World of Trade Competition"
Guideline for Unfair Trade Practice for Wholesale and Retail Business
Abstract of Decisions made by TCC
Brief Report on Actions taken under TCA
Terminology for TCA, Economics and Industry
Study Plan for Unfair Trade in Other Countries
Seminars and Training Programs

Public Announcement by Committee
Trade Competition Committee
TCC Public Announcement: Appointment of sub-committee for studying "dominant market position"
TCC Public Announcement: Appointment of Export Commission for Motorcycle Industry
TCC Public Announcement: Appointment of Export Commission for Wholesale and Retail Business
Central Committee on Goods and Services
Committee for Advance Trading of Agriculture Products
Committee for Agriculture Product Market
Committee for Farmers' Relief and Criteria

Difference between DIT and Consumer Protection Committee	
DIT	Consumer Protection Bureau
1. Governing Law: Goods and Service Act (1999) and Weights and Measures Act (1999)	1. Governing Law: Consumer Protection Law (1979)
2. Coverage: - Fair Price - Production Amount - Goods with limited limited supply	2. Coverage: - Consumers protection from advertisement, lottery, contract, dangerous goods - Direct sales - Legal support for consumers claims
3. Hot line for claim Tel No.1569	3. Hot line for claim Tel No. 1166

Designation of importance for goods and services under control by DIT (update)
Definition: - Sensitive List (SL) - Priority Watch List (PWL) - Watch List (WL)
Year 2003
Year 2004

	Controlled Goods	Services
- Jan 2004	- Jan 2004	- Jan 2004
- Feb 2004	- Feb 2004	- Feb 2004
- Mar 2004	- Mar 2004	- Mar 2004
- Apr 2004	- Apr 2004	- Apr 2004
- May 2004	- May 2004	- May 2004
- Jun 2004	- Jun 2004	- Jun 2004
- Jul 2004	- Jul 2004	- Jul 2004
- Aug 2004	- Aug 2004	- Aug 2004
- Sep 2004	- Sep 2004	- Sep 2004
- Oct 2004	- Oct 2004	- Oct 2004
- Nov 2004	- Nov 2004	- Nov 2004
- Dec 2004	- Dec 2004	- Dec 2004

	(Goods)	(Services)
Sensitive List (SL)	Gasoline, Diesel, Plastic bag, Fertilizer, Cable, Zinc, Steel, Steel Plate/Wire	none
Priority Warch List (PWL)	PVC pipe, Pellet, copy paper, plywood, canned food, canned & bottled beverage	Car repair service, Movie theater tariff
Watch List (WL)	beef, egg, prawn, vegetable, fish, milk, coffee, edible oil, soy sauce, flour, soap, detergent, pesticide, paper, elec appliances, automobile, truck battery, cement, glass, nail, paint, drug, fodder, mobile phone, etc (all 85 items)	electric appliance repair, cleaning, barber, taylor, utility installation, copy parking, courier, gym, hair salon, video/CD rental, hotel, rental book etc (18 items)

Member List of DIT Team

Ms. Porntip Poovarodom, Senior Trade Technical Officer
Ms. Sumalee Wasiganont, Senior Trade Technical Officer
Ms. Prattana Hasamin, Senior Trade Technical Officer
Ms. Orawan Rattanasupa, Senior Trade Technical Officer
Mr. Somsak Kiatchailak, Senior Trade Technical Officer
Ms. Onouma Premyothin, Trade Technical Officer
Mr. Surinthorn Sunthornsanan, Trade Technical Officer
Ms. Chantida Kalampakorn, Trade Technical Officer
Mr. Jarim Dumronghutt, Trade Technical Officer