Competition Law Reform in Britain and Japan

Comparative analysis of policy networks

Kenji Suzuki

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What drives the reform of competition law in Britain and Japan?

As market competition replaces state regulation in many economic fields, competition policy has become an area of increasing significance. Against this background, Suzuki highlights the importance of the domestic political structure for competition policy. He does this through the comparative analysis of competition law reforms in Britain and Japan. He argues – controversially – that a country's domestic political structure should be considered a major factor in causing the reform of competition law, and modifies the established view that it is necessarily a result of changes in international economic and political conditions.

The book outlines the history of competition law reform in Britain and Japan throughout the post-war period, and also contains case studies of the most remarkable reforms of the 1970s and the 1990s. Suzuki uses the policy network approach in order to understand the domestic political structure, viewing the policy-making process as the interaction of relevant parties with their own interests and power resources. Thus he interprets competition law reform as the result of interactions between 'core actors', such as leading business organisations, government politicians and public officials in charge of industrial policy, and existing competition policy.

Competition Law Reform in Britain and Japan makes comparisons based on over half a century of competition law reform, demonstrating that while British and Japanese competition policies are apparently following the same trend of international convergence, the interests and power relations of the core actors in the competition policy network are quite different. This innovative book brings to the fore the political aspects of competition policy rather than the more usual legal and economic concerns. It is the only book to compare Britain and Japan's competition law reform in depth.

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To my family

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Preface

As market competition has replaced state regulation in many economic fields, competition policy has been one of the most important policy areas in recent years. However, this policy area apparently lacks political analysis. Legal and economic specialists have dominated the discussion for a long time, and little attention has been drawn from political scientists. As a result, such matters as organised interests and power relations are often set aside in the textbook of competition policy.

The lack of concern about these political matters is particularly evident in the recent debate on international convergence of competition policy. Many interpret the phenomenon as the result of such external changes as the growth of international economic interdependence and the development of international political cooperation. While those external changes are no doubt important, other changes – in the domestic political structure – should not be overlooked. In this book, the importance of the domestic political structure for competition policy is highlighted through the analysis of competition law reforms in Britain and Japan. In turn, the political analysis of competition policy casts new light on the mechanisms of the British and Japanese political economies from a non-traditional perspective.

The original work for this book was conducted as a doctoral thesis at the Department of Politics and International Studies, University of Warwick, from 1996 to 1999. However, the entire content has been revised for the purpose of this new publication. For the study, I interviewed various people in the business, public and academic worlds in Britain and in Japan. All interviews were highly enjoyable and full of interest, and I am grateful for the cooperation of all respondents. The study also benefited from using a number of archives and libraries, especially the Library and the Modern Records Centre at Warwick University, the British Library of Political and Economic Science at the London School of Economics and Political Science, the Public Record Office in London, the library of the Stockholm School of Economics, the National Diet Library in Tokyo and the library at the University of Tokyo.

I would strongly thank Professor Wyn Grant of the University of Warwick and Professor Magnus Blomström of the European Institute of Japanese Studies for their continuous, patient supervision. I also appreciate much useful advice

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Last but not least, my greatest thanks go to my parents, Kenichi and Kazuko, and my wife, Reiko, for their support and forbearance throughout the period of my study.

Kenji Suzuki
August 2001

Abbreviations

AMA	Anti-monopoly Act
BEC	British Employers' Confederation
BoT	Board of Trade
CBI	Confederation of British Industry
CIM	Commission for Industry and Manpower
DEP	Department of Employment and Productivity
DGFT	Director General of Fair Trading
DTI	Department of Trade and Industry
FBI	Federation of British Industries
FTA	Fair Trading Act
FTC	Fair Trade Commission
IBJ	Industrial Bank of Japan
IRC	Industrial Reorganisation Corporation
JTUC	Japanese Trade Union Confederation
Keidanren	*Keizai Dantai Rengokai*, Federation of Economic Organisations
LDP	Liberal Democratic Party
M&A(s)	merger(s) and acquisition(s)
MinTech	Ministry of Technology
MITI	Ministry of International Trade and Industry
MMC	Monopolies and Mergers Commission
MoF	Ministry of Finance
MOSS	Market Oriented Sector Selective
MRPC	Monopolies and Restrictive Practices Commission
NABM	National Association of British Manufacturers
NBPI	National Board of Prices and Incomes
Nikkeiren	*Nihon Keizai Renmei*, Japanese Federation of Employers' Associations
Nissho	*Nihon Shoko Kaigisho*, Japanese Chamber of Commerce and Industry
NPA	National Personnel Authority
NTT	Nippon Telegraph and Telephone
OECD	Organisation for Economic Development and Cooperation
OFT	Office of Fair Trading

PMO	Prime Minister's Office
RPC	Restrictive Practices Court
RRTA	Registrar of Restrictive Trading Agreements
RTPA	Restrictive Trade Practices Act
SDP	Social Democratic Party
SII	Structural Impediment Initiative
SIPB	Specific Industries Promotion Bill
TUC	Trades Union Congress
WTO	World Trade Organisation

1 Introduction

International convergence and policy network of competition law

In autumn 1998, the British Labour government brought to an end the long-standing process of the reform of competition law by the passage of the Competition Act. The new Act was a landmark in the history of British competition law, as it introduced a new regulatory framework, identical to the European Community Law in many ways. Likewise, in Japan, the Anti-monopoly Act (AMA) underwent a number of reforms of competition legislation in the 1990s, including the reinforcement of administrative surcharge and criminal penalty, the liberalisation of holding companies, and the simplification of merger procedures. Those changes were conceived as imports of the Western (particularly American) model, making Japanese competition law appear similar to its Western counterparts.

Apparently, those policy changes marked a general trend of international convergence[1] in the field of competition policy. Policy convergence, or policy transfer, is 'deemed to be on the increase in an era of globalisation',[2] and competition policy is not an exception to this trend. The progress of economic internationalisation has increased the number of international anti-competitive practices, and national competition laws need more harmonisation. The growth of political interactions, in such forms as bilateral trade negotiations and multilateral study forums, also encourages the diffusion of policy instruments from one country to another. International organisations such as the Organisation for Economic Development and Cooperation (OECD) and the World Trade Organisation (WTO) encourage the sharing of knowledge about competition policy for the multinational transfer of standard models.[3] Regional political frameworks such as the European Union and the North American Free Trade Agreement also encourage their members to harmonise their practices with others. Consequently, many developed countries recently reformed their competition legislation by introducing policy models applied in other jurisdictions. As early as the late 1990s, OECD remarked that 'there is increasing convergence within the OECD area', and that the progress 'has been made…towards convergence in such areas as objectives and principles of competition laws, analytical tools, enforcement practices and some areas of substantive law such as horizontal agreements and resale price maintenance'.[4] Against those backgrounds, scholars such as Scherer go so far as to envisage the integration into a worldwide

regulatory framework,[5] while others are more cautious but anticipate the gradual convergence of national laws.[6]

In the existing debate, however, little attention has so far been paid to the policy-making process as a condition for promoting the international convergence of competition law. Few scholars are concerned about the importance of the policy-making process for the formation of competition law,[7] while many others focus only on the policy output and not the policy-making process.

So what happened in the policy-making process of competition policy in Britain and Japan, behind the above pro-convergence reforms? That is the main question of this book. Unlike ordinary textbooks on competition policy, this book does not devote much energy to legal and economic discussions. Instead, it highlights wider political and socio-economic factors for competition policy. Political and socio-economic backgrounds are seldom investigated in legal and economic textbooks, but they are undoubtedly important for the assessment of the actual function of competition policy.

Before leaving this introductory section, it should be noted that the scope of the study is restricted to the reform of only basic components of competition law, namely the rules on restrictive trade practices (such as cartels) and industrial concentration (such as monopolies, mergers and holding companies).

The remainder of this introductory chapter is composed of four sections. The first section describes the comparative framework of the study, particularly articulating the benefit of comparative analysis between Britain and Japan. The second looks at the existing literature of competition policy. The third discusses the approach to the comparative analysis of the policy-making process regarding competition policy. This is followed by the final section, which articulates some specific questions and provides the structure and methodology of the study.

Comparison across countries and times

The book focuses on Britain and Japan. This is primarily because those two countries exhibit the representative cases of international convergence of competition law, as shown above. Yet there are some other advantages of dealing with Britain and Japan for the comparative political study of competition law.

First, Britain and Japan are both highly developed countries and have experienced more or less similar changes in international economic and political circumstances, at least for the last thirty years. They are not only members of OECD and WTO, but are also members of G7 (the group of seven Western economic powers). It should also be noted that both countries maintain strong political and economic ties with the United States, which is the originator of competition law and has been the most influential in that policy field.

Second, despite their similarities, Britain and Japan are different enough to be interesting. Their major differences lie in the structural settings as well as the interests and resources of their various political actors. They are particularly contrasting when it comes to the degree of market openness and market competition. At least until the last decade, Britain was one of the most open and

competition-oriented, whilst Japan was regarded as one of the most closed and least competition-oriented among leading industrialised countries.

For those reasons, as well as the close socio-economic and academic relationship between the two countries, the Anglo-Japanese comparison is very popular, particularly on the side of Japan. In Japanese literature, Britain has often been treated as one of the prominent models from which to learn about various political institutions, ranging from the small constituency system[8] to the deregulation of financial institutions – including its label, 'Big Bang'.[9] Nevertheless, the scope of the Anglo-Japanese comparison has rarely been extended to the policy-making process of competition law reform.

Besides the cross-country comparison between Britain and Japan, the book also draws a cross-time comparison in each of the countries, so as to highlight changes in the policy-making process over time. The underlying hypothesis is that recent policy changes in those countries have reflected not only the recent trend of international convergence, but also the structural change in the policy-making process in the field of competition policy. To compare with the policy-making process of the 1990s, this book investigates the policy-making process of the 1970s, for both Britain and Japan underwent large-scale reform of competition law in that period. In Britain, a quasi-independent body for competition policy, the Office of Fair Trading, was established in 1973 by the Conservative government, after the setback of a similar plan of the Commission for Industry and Manpower under the Labour government. In Japan, the AMA was reinforced in 1977, and that was the first reinforcement since its establishment in 1947. Both countries conducted a number of reforms in the 1980s, but they were largely incremental and not as drastic as the reforms of the 1970s and 1990s. The reforms of the 1970s did not appear to be cases of 'convergence-type' change in either Britain or Japan, even though the policy-makers apparently took account of policy models of other countries. Comparing the policy-making processes of the 1970s with those of the 1990s may indicate the characteristics and conditions of the policy-making process for international convergence of competition law reform.

Consequently, the book examines and compares four cases of the policy-making process of competition law reform (Britain/Japan; 1970s/1990s). Other periods are also explored, given the importance of the historical context, but the book focuses on those periods and does not recount the entire history.

Political analysis of competition law reform

'In the mainstream literature on competition policy, a literature in which lawyers and economists are the dominant academic disciplines…issues of power are rarely treated explicitly'.[10] The literature of British and Japanese competition policy is no exception. Standard textbooks, such as *Competition Law*[11] and *The Anti-monopoly Laws and Policies of Japan*[12] are mostly devoted to legal and economic discussions, while political matters are apparently considered as mere confounders.

This may be because competition policy is highly technical in nature, both legally and economically, and there appears to be little room for political discretion. However, the plurality of policy ideas in this policy domain often leads to controversy. Take the regulation of market concentration, for example. On the one hand, scholars such as Schumpeter and Galbraith accept large-scale establishment of units of control either 'as a necessary evil inseparable from the economic progress',[13] or as a means of enhancing economic efficiency.[14] Scholars such as Baumol *et al.* would not give such a total acceptance, but see market concentration as unproblematic provided 'the potential entrants can, without restriction, serve the same market demands and use the same productive techniques as those available to the incumbent firms', and that 'the potential entrants [can] evaluate the profitability of entry at the incumbent firms' pre-entry prices'.[15] According to this 'contestable market theory', market dominance should not automatically induce regulatory intervention.

On the other hand, scholars such as Adams, Brock and Hirsch are concerned about industrial concentration either because 'decision-making power over such vital matters as price, production, and investment is to be widely decentralised among many firms, not concentrated in one or a handful',[16] or because 'to allow a single firm to dominate an industry vital to national security may grant the firm's owners more political power than is in society's interest'.[17] Utton also argues against industrial concentration on the ground that 'managers of very large enterprises may be much less willing to take risks, especially those associated with innovation and change, than the (owner) managers of smaller firms'.[18]

Accordingly, the regulation of industrial concentration is usually very controversial. When there is great conflict of policy ideas even among legal and economic specialists, political interaction often has a decisive impact. On this point, it is necessary to recall that the competition policy agency in many countries, including Britain and Japan, is a mere regulatory body and does not have any formal authority to draft legislative bills. Against this background, the political study of competition law is no doubt significant, even though it is not as popular as a subject of study among lawyers and economists.

The paucity of political analyses of competition law may also come from a lack of knowledge about law and economics in the discipline of political science. Yet it is necessary to introduce a number of prominent political studies regarding competition policy. Shughart II, for instance, provided a good analysis of the policy-making process of anti-trust policy in the United States.[19] In the British context, Mercer examined the policy-making process of competition policy from the nineteenth century to the early 1960s.[20] Meanwhile, Wilks provided an extensive institutional analysis of British competition policy up to the 1990s, largely focusing on the Monopolies and Mergers Commission.[21] For Japan, Misonou explored the development of Japanese competition policy until the 1970s.[22] Beeman closely analysed the policy implementation of the Fair Trade Commission (FTC) in the period between 1973 and 1995.[23]

Besides those single-country studies, *Comparative Competition Policy* provides a comparative political analysis of competition policy for six leading developed

countries, including Britain and Japan.[24] The volume looked into various aspects of the policy-making process in individual country studies. However, its cross-country comparison includes only what the authors call 'mid-range' aspects, such as the relative independence of the national competition policy agencies; the intensity of their enforcement; the relative balance between law and economics; the variations in legal doctrines; and the relative legitimacy and compliance levels of the various jurisdictions. In other words, it does not provide a useful model of approach to the comparative analysis of the policy-making process. It is therefore necessary to develop our own framework for the comparative analysis of the policy-making process with regard to competition law reform.

Approach to the comparative analysis of the policy-making process of competition law reform

There are numerous approaches to the comparative analysis of the policy-making process, but not all are useful to the analysis of the policy-making process of competition law reform. There are a number of points to consider in choosing the most useful approach to the study.

First, one needs to choose an approach particularly useful for analysis of the policy-making process at policy-sector level, so that the policy-making process of competition policy should deliberately be focused separately from that of other types of industrial policy. Since competition policy is a policy for industry, it is often treated as a part of industrial policy.[25] Nevertheless, the policy-making pattern is often quite different between competition policy and other microeconomic policies. It is therefore very important to look for specific patterns of the policy-making process of competition policy, particularly from the perspective of cross-country comparison.

Second, the approach should consider the characteristics of competition policy mentioned above: high economic/legal technicality and variety of policy ideas. The high technicality of competition policy implies that the number of participants in the policy-making process is relatively small. It is true that competition policy in principle covers all business sectors, but this does not mean that all individual businessmen are able and willing to engage themselves in the policy-making process of competition law reform. In reality, many businesses are not usually concerned very much with competition law unless they commit a violation of it. Public concern is drawn to competition law reform especially when it is seen as closely connected with prices, but little attention is paid otherwise. It should also be noted that participating actors are very often organisational, so they can manage complex information and knowledge in order to make their policy ideas more sophisticated. Regarding the second characteristic, the variety of policy ideas, this suggests that the interaction of the participants in the policy-making process is very likely to have a decisive impact on the direction of the reform output.

As a result, the study of the policy-making process of competition law reform requires an approach that is able to conceptualise the interaction of a limited

number of organised political actors at policy-sector level. On this ground, the policy network approach seems to be the most useful for our study.

The policy network is typically defined as 'a complex of organisations connected to each other by resource dependencies and distinguished from other clusters or complexes by breaks in the structure of resource dependencies'.[26] The policy network approach has been especially popular in the recent literature of European political studies,[27] and is becoming more so in the North American literature.[28] It has also applied to the case of Japan.[29]

One of the virtues of the policy network approach is to 'allow that the world of state/society relations is richly varied',[30] thus sorting out traditional concepts of state/society relations such as pluralism, corporatism and 'iron triangles' by 'using a more general and neutral concept'.[31] While earlier literature of political science tends to dichotomise society and the state, the policy network approach is innovative in that it allocates and links both societal and state actors horizontally, rather than vertically. Unlike many traditional approaches, it does not *a priori* decide whether societal or state actors should be given prominence in the analysis. In this regard, the policy network approach is very useful for the description of the policy-making process in the comparative analysis.

With regard to the policy network approach, one should note that there has been a long debate as to whether it is a mere metaphor or a theoretical model. On the one hand, scholars such as Rhodes and Marsh appreciate the policy network approach as a theoretical model, emphasising the role of the policy network as a crucial factor for the policy output,[32] if not avoiding the significance of other factors. On the other hand, scholars such as Dowding argue that policy network in the political science literature is just a metaphor, 'because the driving force of explanation, the independent variables, are not network characteristics *per se* but rather characteristics of components within the networks'.[33] Even though acknowledging the importance of the policy network for understanding the policy output, some scholars believe that 'theoretical meat must be added to these strong metaphorical bones'.[34]

The author does not intend to join in the debate, nor to develop a new theory to enhance the validity of the policy network approach itself. After all, it is virtually impossible to draw any general proposition from the study of one particular policy domain in only two countries. Nevertheless, the book at least stands on the assumption that the policy network affects the policy-making process and policy output. This does not mean that the book neglects the effect of other factors, such as historical contexts and external changes, but it utilises the policy network as a main unit of analysis.

With regard to the comparison of policy networks, the mainstream literature often classifies policy networks with such concepts as 'policy community' and 'issue network'.[35] While such a holistic classification does not seem to be appropriate for detailed comparison of policy networks, it is useful to look at the dimensions to assess for the classification. For instance, Rhodes identifies four dimensions – interests, membership, interdependence and resources.[36] Van Waarden specifies numerous dimensions for the typology of policy networks.[37]

Taking these earlier discussions into consideration, this study focuses on the following three dimensions to characterise policy network comparatively: first, membership; second, interest cohesion; and third, power resources. As for membership, it is theoretically true that all voters participate in all policy-making processes through their votes. While not ignoring the public context, however, far more attention is drawn to the most active participants (henceforth 'core actors') in the policy-making process. Once the membership of core actors is identified, efforts are made to consider the degree of interest cohesion among those core actors. According to Daugbjerg, the degree of cohesion in the network is '[t]he key to revealing the different opportunities for reform embodied in a network'.[38] Presumably, legal reform can easily be achieved when there is consensus among all core actors, but it is often the case that various policy ideas conflict with each other in the field of competition policy. When core actors are not very cohesive in their policy interests, their power relations should matter. It is therefore very important to investigate the distribution of power resources among core actors in order to explain the reform output.

The aim, structure and methodology of the study

To rephrase the aim of this book, it is to see the policy-making process of competition law reform from the above 'network perspective'. The book outlines the history of competition law reform in Britain and Japan throughout the post-war period, but much focus is put on four particular reform cases (Britain/Japan; 1970s/1990s) as stated earlier. In each case, efforts are made to consider how the reform output is explained by the structure of the policy network concerning competition policy (henceforth 'competition policy network'). The comparison of the 1970s and the 1990s cases will illuminate the characteristics of the policy-making process behind the pro-convergence reforms in the 1990s. The changes in external circumstances, such as economic and political internationalisation, are also investigated, but they are not considered to be the direct cause of the reforms. Those external changes will be treated as incidental factors affecting the structure of the competition policy network.

The next chapter starts with an account of the historical development of British and Japanese competition laws up to the 1960s. Then it investigates the policy-making process of the reform cases of the 1970s. The core actors in the competition policy network are specified, and major characteristics of the competition law reforms are pointed out. The following two chapters are concerned with the cohesion of the core actors' interests and the distribution of power resources, respectively. In Chapter 3, the interests of the actors are identified so as to assess the degree of cohesion in the competition policy network. In particular, the examination encompasses the preference of businesses for inter-firm collusion and industrial concentration; the relationship between party ideology and competition policy; the relationship between the interests of industrial policy and those of competition policy; and the basic theoretical stance and the actual performance level of competition policy agencies. Chapter 4 looks at

such factors as the organisational features of representative business associations; intra- and inter-party structure; the general 'triangular' relationship between businesses, politicians and public officials; the institutional relationship between industrial policy and competition policy; and the competence of the public officials in charge of competition policy.

Chapters 5 to 7 examine the cases of the 1990s. Chapter 5 starts with the investigation into the progress of economic and political internationalisation from the 1970s to the 1990s. It then looks at the policy-making process in the cases of British and Japanese competition law reform in the 1990s. This is followed by Chapters 6 and 7, where the interest cohesion of core actors and the distribution of power resources are examined, corresponding to Chapters 3 and 4 for the 1970s cases. The last chapter summarises the characteristics of the competition policy networks in the four reform cases. It also looks at the changes following the legal reforms of the 1990s, and gives some indications for the future development of British and Japanese competition policy.

With regard to methodology, this study draws a large amount of knowledge and information from academic literature, journals and mass media. Like most other political studies, however, much effort has been made to access such original resources as cabinet minutes and the records of parliamentary debates and discussions. In addition, over thirty interviews were conducted with politicians, political party staff, public officials, business representative bodies, trade unions, consumer groups and academics, both in Britain and Japan, many of whom have played an important role in the policy-making processes studied here. The author was asked by some interview respondents to keep their frank comments 'off the record'. Hence interviews are not always quoted distinctively in the text, even though they have had a strong influence on the author.

2 Early history and cases of invention-type policy innovation in the 1970s

In the 1970s, both Britain and Japan experienced large-scale reforms of competition law. In Britain, the Office of Fair Trading (OFT), a quasi-independent body engaged in the administration of British competition policy, was newly established under the framework of the Fair Trading Act (FTA) in 1973. In Japan, attempts were made to strengthen the Anti-monopoly Act (AMA) by means of legislative change in 1977, which was the first such change in the history of Japanese competition law. It is important to keep in mind that these cases represent the invention-type policy innovation, rather than the transfer-type policy innovation. The idea of harmonisation with international standard practices failed to gain much support, and the policy output was not seen as the result of policy transfer from other jurisdictions.

This chapter has two aims. First, it traces the development of competition law in earlier years in order to understand the historical context, and also to identify the core actors of the competition policy network. Second, the above 1970s cases are closely investigated to observe the policy-making process *vis-à-vis* invention-type policy innovation. The first two sections and the last two sections look at Britain and Japan respectively. For each country, the first part traces the early history of competition law, and the second part closely investigates the policy-making process with regard to the cases of the 1970s.

Historical development of British competition law

The origin of UK competition law

There was no special legal system dealing with competition policy until the nineteenth century, but statutory control over anti-competitive practices of businesses has gradually been developed within the framework of English common law over the course of centuries. By the last quarter of the nineteenth century, common-law judges came to apply two doctrines: the restraint of trade doctrine, and the tort of conspiracy doctrine.[1]

The restraint of trade doctrine provides that the courts will not enforce a contract which unreasonably restrains a person from exercising his/her trade. Apparently, this can be utilised to wipe out such practices as cartels. However,

several limitations considerably reduce the chances of its use.[2] First, the scope of its application is uncertain. Many contracts include some elements to restrain trade in some sense, and their legality or otherwise relies on a difficult judgement of the balance between two conflicting liberties: to contract and to trade. Second, the effect on the public interest tends to draw little attention within the framework of the common law. Third, it is quite difficult for third parties to invoke the doctrine. In *Mogul SS Co.* v. *McGregor Gow and Co.* (1892), for instance, the common law turned out to be helpless to protect a plaintiff from others' agreement to monopolise their trade route.

The second doctrine, the tort of conspiracy, was also not generally very helpful. According to the doctrine, the victim of conspiracy may recover damages where unlawful means inflict harm upon him, and where the conspirators' main purpose is to injure the business of the plaintiff. Nevertheless, the plaintiff could not invoke the doctrine against the conspirators' argument that their main purpose is to protect their trade, but not to damage the plaintiff.

Since those limitations considerably diminish the utility of the common law in the regulation of anti-competitive practices, some attempts were made to establish a special framework of competition policy during the interwar period. The first governmental effort of that kind was the appointment of the Committee on Trusts by the Ministry of Reconstruction in 1918. Yet it was not successful, and to the contrary, cartels and monopolies prevailed, as a result of the Great Depression of the 1930s. The major argument at that time was that 'such devices mitigated unemployment and staved off bankruptcy by avoiding what was called "cut-throat competition" '.[3]

The 1948 Monopolies and Restrictive Practices (Inquiry and Control) Act

As economic difficulties grew in Britain during the Second World War, the public became more cautious about anti-competitive practices. Characteristic of that time is the link between competition policy and the achievement of full employment. The major argument was that the promotion of market competition would be beneficial to economic expansionism, thus reducing unemployment.[4] In fact, the White Paper on Employment Policy, which was published by the coalition government in May 1944, stated:

> There has in recent years been a growing tendency towards combines and towards agreements, both national and international, by which manufacturers have sought to control prices and output, to divide markets and to fix conditions of sale. Such agreements or combines do not necessarily operate against the public interest; but the power to do so is there. The Government will therefore seek power to inform themselves of the extent and effect of restrictive agreements, and of the activities of combines; and to take appropriate action to check practices which may bring advantages to sectional producing interests but work to the detriment of the country as a whole.[5]

'Public interest' was now clearly recognised and prioritised over freedom of trade. Initially there was a strong resistance from business, and the government was not very eager to introduce a new rule envisaged in the White Paper. Yet most businesses subsequently changed their attitude and accepted some rules – not because they thought it necessary for the sake of the public interest, but rather because they wanted 'to moderate American international trust-busting' against them.[6] Consequently, the first British competition law, the Monopolies and Restrictive Practices (Inquiry and Control) Act, was established in 1948.

The 1948 Act set up the Monopolies and Restrictive Practices Commission (MRPC) as an organisation for the investigation of anti-competitive practices. The Board of Trade (BoT) was empowered to refer cases to the MRPC. As a tribunal, the MRPC was able to carry out a close economic examination to determine which practice was unjustifiable in light of the public interest. It investigated not only individual cases but also commonly adopted practices, when the BoT made 'general reference' to such practices.

Despite those arrangements, however, the 1948 system was not very successful for a number of reasons. First, the scope of the investigation by the MRPC totally depended on political discretion, for the concept of the 'public interest' was too vague to determine which types of action should be considered illegal. Second, even if the MRPC judged certain practices to be against the public interest, it could not resort to any practical action to rectify them if it could not gain support from Parliament. Third, actions could be taken to change the behaviour of the parties, but not the market structure. In other words, businesses were free from such sanctions as asset divestiture, no matter how large they were in their market. The government was indeed very careful not to include the power to break up trusts and monopolies[7] when it prepared the 1948 Act. The government at that time was not so active as to intervene heavily in the business world.

Accordingly, the MRPC did not function very much. It published only twenty-three reports from 1949 to 1956, and each investigation took on average two years and three months to be completed.[8] The real economic impact of the MRPC was far from significant. Nonetheless, the MRPC represented an important step in the sense that it gathered facts and figures together and stimulated public concern, thus providing a basis for further development.[9]

The Restrictive Trade Practices Act of 1956

In fact, it was the report of the MRPC, *Collective Discrimination*,[10] that led to further legislation in the mid-1950s. The report included two different opinions – Majority and Minority – about the way to treat restrictive trade practices. The Majority argued that restrictive trade practices should be regarded as *per se* against the public interest, and that only special exemptions could be permitted. By contrast, the Minority considered that restrictive trade practices should be registered and that only those unacceptable in light of public interest should be prohibited.

The new statute – the Restrictive Trade Practices Act (RTPA) 1956 – resulted from a mixture of both positions. That is, while restrictive trade practices were normally presumed to be against the public interest, they could be registered and not prohibited across the board. Once registered, details of agreements should generally be open to public inspection. The new framework adopted the judicial approach, and the newly established Restrictive Practices Court (RPC) was authorised to judge whether registered practices should be permitted. The RPC held High Court status, and its main concern was the technical form of practices, not their economic impact. At that time, it was believed that the criteria for the RPC's judgement should be reduced to formal propositions so as to avoid discretionary evaluation under a vague concept of 'public interest'.

This 'formalistic approach' was largely welcomed by businesses. They were happy with that approach, not only because it was seen as better for reducing uncertainty, but also because they expected the legalistic approach to be less harmful. The common law court was traditionally lenient towards restrictive agreements, and businesses did not expect RPC to deviate significantly from that tradition.

For the administrative framework, the Registrar of Restrictive Trading Agreements (RRTA) was established under the 1956 Act. It was a special body engaged in the management of the regulation for restrictive trade practices. As a result, the role of the BoT and the MRPC, which was now renamed the Monopolies Commission, was reduced to inquiring into monopolies and oligopolies. The number of staff at the Monopolies Commission fell from 100 in 1954 to 37 in 1962.[11]

The developments of the 1960s

The 1956 Act was regarded as fairly successful on the whole, but several politicians, including Edward Heath, the then president of the BoT, planned to strengthen competition law for 'the modernisation of Britain', which was one of the important slogans of the Conservative government of the early 1960s. In that context, a party committee named the 'Poole Committee' requested further development of competition law:

> Our own view is that the British economy since the war has been suffering not from too much but too little competition. The trouble with British industry today is not that managements are so ruthless in their determination to score over their competitors that any less immediate objectives, values and amenities, are forgotten; the risk is rather that both management and organised labour should become complacent and, as a result, sluggish and inefficient.[12]

In consequence, the government published a White Paper on *Monopolies, Mergers and Restrictive Practices* in 1964.[13] At the same time, the government established the Resale Prices Act 1964 so as to fill the loophole of the 1956 Act regarding the rules for resale price maintenance. The White Paper announced

that the government also planned the development of the Monopolies Commission, the introduction of merger inquiry and the reinforcement of the control over restrictive trade practices. However, the plan was halted due to the defeat of the Conservative Party in the general election of that year.

Yet, after a while, the subsequent Labour government decided to carry out some of the proposals in the Conservative's White Paper. The result was the Monopolies and Mergers Act of 1965.

The 1965 Act certainly extended the regulatory scope of the BoT and the investigative scope of the Monopolies Commission in several ways. First, the BoT was authorised for a number of new actions such as requiring the publication of price lists, regulating prices, prohibiting acquisitions and imposing conditions on acquisition on the basis of the Monopolies Commission's report. With parliamentary approval, furthermore, it could also order the asset divestiture of monopolistic companies. Second, the BoT was also authorised to refer mergers to the Monopolies Commission, either when they would lead to the dominance of at least one third of relevant markets, or when their asset value exceeded £5 million. If the BoT made such a reference to the Monopolies Commission, the government could hold up the merger or restrict the integration of firms' activities until the Monopolies Commission issued its report. If the report failed to justify the merger in question, the BoT was able to prohibit it. Third, the Monopolies Commission might inquire into the supply of services as well as the supply of goods.

Under the Labour government of the late 1960s, furthermore, control over restrictive trade practices was strengthened by the RTPA 1968. The 1968 Act offered a number of provisions to supplement the 1956 Act. In particular, it added information agreements to the regulatory scope on the ground that these were used as alternatives to cartels.

To summarise its early history, British competition law extended its scope step-by-step. The 1948 Act initiated the institutionalisation of competition policy, and the 1956 Act (with the complement of the 1964 Act and the 1968 Act) and the 1965 Act established the two basic components of competition law: the regulation of restrictive trade practices and control over monopolies and mergers.

It is not surprising that the development of competition law by this stage was relatively peaceful, because there was little disagreement about the establishment of those basic components. After this 'line-up' stage, however, political discussion would naturally become more controversial, for there was no agreed direction of development beyond this point. This was actually the case in the policy-making process around 1970, which started with the initiative of the Wilson government in establishing a new competition policy agency in 1969, and settled with the establishment of the OFT under the Heath government in 1973.

British policy reforms of the 1970s: the Commission for Industry and Manpower and the Fair Trading Act

It was at the beginning of October 1969 that the Wilson government first announced the establishment of a new body, the Commission for Industry and Manpower (CIM) by the merger of the competition policy agencies and the National Board of Prices and Incomes (NBPI). Apparently, this merger was understandable since it was reasonable to remove the organisational barrier between the two pillars of competition policy, and to adjust the overlapping scope of investigation between the Monopolies Commission and the NBPI. Yet the establishment of the CIM implied more than that, because it followed the transfer of competition policy from the BoT to the Department of Employment and Productivity (DEP), whose central concern was employment policy. As discussed in the next chapter, the Labour politicians seemed to have intended to use competition policy as a tool of controlling businesses in compensation for their failure in employment policy.

The CIM plan encountered strong opposition from businesses. The leaders of the Confederation of British Industry (CBI) thought that the statutory power of the new regulatory body would be too strong. They suspected that the reform 'could mean an investigation into every part of a company's commercial practices'.[14] On top of that, businesses were furious at the government's partiality for the employee side. Sir Arthur Norman, the then president of the CBI, claimed that '[t]he public was surely more concerned with the abuse of monopoly power by trade unionists'.[15]

It is true that when Wilson announced the CIM plan he assured the CBI that it would be consulted, but the plan was far from acceptable to the CBI. In particular, businesses were furious at the proposal that all companies employing more than £10 million capital would automatically be referred to the new Commission. They also worried about the plan enabling the new Commission to examine *ex post facto* whether merged companies resulted in the desirable consequences that had been anticipated at the time of their mergers. Furthermore, Barbara Castle, the then Secretary at the DEP, stated her intention to endow the new Commission with the power to order the disclosure of more detailed financial information.

Despite strong opposition from businesses, Castle and Wilson made virtually no concessions to them. Indeed, when the proposal was turned into a Bill, only a few minor modifications were made. The only point that the government adopted from the CBI's advice on the Bill was that where a reference to the CIM relates only to a price increase, any order made will use only the power to regulate the price and no other, and for a period of no more than eighteen months from the date of its report. It was symbolic that businesses could not exert any influence on the staffing policy for the CIM. As a chairman of the new Commission, the government appointed Aubrey Jones, the then chairman of the NBPI, while the CBI strongly recommended another person for the job.[16] They also tried to delay the execution of the plan, but they failed here too.

Conservatives strongly opposed the CIM Bill in Parliament, with the argu-

ment that 'the principle of market power is hopelessly mixed up with and largely overlaid by considerations which…will prove as harmful in [Labour's] new CIM context as they did in the past in their old prices and incomes policy context'.[17] From their point of view, the plan was 'nothing but a spoof, a great big spoof'.[18] Nevertheless, the opposition could not achieve any significant amendments. The relationship between government and opposition on this issue was so antagonistic that the first committee meeting had ended with uproar, due to the resistance of the opposition to the forcible attitude of the government. In retrospect, such resistance proved highly effective for the Conservatives, since it caused such a delay of the legislative process that the CIM plan could not be passed before the Labour Party left office.

Whereas the Conservatives were against the CIM plan, they generally admitted the necessity for further reforms in British competition policy. In particular, there was recognition that 'investigations of monopoly should be conducted by a body with greater status and powers than those of the present Monopolies Commission and with a stronger and more expert staff'.[19]

About a year after the Labour government had announced the creation of the CIM, the Conservative government of Edward Heath announced the establishment of a new body as a replacement for the Monopolies Commission and the NBPI. However, the emphasis of the new government was different from that of the Labour government on a number of points. First, since the Department of Trade and Industry (DTI) took the main initiative in industrial matters in place of the DEP, the priority of the new body shifted from employment and income to market competition itself. Second, the Conservative government intended to include inquiry into labour practices in the regulatory scope, so that the process of collective bargaining might be formally investigated. Third, the reform plan was to prepare more specific criteria to clarify the regulatory scope, instead of using the vague concept of 'the public interest'.

The mainstream business leaders acknowledged that '[t]here was no disagreement over the need for government to exercise certain controls on monopolies and mergers',[20] and they did not oppose a reform plan on the whole. Yet there were two sources of controversy between business and government. The first was that some businessmen, notably those senior industrialists in the Industrial Policy Group, persistently opposed any reform, and on the contrary demanded the relaxation of existing regulation. Second and more important, whilst mainstream business leaders generally would have preferred the system to be modelled after the European Commission, the government did not appear to be interested in doing this.

According to the minutes of the CBI Trade Practices Policy Committee, the Committee members were concerned that the legislative differences 'would handicap UK firms in competing with firms on the Continent'.[21] They thought the existing court-based system was disadvantageous, and wanted to replace it with a system based on that of the European Community (EC). In particular, they wanted the coming reforms to enable their competition authority '(1) to grant category or block exemptions as was done in the Common Market and (2)

to give authoritative guidance and to exercise administrative latitude in determining whether agreements materially restricted competition'.[22] Some business leaders and their judicial consultants were concerned about the effect of the introduction of Article 86 of the Treaty of Rome, which provided controls over the abuse of market power, but that concern was not very great, because both inter-state trade and the European Competition Policy had hardly been developed at that time. As H. J. Gray, at the time Director of Legal Affairs at the CBI, says:

> I had not myself thought that there had been any marked change in policy in the Commission in relation to inter-state commerce in respect of Article 86; it was my understanding that they were always concerned with the possible dominant position of a firm in a substantial part of the Community which might on that account have an effect on inter-state trade.[23]

Accordingly, Campbell Adamson, the then director general of the CBI, argued as follows in a letter to John Davies, the then Secretary of State for Trade and Industry:

> We have felt it better…to seek to persuade you to make certain changes in the proposed legislation particularly in regard to restrictive practices where we feel among other things that our present legislation is liable to constitute a serious handicap to our competitive position in relation to continental manufacturers.[24]

Public officials in charge of competition policy did not seem to be very positive about the European model. For instance, Sir Ashton Roskill, the then Chairman of the Monopolies Commission, warned of possible conflict between British and European rules.[25] Sir Rupert Sich, the then RRTA, apparently made no mention of the European model when he was asked for his ideas about the reforms.[26]

Similarly, the government politicians did not seem to think much of international harmonisation of competition law, even though they were keen to gain membership of the EC. At least apparently, John Davies, industry secretary from 1970 to 1972, had been in disagreement with the CBI on the issue of competition law reform. It was reported that 'when industry is calling for the end of the RPC in its present form, Davies feels the law on restrictive agreements should be preserved but administered where necessary by the general courts'.[27]

What was more adverse to the CBI leaders was that all their efforts to persuade Davies came to nothing as the result of the Cabinet reshuffle of November 1972. Peter Walker, the new industry secretary, was not very sympathetic to business interests. His basic position was that 'modern society must accept that the directors of companies have considerable responsibility both to their employees and to the community in which they operate'.[28] He, together with Sir Geoffrey Howe, the new Minister for Trade and Consumer Affairs, put

more emphasis on consumer protection, with virtually no concern for the 'harmonisation' issues advocated by the business sector. Under that direction, the government stressed its intention to extend the scope of the new body's authority to consumer protection and to add several new measures which had not been mentioned before, such as legal punishments for unfair practices, and the extension of the scope for monopoly investigation by lowering the market share threshold from one third to one quarter. After this process, the government finally introduced the Fair Trading Bill to Parliament at the end of November 1972.

This Bill was severely criticised by both business leaders and opposition politicians. The CBI quickly published a report to push the EC-based reform.[29] The Labour Party considered the Bill as 'window dressing', arguing that '[t]here has to be a wider degree of Government control and intervention in the affairs of big business'.[30] Consequently a large number of amendments were moved in Parliament, but only few minor changes were eventually made. One of the most remarkable amendments was to extend the regulatory scope of consumer protection to health and safety matters on 16 May. This clearly showed that concerns about consumer protection were continuing to grow even after the Bill's submission. The new legislation was established in July 1973, nearly four years since the initial discussions of reform under the preceding Labour government.

It was observed, at least at first, that the new legislation 'represent[s] the biggest shake-up in competition policy since the war'.[31] The most important change was the creation of the post of Director General of Fair Trading (DGFT) and his/her office, the OFT. As a quasi-independent administrative body like the Federal Trade Commission of the United States, the OFT was enabled to exercise regulatory powers in the defined fields of consumer protection and competition policy.[32] The DGFT took over the authority of the RRTA. The DGFT also had the authority to make monopoly referrals to the investigative body, which was now strengthened and renamed the Monopolies and Mergers Commission (MMC). The Heath government had previously announced that the new legislation 'ought to drop the presumption in present monopoly-vetting that companies with more than one-third of their market tend to operate against the public interest and that mergers involving £5m or more of assets, can be scrutinised by virtue of size'.[33] In reality, the new legislation adopted a rather more stringent criterion of one quarter of market share, while maintaining the £5 million criterion. When the reform was put under discussion, the DTI announced that at least 115 product sectors would be newly captured by this reform. With those arrangements, the reform was rather unwelcome to many business leaders.[34]

Yet the new legislation did not really seem to consider the interests of the competition policy experts, either. The DGFT had little control over the regulation of monopolies and mergers. The DGFT was not able to exercise his/her power against the opposition of the Secretary of State. With regard to merger referrals, the DGFT could at most recommend the Secretary of State to make referrals to the MMC. In other words, the DGFT could not consult the MMC

without the Secretary of State's approval. This also applied to nationalised industries and restrictive labour practices. The reform was certainly a policy innovation, but it was little more than an organisational reconfiguration. The establishment of an integrated enforcement organisation can be regarded as a step towards the European model, but there was apparently no significant policy transfer with regard to the regulatory system.

Historical development of Japanese competition law

Market competition in pre-war Japan

Japanese competition law did not spontaneously stem from Japanese society. Instead it was 'implanted' during the era of US occupation. Traditionally, the concept of 'fair competition' was not the norm in the Japanese market. There is a story about public officials of the mid-nineteenth century who had difficulty even in translating the word 'competition' into Japanese, since it was neither 'battle' nor 'cooperation'.[35] Even as late as the Second World War, the concept was still unfamiliar to Japanese people in general, even though they had by now imported many other concepts and techniques from the West. Of course, Japanese businesses were deeply committed to market competition in reality, but their main competitors were foreign countries. In the domestic market, they were willing to cooperate with each other in order to win the 'economic battle' against foreigners.

Victory in the economic battle was strongly recognised as a national priority at that time, and the government played a leading role in promoting economic development. Many industries were put under strong governmental control through their trade associations. Publicly owned factories preceded leading industries such as textiles and steel, and played a major role in introducing Western technologies. The government was expected to protect them all the time, so many businesses jumped into the market no matter how competent they were.[36] Thus markets were occupied by too many competitors, who were all reluctant to leave the market, expecting government help in case of distress. With too many competitors, it was very difficult for newcomers to enter the market. The regulatory environment also favoured existing players rather than new entrants, and many markets were 'compartmentalised'. This 'compartmentalised market' is often followed by the demand for protection from 'excessive competition'. That is, severe competition among too many competitors would be harmful to all competitors and should be avoided for the sake of the public interest. In this context, cartels were considered as a good means to avoid such 'undesirable' market competition.

Furthermore, there were a number of large industrial conglomerates called *zaibatsu*. Growing from suppliers of public procurement, they gained economic strength under the strong protection of the government. After they acquired public factories at unfairly low prices thanks to their special government connection, they

formed enormous industrial conglomerates in which several family-owned stock-holding companies controlled a variety of businesses hierarchically.

The economic expansionism of *zaibatsu* was regarded as one of the most important causes of the Pacific War. Furthermore, traditional cartel-based trade associations had made it easy for the government to establish totalitarian regulations during the War. Since *zaibatsu* and cartels had a close relationship with Japanese militarisation, radical reform of such economic traditions was justified when the war ended. According to Corwin D. Edwards, the head of the State-War Mission on Japanese Combines, 'the purpose of *zaibatsu* dissolution is not to reform Japanese society for the sake of the American economy nor of the Japanese themselves: it is to destroy Japanese military strength both psychologically and institutionally'.[37]

Competition policy under the occupation

The implantation of 'sound' competition policy was one of the most important tasks that the US occupation forces managed under the name of 'economic democratisation'. The occupation forces adopted both temporary and permanent methods. Among the temporary methods were the dissolution of *zaibatsu* and the deconcentration of economic power. Following the dissolution of *zaibatsu*, the stocks of the major holding companies were thoroughly dispersed. The number of companies targeted under the *Zaibatsu* Dissolution Law was 1,682, nearly half of which were member companies of the four major *zaibatsu* (Mitsui, Mitsubishi, Sumitomo and Yasuda – 761 companies). In addition the holding companies were dissolved and liquidated, and the *zaibatsu* families were prohibited to work for similar companies again. The commission for holding company liquidation once announced the designation of 325 companies with seemingly dominant power in their respective markets.

It was natural that the officials of the occupation forces should want to create a permanent method of economic democratisation in order to prevent any future re-emergence of *zaibatsu* and other industrial concentrations. This led to the establishment of the Anti-monopoly Act (formally called the Act Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade). The Japanese government was ordered to make the law itself in the first instance, but the government's proposal was not stringent enough to satisfy the occupation forces. This was mainly because Japanese officials themselves did not see the restriction of market competition as problematic *per se*. Eventually a proposal came from the occupation forces. The proposal included many stringent regulations which were resisted by the Japanese government. After intense discussion, which endured for seven months after the initial proposal, the law was passed by the Diet in March 1947. Under this law, the FTC was established as an enforcement organisation.

Since the law owed much to the proposal of the occupation forces, the Japanese anti-monopoly system was largely modelled on the antitrust system of the United States. The result was that the law was a compilation of relevant

American competition laws including the Sherman Act, Clayton Act and Federal Trade Commission Act. In general, the law was viewed as very tough on Japanese businesses. For instance, Article 4 provided that agreements among enterprises in competitive relationship about prices, territory of activities, quantity of production and other terms of business were prohibited, unless the effect on competition of such agreements was regarded as negligible. Such *per se* prohibition was totally unfamiliar to the Japanese at that time.

Furthermore, the first AMA included some rules apparently more stringent than those found in US legislation. For instance, Article 8 provided that to hold a dominant position in the market was illegal in itself. Article 9 prohibited the establishment of holding companies. Article 10 prohibited non-financial companies from holding any normal stocks of other companies.

It was widely recognised that these articles reflected the desire of some American officials, namely 'New Dealers', in the occupation forces to experiment with an 'ideal type' of antitrust policy which they could not achieve in their own country. Such drastic treatment might have been necessary in order to rectify the tradition of anti-competitive practices in the Japanese economy, but such treatment created in Japanese business an unnecessarily strong antagonism towards competition policy, at least initially. For example, Shigeo Nagano, a former executive of Japan Steel Corporation and a member of the AMA policy-discussion group in the Japanese government, once stated that 'we no longer need to obey capital deconcentration carried out with a view to weakening the Japanese economy',[38] in a discussion of Japanese competition policy in later years. Whether he was right or not, this clearly represented the dominant feeling among Japanese business leaders at that time.

Relaxation of the AMA

Despite the stringency of the original law, many amendments were carried out in only a few years, due to a change in the occupation forces' policy. The occupation forces shifted their policy direction from the thoroughgoing achievement of economic democratisation towards the preservation of the power of Japanese industry as a gatekeeper *vis-à-vis* the communist camp. Moreover, strong demands for the law's relaxation came from those American businessmen who wanted to set up their businesses in Japan. The Japanese law seemed too stringent even for them. Under these circumstances, antitrust officials in the occupation forces were forced to make some concessions.

Consequently, some regulations, notably the prohibition on holding other companies' stock (Article 10), were relaxed in 1949. For the same reason, the planned deconcentration of economic power made very limited progress, resulting in the reorganisation of eleven companies and the partial asset divestiture of seven companies. The occupation forces also relaxed policy implementation through their direction to the FTC. This was especially evident after the Korean War began in 1950.

The demands for wider relaxation increased rapidly after the departure of

the US occupation forces consequent to the signing of the San Francisco Peace Treaty of 1952. Now the Japanese government was able to modify competition rules without the previous obstacle. Business leaders, especially those in the *Keizai Dantai Rengokai* (Federation of Economic Organisations, or *Keidanren*) strongly advocated the relaxation of the AMA. As a result, the AMA underwent a large-scale amendment in 1953, with a number of very significant changes. First, Article 4, which provided *per se* illegality of cartels and other inter-firm agreements, was abandoned. The new legislation prohibited inter-firm agreements only if those agreements caused substantial restraint of market competition in a particular field of trade. In relation to this, the new scheme authorised two particular cartels, namely 'depression cartels' and 'rationalisation cartels'. Under this scheme, the FTC permitted cartels if they were justifiable in light of such purposes as overcoming economic depression and achieving operational rationalisation.

Second, Article 8, which provided *per se* illegality of dominant market position, was also abandoned. In relation to this, the prohibition of mergers and acquisitions (M&As) was removed on condition that they should not restrain competition in any specific market (Articles 10–16). In effect, those changes paved the way to the reorganisation of large business groups. Those business groups, the so-called *keiretsu*, were not identical to, but functioned in the same way as the old *zaibatsu*.

Third, the 1953 amendment introduced the exemption of resale price maintenance control, which had been entirely prohibited in the original Act (ironically, this was modelled after the legislation of the United States).[39] Under this rule, resale price maintenance was permitted for published materials (e.g. books) and products covered by copyright (e.g. records), as well as nine products specifically designated by the FTC, such as cosmetics, medicines and detergents.

Furthermore, some types of unfair business practice were newly added to the list of prohibitions in Article 2, and the phrase 'unfair methods of *competition*' in the law was replaced with 'unfair methods of *trade*' in that article. Consequently, the law came to apply to such practices as the severe conditions that large firms forced on small firms by taking advantage of their dominant bargaining power, while such activities had not previously been prohibited because they did not directly affect market competition. In return for the extension of its regulatory scope, however, the FTC lost the authority to designate new types of unfair business practices as a result of the reform. In that sense, this reform was also part of the relaxation of the original law, even though it somewhat extended the regulatory scope of the FTC.

Finally, there was an organisational restructuring of the FTC, and the number of its staff was reduced considerably during the early 1950s. FTC staff numbered 305 in April 1952, but this figure fell to 237 after just one year. The number of commissioners was also reduced from six to four.

Competition law after the 1953 amendment

In consequence of the relaxation of the AMA and the cutbacks in the FTC, Japanese competition policy looked stagnant for a while. Under the slogan of 'flexible implementation', the FTC was contemptuously called 'a toothless watchdog'. Many industries did not even apply for authorised cartels. They were able to create cartels easily under the administrative guidance of the Ministry of International Trade and Industry (MITI), namely *kankoku-sotan* (simultaneous decreases in production by administrative directives). It was observed that '*de facto* cartels such as *kankoku-sotan* played a rather more important role than cartels authorised by the FTC in the principal industrial sectors including fibre, steel, non-steel metal, chemical and paper manufacturing'.[40] At that time, the mainstream argument was that cartels of this kind enhanced economic welfare because they avoided 'excessive competition' and secured steady production.

Since business leaders had not been satisfied even after the 1953 reforms, from time to time they pressed the government to make competition rules more lenient. One of those efforts led to the amendment Bill in 1958, which would totally emasculate the AMA. The Bill was actually submitted to the Diet, but it brought strong protest from smaller businesses, farmers and consumer groups, and the united campaign of the opposition parties. As a result, the reform Bill was abandoned.[41]

The AMA came under attack once more in the early 1960s. The growing prospect of rapid economic liberalisation at that time led MITI officials to believe that their informal administrative guidance should be replaced with formal legislation. This resulted in the submission of the Specific Industries Promotion Bill (SIPB) in 1963. According to the Bill, the MITI would be able to take the initiative in competition policy. Nevertheless, the Bill was discarded due to strong resistance from business, in particular the banking community. Now they were getting worried about excessive expansion of MITI's powers.[42] Even after the setback of the SIPB, MITI officials persistently tried to bring the AMA and the FTC under their control, and to incorporate competition policy into their brief. The slogan of the 'New Industrial Order'[43] in 1967 was a case in point. Under this slogan, it was argued that the traditional order of excessive competition should be replaced with a New Industrial Order, where 'orderly competition' was the norm. In MITI's view, it was unreasonable to promote disorderly competition in the face of changing economic conditions.

However, the AMA did not suffer from any formal relaxation after 1953. On the contrary, in the 1970s the FTC began to mount a counter-attack, and its aims were finally achieved with an amendment which reinforced the AMA for the first time in its thirty-year history.

The Japanese case in the 1970s: the 1977 amendment of the Anti-monopoly Act

On 12 October 1973, FTC Chairman Toshihide Takahashi formally announced that it was necessary to consider whether competition policy should be strength-

ened against the background of inflation and the anti-big business atmosphere. At first his reform plans included

1 the measure of asset divestiture for highly oligopolistic companies;
2 forcible price reduction to remove price cartels;
3 stronger penalties;
4 judgement based on circumstantial evidence; and
5 the disclosure of accounting information.

He then organised a special study group, the 'AMA Study Group', comprised of economists and lawyers, to discuss his plan. Correspondingly, the House of Councillors published the supplementary resolution that 'the government should…launch the reform of the AMA so that the FTC is authorised to give such orders as asset divestiture for oligopolistic companies and price reduction for cartels'[44] when the 'Law for the Urgent Measures to Stabilise the Life of the People' was passed in December 1973. Allegedly, Takahashi and his staff were at first not so eager to promote the legislative reform,[45] but their interest in reinforcing the AMA grew rapidly as inflation became more serious and cartels became more evident after the Oil Crisis of 1974.

Meanwhile, the AMA Study Group had discussed the issue in depth, and finally published a report strongly recommending the reforms. These included

1 asset divestiture of highly oligopolistic companies;
2 publication of cost structure for those companies pursuing parallel pricing in cases where neither cartel regulation nor asset divestiture was applied;
3 restoration to the original price level, although it should not be 'price reduction', which would belong to price control;
4 establishment of an administrative surcharge system and the reinforcement of criminal penalties; and
5 restrictions on stockholding by trading houses and financial companies.

Based on this report, the FTC published a reform proposal in September 1974.

Naturally, the proposal encountered strong opposition from business. The *Keidanren* had already indicated its opposition to any extension of competition regulation in May 1974, even though the FTC had yet to publish its proposal. Toshio Doko, who was installed as President of the *Keidanren* at that time, said in his very first public speech that the '*Keidanren* does not think it necessary to reinforce the AMA. The reform which the FTC is planning goes too far'.[46] At first, the *Keidanren*'s AMA Study Group took a hard line and almost completely rejected the necessity of the legislative reform. Not only that, but the Study Group even questioned the constitutionality of the FTC and claimed that it needed restructuring. Junji Hiraga, chairman of the Study Group, published his hard-line opinion against the FTC and the anti-big business atmosphere in Japanese society at that time:

> The debate on the FTC is *low-level*, in the sense that it only considers the extension of its authority, without any discussion of its basic principles.…It is a great shame that there is a widespread view that all responsibility for price rises lies with business.…It is very *short-sighted* to fail to appreciate the attempts of business to innovate, to supply high-quality goods to consumers at reasonable prices, and to contribute to society by bringing stability to the lives of its workers.[47]

Seemingly, Hiraga believed that his opinion could gain enough public support to discourage the FTC from further pursuing the reform process. But to the contrary, it had in reality consolidated the anti-big business mood among the general public, which had already grown against a background of hyper-inflation. The public grew antagonistic to business leaders because of their arrogant attitude and use of such phrases as 'low-level' and 'short-sighted' in statements such as Hiraga's. Consequently, the *Keidanren* found it necessary to abandon its hard-line policy and to concede the necessity of legislative reform. In July 1974, Doko announced that he would not treat the 'Hiraga view' as the official *Keidanren* line. He said that the President/vice-President meeting did not confirm the 'Hiraga view', and that the *Keidanren* had yet to reach any conclusion. After this announcement, the *Keidanren* apparently became reluctant to lead the debate on AMA reform, although they seemed frustrated by the course of events.

After that retreat by the leaders of business, MITI officials played a major role in opposing the FTC. A newspaper reported that a high-ranking MITI official had said he would prevent the AMA reform 'at any cost'.[48] The MITI officials were even more offensive than business leaders because they not only tried to block the FTC's proposal, but also attempted to substitute their own proposals for extending the scope of exemption from the AMA, namely a 'Law for Adjustment of Demand and Supply of Basic Materials' and a 'Law for Promotion of Industrial Restructuring'.[49]

The governing Liberal Democratic Party (LDP) was on the whole reluctant to strengthen the AMA. The majority of LDP politicians was far more sympathetic to the *Keidanren* and MITI than to the FTC. For example, an anonymous LDP leader suggested that 'seventy per cent of LDP politicians opposed the plan'.[50] As a result, the first bill proposed by the LDP in April 1975 allowed various exemptions and other ministries' intervention to substantially reduce the scope of competition regulation, even though it ostensibly included a number of new measures.

The opposition parties and the FTC, supported by academics, consumer groups and mass media, put up a strong resistance to the first proposal. While most LDP politicians were antagonistic to competition policy, some of them lent support to the genuine reforms. The most significant support came from the Prime Minister, Takeo Miki. Compared with others of the LDP, Miki was less concerned about the parochial interests of big business, hence far more supportive of the reinforcing of competition policy. Significantly, he told the Prime Minister's Office (PMO) to prepare the Bill for AMA reform at his very first cabinet meeting. Without his support, therefore, the government would not

even have published the Bill proposal. There were several other politicians, notably the *Dokkin-Yoninshu* ('Anti-monopoly Quartet'),[51] who sided with the Prime Minister and waged a campaign for more effective reform.

Against this background, the LDP government finally agreed to the 'five parties' amendment plan', proposed by the opposition parties as an alternative to its own proposal. The government proposed the second Bill based on the 'five parties' amendment plan'. The LDP supporters of competition policy finally persuaded their colleagues, and the Bill was passed by the House of Representatives in June.

Given the strong opposition of business leaders and MITI, and the LDP's traditional sympathy to those interests, the LDP's last-minute turnaround was so surprising that 'business leaders were dumbfounded'.[52] Then there was a backlash against the Bill. This time business leaders and MITI officials succeeded in gaining the support of the LDP politicians in the House of Councillors. The LDP Councillors persistently opposed the passage of the Bill, and they successfully delayed the process so that the Bill could not be brought to a vote before the end of the 1975 session.

After the 1975 session, the LDP established an advisory committee to discuss the reform of competition law again. The government planned to propose a new Bill in the 1976 session, but this proposal was not formally discussed in the Diet. After all, many LDP politicians had again turned away from competition policy, while the opposition parties were sceptical about the new proposal because it looked less effective compared with the 'five parties' amendment plan'. The retirement of Chairman Takahashi in February 1976 (due to a health problem) also reduced the impetus of reform.

By the end of the 1976 session, it was widely expected that there would no longer be any calls for reform.[53] Nonetheless, competition law reform came onto the agenda once again, as a result of the LDP's defeat in the elections of December 1976. Apparently, the party tried to promote reform in order to regain popularity with voters. Ironically, however, this turnaround came after Miki, the LDP's strongest supporter of competition policy, left office in consequence of the electoral defeat.

Under the next Prime Minister, Fukuda, therefore, the government prepared a new Bill proposal, which was largely based on the 'five parties' amendment plan' of 1975. The proposal was eventually passed by both the House of Representatives and the House of Councillors in May 1977.

The new legislation was not identical to the 'five parties' amendment plan' because it allowed other ministries to intervene in the investigation process of the FTC regarding orders of asset divestiture. When compared with the FTC's original proposal of 1974, moreover, the new legislation considerably reduced the scope of the FTC's discretion with regard to asset divestiture. Neither was the FTC able to order companies to publish cost structure or to restore original prices. Instead, the FTC was only allowed to ask companies why they had raised prices when it suspected parallel pricing. In light of those modifications, it would

be difficult to say that the reforms were 'an epoch-making event',[54] or represented the total victory of competition policy.

Nevertheless, it is equally noteworthy that the LDP was unable to further emasculate competition law. The penalty system was reinforced and the limitations on stockholding became more stringent, as proposed by the FTC from the beginning. There is little doubt that the reforms were a significant counter-blow against business. On top of this, it is significant that the LDP could not prevent reform. The new legislation was the first reinforcing amendment in the thirty-year history of Japanese competition law, and although the extent of the achievement should not be overestimated, it is important to take account of the symbolic effect of this fact.

It should also be stressed that these new rules were not the products of policy transfer from other countries. It is true that the reinforcement of competition policy itself was an effort to bring Japanese competition law more in line with its Western counterparts. Indeed, Chairman Takahashi became more anxious for reform after he had visited the OECD and several Western countries.[55] Nevertheless, the goal of reform at that time was not to obtain similar policy outputs, but rather to obtain similar policy outcomes. In that sense, the reforms should not be regarded as policy transfer, but rather as policy invention.

Conclusion

The discussion of competition policy is intermittent; the reform of competition law is periodically discussed quite extensively, but attracts little attention at other times. Moreover, competition policy draws attention from various societal interests. It targets all business sectors in principle, and it affects consumers' interests, often indirectly but sometimes directly.

As a result, the competition policy network is neither a closed nor persistent entity. However, the competition policy network is not entirely diffused. There are certain government experts constantly concerned with competition policy, even when there is no major concern among politicians. Also, as discussed in Chapter 1, competition policy requires a great deal of legal and economic knowledge, hence this tends to select the membership of its policy fora. These characteristics distinguish the competition policy network from other policy networks.

Its early history and the cases of the 1970s discussed above have highlighted the basic membership of the competition policy network. In both Britain and Japan, competition policy was primarily discussed among representative business organisations, political parties and public agencies in charge of industrial policy and competition policy (henceforth 'industrial policy agencies' and 'competition policy agencies' respectively). Of course, the above history shows that several other actors were present, notably trade unions and consumer groups. With regard to trade unions, nonetheless, these were never really interested in competition policy unless it was directly related to their interests. It is true that trade unions were highly concerned about the regulation of restrictive trade practices

when the Heath government proposed such regulation, but this was somewhat exceptional. They were, of course, interested in competition policy when it was expected to alleviate inflation, but their interest was no more than that of general consumers. As for consumer groups, they should be excluded from the network core for lack of resource dependencies with others. Generally speaking, they represent the interests of consumers, but they fail to organise the power resources of consumers (e.g. their votes). As Olson notes, '[t]he consumers are at least as numerous as any other group in the society, but they have no organization to countervail the power of organized or monopolistic producers'.[56] Consequently, it is more useful to focus on the former four actors (representative business organisations, political parties, industrial policy agencies and competition policy agencies) as the core actors, in the cases of both Britain and Japan.

Britain and Japan are also similar in that their reforms of the 1970s did not represent the transfer-type policy innovation. The idea of the harmonisation with international standard practices failed to gain much support at that time. In Britain, the CIM plan of the Wilson government would have increased the degree of national specificity in British competition policy. The Heath government's proposal to introduce a European model was rejected. Likewise, in Japan, most of the amendment provisions were domestically invented, and not imported from other countries. The failure of the idea of international harmonisation also indicated its lack of predominance in the policy position of major business representatives (i.e. the CBI in Britain and the *Keidanren* in Japan). Businesses criticised the increase of nation-specific measures and advocated international harmonisation, but they were not very successful in either Britain or Japan.

In that case, how should this similarity be explained? One possible answer is that the idea of international harmonisation was not popular at that time, and thus businesses could not persuade other actors. It can also be said that even if businesses preferred to block the strengthening of competition policy by advocating the necessity for international harmonisation, their interest in this issue was not fundamental, and thus they were not so willing to mobilise their resources to oppose reform. In any case, however, it may be naive to attempt to judge how persuasive these interpretations are, without investigating the structure of the policy network underlying the policy-making processes described above. This will be undertaken in the following two chapters.

3 Actor interests and cohesion in the competition policy network of the 1970s

One of the key dimensions of the policy network is the cohesion of actor interests, as discussed in Chapter 1. The aim of this chapter is therefore to assess the degree of cohesion of actor interests in the competition policy network at the time of the 1970s reforms. This assessment may help answer the question of why the final policy output failed to reflect the position of business leaders.

The first section discusses the interests of businesses through close examination of their preference for inter-firm collusion and industrial concentration. The second section considers the interests and strategies of politicians and industrial policy officials in the context of party politics and industrial policy. The third section assesses the interests of competition policy officials by investigating their basic theoretical stance and performance level. The concluding part summarises those findings, and discusses the extent to which the final policy output can be explained by the cohesion of actor interests in the competition policy network.

Business preferences for inter-firm collusion and industrial concentration

British businesses' attitude towards inter-firm collusion

Reflecting the traditional lenience of common-law doctrines concerning restrictive practices (see Chapter 2), British businesses had no qualms about inter-firm collusion, at least before the Second World War. In order to avoid painful market competition, many businesses were engaged in cartels and/or other restrictive practices, often through trade associations. In the interwar period, the government abandoned free trade policy and imposed protective duties as well as quantitative import control, and this facilitated such inter-firm collusion under the name of 'rationalisation'. In those days, rationalisation was 'looked upon as a means for strengthening the ability of an industry to operate price-fixing and quota schemes', and 'its success was to be judged by the extent to which it brought financial advantages to the firms rather than to its effect on costs'.[1] The suppression of market competition culminated during the Second World War. In the war years, the government was engaged in price control and rationing via

trade associations and large companies. Consequently, 'many businesses disliked the thought of a return to a competitive market place and were ill prepared for the rebirth of competition'.[2]

After the War, however, the market environment in Britain changed significantly in some ways. The first was a rise in the pressure for market competition. Although still to a limited extent, efforts towards trade liberalisation, including the General Agreement on Tariffs and Trade and the European Free Trade Association, had lowered entry barriers in the domestic market. This led to the growing inflow of foreign imports. In addition, British companies suffered from a reduction of demand from the Commonwealth countries due to the dissolution of the British Empire. While the share of the Commonwealth countries in total exports was just below 50 per cent in 1949–53, it fell quickly to 26 per cent in 1969–73.[3] The structural changes in both supply and demand as such naturally intensified market competition in Britain.

Second, the British market experienced a large amount of capital inflow and outflow, which was prominent in comparison with other industrialised countries. During the 1960s, the ratio of direct investment (outward plus inward) as a percentage of gross capital formation was 8.1. In the same period, the corresponding figures for the United States, France, West Germany and Japan were 3.7, 2.0, 2.5 and 0.6 per cent respectively.[4]

According to Channon, the growing influx of foreign capital, particularly from US manufacturers, had a significant impact on British businesses in their attitude towards market competition:

> These companies brought to the United Kingdom improved exploitation of technological innovation and the extensive use of marketing techniques, both of which permitted market segmentation and product differentiation. They also brought an attitude of market competition since they were subsidiaries of corporations which grew in an environment where competition had long been involved in cartel type operations, and in the main their presence tended to increase competitive activity.[5]

Moreover, American subsidiaries even contributed to the discussion on competition policy. According to Douglas Jay, a Labour Member of Parliament, he received a letter from an American firm informing him about the anti-competitive practices of British firms when he joined in the policy discussion of the Restrictive Trade Practices Bill 1956.[6]

It may be argued, however, that neither intensified competition nor prosperity of foreign investment would necessarily lead to a reduction in inter-firm collusion. Existing businesses might be inclined to strengthen their traditional ties in order to protect themselves from severe competition with newcomers. The fear of the penetration of foreign investment might reinforce the ties among purely domestic companies – as was the case in Japan (see below). Why, then, did those changes help British businesses change their attitude towards market competition?

The first answer is the development of the regulatory scheme for restrictive trading agreements based on the Restrictive Trade Practices Act (RTPA) 1956, but we will return to this issue later in the chapter.

Second, given the regulation of inter-firm links, British firms instead tended to form a direct link, i.e. a merger. Although mergers are not necessarily a substitute for inter-firm collusion, some mergers were apparently motivated by the wish to replace formerly condemned *inter-firm* agreements. Turner, for example, observed that 'the legal restriction of price-fixing agreements…forced many industries which had previously relied on price regulation through trade associations to look to mergers for salvation'.[7] In other words, mergers played the role of giving vent to the desire for market control, not by inter-firm collusion but by market dominance.

The third answer relates to the short-termism of British businesses. There are two aspects in relation to inter-firm collusion. First, the supplier/buyer relationship in Britain was mainly constructed on a short-term basis, and British businesses were less likely to set up close ties of vertical integration, at least compared to their Japanese counterparts (see below). The second aspect is the short-termism expressed in corporate governance. Generally speaking, British managers tended to think more of short-term than long-term profits.[8] From this it follows that they would prefer an all-or-nothing contest rather than cooperation with their competitors.

Finally, the cultural aspect is noteworthy. It is less direct and visible, but nonetheless quite important. In general, British businesses are characterised by 'persistent individualism', reflecting the historical view that Britain was 'industrialised on the basis of efforts by individual entrepreneurs'.[9] As the War ended, moreover, the centripetal force of business associations became weaker, and businesses were less eager to join together at the cost of their freedom of individual activity. This was reflected in the attitude of businesses towards competition policy in the 1950s. In relation to this, Mercer observed that

> The solid phalanx of business opposition to competition policy began to break up in the 1950s, mainly because of the rewards the economic expansion of the 1950s offered to the firm who broke away from cartel agreements.…Thus larger firms did not lobby to kill restrictive practices, but neither did they strive officiously to keep them alive.[10]

As a matter of course, it may not be correct to suppose that all British businesses had washed their hands of inter-firm collusion, nor that they had totally devoted themselves to inter-firm competition. Nevertheless, all the above factors on the whole reduced British businesses' attachment to inter-firm collusion, at least compared with their Japanese counterparts.

British businesses' attitude towards industrial concentration

With regard to industrial concentration in Britain, a significant merger boom occurred in the mid-1960s and again in the early 1970s, as shown in Figure 3.1. Correspondingly, there was a significant rise in the degree of industrial concentration in terms of the share of the largest 100 firms in manufacturing net output (Figure 3.2).

It should be noted that the degree of concentration was, as a result, well beyond the level of the 1930s, when the 'rationalisation movement' occurred.[11] According to the Department of Employment and Productivity's report in 1970, 156 companies were found holding half or more of the British market for their particular product.[12]

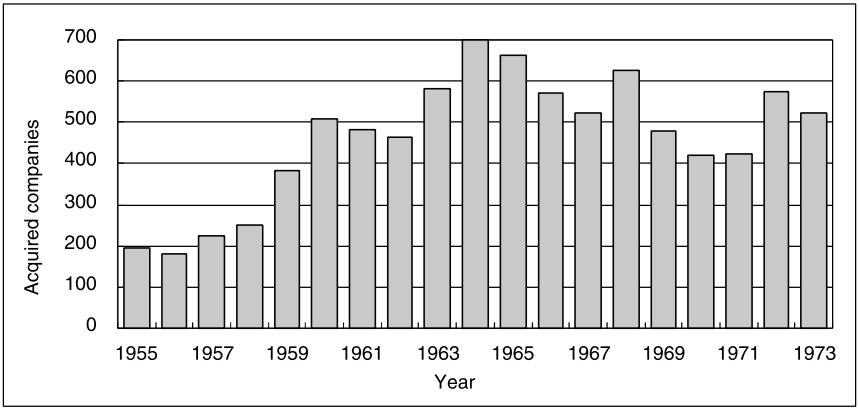

Figure 3.1 Acquired companies in Britain, 1955–73

Source: Aaronovitch and Sawyer 1975

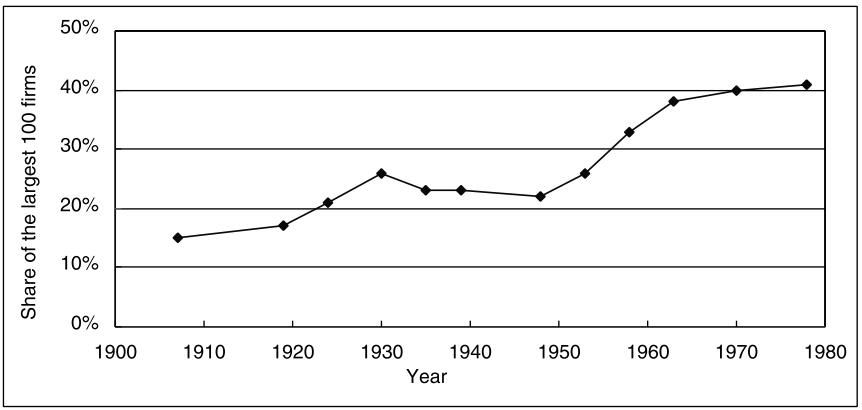

Figure 3.2 Share of the largest 100 firms in manufacturing net output in Britain, 1907–78

Source: Hannah 1983

A number of factors should be considered in explaining that boom. The first is the advancement of trade liberalisation, as mentioned above. It was natural that businesses were inclined to seek economies of scale by mergers in order to enhance their international competitiveness. Second, economies of scale also became important once the pattern of mass production/mass consumption had spread throughout the economy. Third, a large number of technological innovations, especially in the area of electronics, required many businesses to revise their production system.

Obviously, the regulatory scheme of competition policy was important as well. Whilst the regulatory system under the RTPA 1956 was on balance successful, the government was rather slow in providing a scheme of monopolies and mergers control. The Monopolies and Mergers Act was established in 1965, but regulation was not very stringent. Under those circumstances, businesses were inclined to prefer mergers over cartels, as explained above. One of the main reasons for the weak controls on industrial concentration was that the government devoted itself to the creation of dominant firms under the name of 'national champions'. The rise of international competition in the 1960s encouraged the government to create firms large enough to compete with other international economic giants. As a result, the British government faced a serious paradox over industrial concentration.

The effect of the short-termism in corporate governance should be mentioned again to explain the attitude of businesses towards industrial concentration. The owners of British companies had a tendency to focus on short-term profits, and company managers were often urged to resort to takeovers as the quickest way to raise profits. As Moran pointed out,

> The stakes in these battles are high: for managers of targets the result of a victorious take over can be loss of jobs; for the bidder, the rewards are enhanced size, market share and, in many cases, the opportunity to dispose of assets (or to strip assets) in the acquired concern.[13]

The above description also includes an important implication about the relationship between mergers and short-termism. That is, while short-termism led managers to instigate takeovers, managers would become keen to raise profits in a short period so that their companies would be less vulnerable to the takeover bids of others. 'Persistent individualism' also helped British managers adopt more aggressive measures (i.e. mergers) instead of establishing inter-firm cooperation. It should also be noted that in Britain managers of targeted companies had few effective defences against takeover.[14]

Finally, it is necessary to take account of some characteristics of the City. The City was comprised of merchant banks such as Schroder and Rothschild at its centre. Those banks developed highly specialised know-how about mergers, and they promoted mergers primarily for the commission they expected to receive, with little concern for industrial development and the national economy. The City's commitment to industrial development traditionally lacked responsibility

and long-term considerations. After all, 'the City institutions have acted almost exclusively as simple intermediaries between investors and borrowers, and have traditionally been characterised by an organisational separation from productive enterprise either at home or abroad'.[15]

The City's encouragement strengthened the appetite of British businesses for mergers. While the increase in mergers helped the revival of the City in the 1960s, the development of the City in turn facilitated the merger boom.

Japanese businesses' attitude towards inter-firm collusion

Overall, Japanese businesses had a strong preference for inter-firm collusion, whether horizontal (i.e. between competitors) or vertical (i.e. between suppliers and buyers).

One of the main reasons for this strong preference for horizontal cooperation should be attributed to the tradition of the government-led industrial development system dating back to the Meiji Restoration. During the Second World War, government leadership in this area was further strengthened. The situation did not change very much after the War. It is true that the US occupation forces initially tried to establish a strong competition policy in Japan, but they subsequently changed their policy and avoided too stringent implementation for the sake of immediate economic growth. Japanese competition policy was further undermined after the departure of the occupation forces (see Chapter 2). As a result, an anti-competition mindset persisted among Japanese businesses. In 1957, for instance, the Fair Trade Commission (FTC) had to admit that 'there are very few industries without cartels' in its annual report.[16]

While cartels were largely spontaneous in Britain (except during wartime), Japanese cartels were originally developed as a tool of state intervention. The interventionism of government and the preference of business for horizontal cooperation grew complementarily. For the government, it might well see market competition as desirable for the sake of economic growth, but it did not favour 'excessive competition', which was thought to lead to the undesirable loss of national resources due to excessive production, bankruptcy or other factors. Moreover, inter-firm connections through trade associations were convenient for the government because they served as a channel of industrial control.

For businesses, they often required government help in order to address problems that could only be solved by a collective approach. Generally speaking, horizontal cooperation could be more effective if there were a mediator for mutual communication and cooperation. Also, government intervention gave authority to cartels, so that companies in the same market felt obliged to participate. This was convenient to cartel organisers, for cartels became far more effective when they included all companies in the market. This 'persistent reliance on the government' by Japanese business formed a clear contrast with the 'persistent individualism' of British business, which held 'the old instinctive suspicion of positive government, which purports to identify the needs of the community before the community itself has recognised them'.[17]

Another factor contributing to Japanese companies' preference for cartels was the deconcentration of economic power carried out by the occupation forces. In contrast to the case of Britain, cartels were formed among dissolved companies. Take the dissolution of Japan Steel Corporation, for example. As the dominant company, Japan Steel Corporation played a leading role in the price formation of the industry, and its dissolution caused difficulties in stabilising price formation in the steel sector. Hence the companies created by the dissolution of Japan Steel Corporation, as well as other steel companies, formed various cartels in the steel market.[18]

The third factor was the exclusiveness of the Japanese market. Obviously, horizontal industrial adjustment would be more effective if there were few entries of new competitors. Conversely, effective inter-firm cooperation would block new entries and serve to maintain the closed market.

As for exports and imports, they rapidly increased from 0.5 per cent and 0.9 per cent in 1946 to 5.0 per cent and 8.4 per cent in 1949 respectively (in terms of their share of Gross National Product).[19] However, they did not increase significantly for the next twenty years: the GNP share of exports was 10.8 per cent in 1970 and the corresponding figure for imports was 9.5 per cent. The figures were less than half of those of Britain (22.0 per cent and 21.2 per cent respectively).[20] As already noted, furthermore, investment flow in Japan, both inward and outward, was quite small (0.6 per cent) compared with other industrialised countries. Under those circumstances, Japanese businesses were unlikely to be as strongly influenced by the pro-competitive attitudes of foreign-owned businesses as British businesses were by foreign manufacturers.

It is also worthwhile to take account of the 'long-termism' of Japanese business in order to understand its inclination for inter-firm cooperation. In a study of troubled industries in Japan, Uriu explained the 'long-termism' of Japanese businesses as follows:

> they have tried whenever possible to 'manage competition' domestically, either in the short term through cartelization or over the long term through collective cutbacks in capacity. It may seem strange for distressed industries to desire cutbacks in production or capacity, but by coordinating output in the face of declining demand, they can achieve the *long-term benefit* of managing competition, propping up selling prices, and thus stabilising profits.[21]

Although it was unclear whether such a method of managing competition would actually contribute to long-term benefit,[22] Japanese businesses by and large believed that competition should be managed not to exceed the 'proper' level (which was, of course, estimated only from their point of view). The belief in the benefit of horizontal cooperation was apparently very strong in such sectors as steel and petrochemicals. For instance, Mr Inayama, the first president of the New Japan Steel Corporation, was called 'Mr Cartel' because of his ardent and conspicuous support for cartels. Since those sectors occupied a

leading position in the Japanese economy and supported horizontal cooperation, other sectors did not hesitate to utilise cooperative measures as well. There was no doubt that even Japanese businessmen knew the benefit of market competition and competition policy,[23] but they tended to emphasise the importance of controlling competition, particularly for the sake of long-term growth.

Here it should be noted that Japanese companies had little difficulty in stressing long-term growth rather than short-term profit, as was the case in Britain. The main reason for this was the generally low interest in short-term profit among shareholders. After all, the majority of company ownership was in the hands of other companies (both financial and non-financial) in the form of cross-shareholding (62.5 per cent in 1975, for example).[24] Managers of affiliated companies were generally far more tolerant about low short-term results than were outside investors. Non-corporate owners could rarely apply pressure even if they *were* concerned about short-term profit, because this was difficult to do so in the face of the majority of company owners. In addition, there were many 'fixers' employed specifically for stockholders' meetings, so-called *sokaiya*, who, in return for some compensation, helped stifle any claims unfavourable to company managers. 'Managers, employees and *sokaiya* are seen as playing unitedly in stockholding meetings' and stockholders 'do not have the means nor the institutions to make their claim'.[25] Thus the contrast between British short-termism and Japanese long-termism partly reflected the difference in the institutional settings relevant to the owner/manager relationship.

The long-termism of Japanese companies affected not only their preference for horizontal cooperation, but also their attitude towards vertical cooperation. Traditionally, Japanese companies tended to have close vertical ties, that is, ties between suppliers and buyers, called *suichoku* (vertical) *keiretsu*, or just *keiretsu*. There are two sub-types of *suichoku keiretsu*: *seisan* (production) *keiretsu* and *ryutsu* (distribution) *keiretsu*, respectively referring to the assembler/parts maker connection and manufacturer/wholesaler/retailer connection. In the same *keiretsu* group, the relationship between companies was much more than a simple supplier/buyer relationship. *Keiretsu* members often conducted mutual shareholdings. Larger companies often financed their smaller partners, and/or dispatched their personnel to the management board of their partners.

Vertical cooperation among Japanese companies owed much to long-termism. According to the 'tit for tat' strategy in game theory,[26] players are less selfish and more cooperative in long-term repeated transactions, for they expect to succeed in future transactions. If players think more of immediate profit than of future transactions, it is natural that they will not be cooperative. On the other hand, if players prefer long-term prosperity, they are more concerned about the overall cost of changing their partners. They are more inclined to cooperate with each other, even at the cost of short-term profit, for the sake of their future transactions. In order to contrast British and Japanese businesses in their typical pattern of contractual relationship, it is helpful to apply Sako's concepts of the 'arm's-length contractual relation' and the 'obligational contractual relation'.

According to her, Japanese-type obligational contractual relation is characterised by such factors as high interdependence between supplier and buyer, long-term commitment, oral contract, multi-level communication and much risk-sharing.[27]

Japanese businesses' attitude towards industrial concentration

With regard to industrial concentration, there was a large merger boom among Japanese companies in the 1960s and the early 1970s (Figure 3.3). The merger boom in Japan shared a number of background factors with the British boom, such as the advance of economic liberalisation, the spread of the mass production/mass consumption pattern and technological innovation. All these factors gave much advantage to those companies with economies of scale. It should also be noted that the Japanese economy started to slow down in the mid-1960s. Although not so serious as in Britain, this economic slowdown not surprisingly encouraged Japanese business to consider the possibility of 'industrial restructuring', and this underlay the merger boom at that time.

Besides those similarities, Japanese mergers exhibited two specific characteristics that were not the case in British mergers. First, there were certain mergers resulting from the reunification of the companies that had been dissolved under the initiative of the occupation forces. This movement had already started in the 1950s, yet it culminated in the late 1960s, when Yawata Steel and Fuji Steel merged back into their old form (Japan Steel Corporation), although under the new name of 'New Japan Steel Corporation'.

Second, mergers mostly occurred between companies belonging to the same *suihei* (horizontal) *keiretsu* group, or put more simply, business group. A business group was different from a *suichoku* (vertical) *keiretsu* in the sense that the former

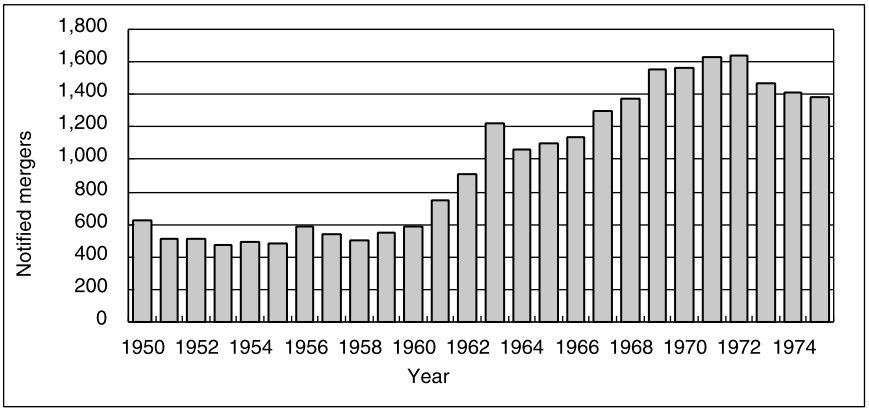

Figure 3.3 Notified M&As in Japan, 1950–75

Source: FTC 2000

included companies from various sectors, while the latter was found in individual sectors. The buyer/supplier relation was the key element of a *suichoku keiretsu*, but this was not always the case in a business group, although companies often chose their business partners from their own business group.

There were six large business groups in which member companies were mutually bound by such things as mutual shareholding, finance and personnel dispatch. Three of the six groups – Mitsubishi, Mitsui and Sumitomo – were based on the pre-war *zaibatsu*, and the others, including Fuyo, Sanwa and Ichikan, were the new conglomerates rapidly developing in the post-war period. Companies such as banks, trading companies and insurance companies were at the centre of the business groups. All those groups held a regular meeting of the executives of member companies, the so-called *shachokai* (presidents' meeting).

To understand these characteristics of Japanese mergers, individual merger cases were examined closely. There were fifty-four mergers where at least two participants were large enough to be listed on the Tokyo Stock Market.[28] Fifteen mergers were regarded as instances of reorganisation between parent companies and their subsidiaries.[29] Of the remaining thirty-nine merger cases, relevant company information is available for twenty-eight cases.

Since many Japanese companies, except those core companies with membership of *shachokai*, had multiple affiliations with more than one business group, it is often difficult to specify their business group identity. To simplify the analysis, however, the identification of business group here only considers the financial relationship.[30] That is, a company is identified with the business group whose core banks[31] provided the largest share of the long-term plus short-term finance in the company's total private (i.e. neither governmental nor quasi-governmental) finance reported in the year preceding its merger notification. Table 3.1 lists the companies and their business group identities for twenty-seven merger cases in the 1960s and 1970s.

The table shows that out of twenty-eight cases there were sixteen of mergers between companies within the same business group. For the remaining twelve cases, three (cases 8, 9 and 20) included companies with other financial relationships. The financial structure of the companies in the remaining nine cases is shown in Table 3.2. According to this, most of these companies shared the same business group banks with their merger partners, even though they had some other channels of finance. The only exception is case 26 (Toyosoda Kogyo and Tekkosha), where the companies had totally different financing patterns. It should be noted, however, that they shared the same quasi-governmental bank (Industrial Bank of Japan) as the main source of finance (27.9 per cent and 23.9 per cent respectively), and their finance from private business group banks was only secondary.

In brief, most of the mergers between Japanese companies in those days occurred along the boundaries of business groups. In other words, the advancement of industrial concentration was constrained by the structure of business groups. Despite the lack of entry of newcomers, the plurality of competitors was preserved in many sectors. This observation is endorsed by the Japanese trend in

Table 3.1 Major merger cases in the 1960s/1970s and business group identity of participating companies

		Acquiring companies		*Acquired companies*	
Case no.	*Year*	*Company*	*Group*	*Company*	*Group*
1	1960	Ishikawajima Jukogyo	Ichikan	Harima Zosenjo	Ichikan
2	1963	Shin Mitsubishi Jukogyo	Mitsubishi	Mitsubishi Nihon Jukogyo	Mitsubishi
				Mitsubishi Zosen	Mitsubishi
3	1963	Mitsubishi Seiko	Mitsubishi	Mitsubishi Kozai	Mitsubishi
4	1963	Nihon Yusen	Mitsubishi	Mitsubishi Kaiun	Mitsubishi
5	1963	Dainichi Densen	Mitsubishi	Nihon Densen	Mitsubishi
6	1963	Mitsui Sempaku	Mitsui	Osaka Shosen	Mitsui
7	1964	Sharin Kogyo	Fuyo	Toto Seiko	Fuyo
8*	1966	Nissan Jidosha	Fuyo	Prince Jidosha Kogyo	Other
9*	1966	Kawasaki Jukogyo	Ichikan	Yokoyama Kogyo	Other
10	1967	Mitsui Zosen	Mitsui	Fujinagata Zosenjo	Mitsui
11	1967	Nihon Riken Gum	Fuyo	Okamoto Gum Kogyo	Fuyo
12*	1967	Jujo Seishi	Mitsui	Tohoku Pulp	Mitsubishi
13*	1968	Tokyu Sharyo Sezo	Sumitomo	Teikoku Sharyo Kogyo	Mitsui
14*	1968	Nissho	Ichikan	Iwai	Sanwa
15*	1968	Fuji Denki Seizo	Ichikan	Kawasaki Denki Seizo	Sumitomo
16	1968	Toyo Koatu Kogyo	Mitsui	Mitsui Kagaku Kogyo	Mitsui
17	1969	Kawasaki Jukogyo	Ichikan	Kawasaki Kokuki Kogyo	Ichikan
				Kawasaki Sharyo	Ichikan
18*	1969	Yawata Seitetsu	Mitsui	Fuji Seitetsu	Sumitomo
19	1969	Nichibo	Sanwa	Nihon Rayon	Sanwa
20*	1969	Mitsui Fudosan	Mitsui	Asahi Tochi Kogyo	Other
21*	1970	Yokohama Seito	Mitsui	Shibaura Seito	Fuyo, Ichikan
				Osaka Seito	Ichikan
22	1971	Nihon Gas Kagaku Kogyo	Mitsubishi	Mitsubishi Edogawa Yuka	Mitsubishi
23*	1971	Nihon Nosan Kogyo	Mitsubishi	Tokyu Ebisu Sangyo	Sumitomo
24	1971	Sanyo Pulp	Fuyo	Kokusaku Pulp Kogyo	Fuyo
25	1972	Kawasaki Jukogyo	Ichikan	Kisha Seizo	Ichikan
26*	1975	Toyosoda Kogyo	Sumitomo	Tekkosha	Fuyo
27	1977	Itochu Shoji	Sumitomo	Azumi Sangyo	Sumitomo
28*	1978	Oji Seishi	Mitsui	Nihon Pulp Kogyo	Ichikan

Source: Calculated from the company data of Nihon Keizai Shimbunsha, *Kaisha Soran* (*The Survey of Companies*), Tokyo, Nihon Keizai Shimbunsha, various years.

Note: Years are of notification to the FTC. A 'major' merger case is defined as a merger when more than two participating companies were listed in the stock market and capitalised with over one billion yen at the time of notification. Mergers between financial companies/between parent and subsidiary companies (a parent company is defined either as being the leading shareholder or holding more than a five per cent share at the time of notification) are excluded. Asterisks (*) are attached to the mergers across different business groups.

Table 3.2 Financial structure of companies in merger cases beyond the sphere of one business group

		Percentage share of the finance from major banks of business groups in the total finance (%)					
Case no.	*Company*	*Mitsubishi*	*Mitsui*	*Sumitomo*	*Fuyo*	*Sanwa*	*Ichikan*
12	Jujo Seishi	8.5	11.3	6.0	9.3	-	1.9
	Tohoku Pulp	17.1	-	-	-	-	-
13	Tokyu Sharyo Sezo	2.1	-	65.0	4.2	-	-
	Teikoku Sharyo Kogyo	10.2	28.3	-	-	-	-
14	Nissho	-	-	-	-	3.2	4.1
	Iwai	-	1.7	-	-	21.4	17.2
15	Fuji Denki Seizo	4.6	-	2.2	9.7	-	12.7
	Kawasaki Denki Seizo	-	2.6	5.0	2.0	-	-
18	Yawata Setetsu	7.1	8.1	6.4	2.1	2.2	-
	Fuji Seitetsu	6.1	3.9	8.1	9.6	1.8	-
21	Yokohama Seito	-	61.9	-	-	-	1.1
	Shibaura Seito	-	-	-	5.2	4.3	5.2
	Osaka Seito	-	28.0	-	-	-	28.9
23	Nihon Nosan Kogyo	18.0	-	4.2	-	2.7	8.3
	Tokyu Ebisu Sangyo	16.4	14.3	23.3	-	-	-
26	Toyosoda Kogyo	-	-	10.7	-	3.0	-
	Tekkosha	1.8	-	-	11.0	-	-
28	Oji Seishi	-	15.1	6.9	-	-	5.2
	Nihon Pulp Kogyo	10.2	6.6	-	-	-	7.4

Source: See Table 3.1

industrial concentration. As Figure 3.4 indicates, the progress of concentration was largely stagnant through the 1960s and 1970s. This was in contrast to the British case, where industrial concentration increased through the merger boom in that period (see Figure 3.2).

Apart from the boundaries of business groups, there are several other hindrances to merger activities in Japan. With regard to this, Odagiri and Hase[32] have pointed out four particular factors arising from labour practices and worker

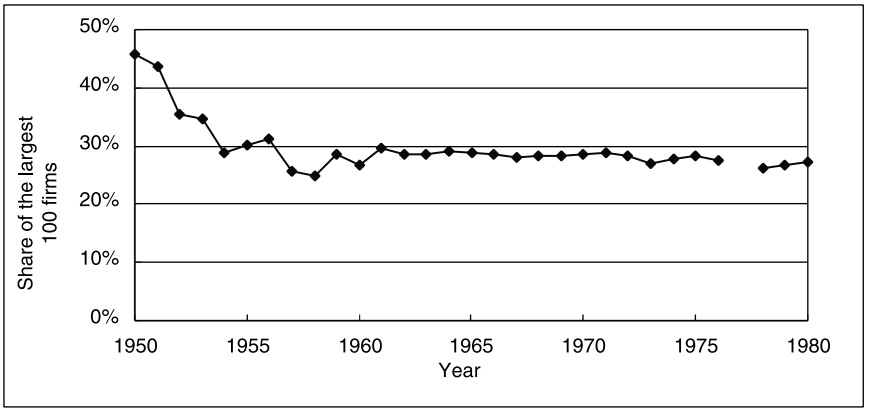

Figure 3.4 Share of the largest 100 firms in manufacturing net output in Japan, 1950–80
Source: Data for 1950–74, Iguchi 1977; data for 1975–80, FTC 1995
Note: The data for 1977 are missing in the original data.

attitudes in Japanese businesses. First, Japanese workers typically stayed in one company until the age of retirement, hence tended to have strong attachment to their companies. As a result, 'any offer to acquire the firm tends to be taken as an intrusion'. Second, Japanese companies did not favour growth by way of mergers. While 'growth is valuable to Japanese firms primarily for utilising and enriching human resources and for creating promotion opportunities', those goals could not be achieved simply by mergers. Third, since labour practices in Japan were firm-specific, mergers were very likely to 'create uneasiness and conflicts of interests' between trade unions with different origins. Finally, Japanese managers were not, and did not have to be, much worried about short-term profit because of the lack of ruthlessly profit-oriented shareholders under the traditional Japanese-type corporate governance structure, as discussed above in the context of the long-termism of Japanese companies.

In addition, it is noteworthy that traditional Japanese mergers were almost always accompanied by organisational fusion, due to the ban on the establishment of holding companies, as well as the limitation on corporate stockholding. Therefore, mergers (*gappei*) were often too costly for managers, and too radical for employees, to accept easily.

On top of that, Japanese businesses tended to avoid causing serious antagonism, even with their competitors. As Konishi pointed out in the early 1970s, 'there persistently remains a traditional view that "competition led to disorder and waste, and the order based on cooperation or control is regarded as more respectable"'.[33] It goes without saying that such an atmosphere promoted inter-firm collusion, but also prevented relentless takeovers. Given the abundance of horizontal cooperation, it was not necessary for businesses to think about

mergers because they were able to adjust their interests by way of inter-firm coordination.

Consequently, Japanese mergers could often be accomplished only with the consent of all relevant parties, including their associated banks and sponsoring government divisions. Okumura called this the 'discussion merger' as the antithesis of the Anglo-American style of takeover bid.

British and Japanese businesses' attitude to competition policy in the 1970s

There was no difference between Britain and Japan in that businesses opposed the reinforcement of competition policy, whether it concerned restrictive trade practices or industrial concentration, unless they suffered from others' anti-competitive practices. Nonetheless, there was some difference in priorities between British and Japanese businesses – the British were more interested in merger activities than their Japanese counterparts, while the Japanese had a stronger preference for inter-firm collusion. This national pattern appears to have been consolidated under the economic downturn and inflation of the 1970s. In Britain these economic difficulties promoted industrial concentration through mergers, whilst in Japan they led to a strengthening of cooperative ties between companies.

Since British businesses had on the whole little interest in inter-firm collusion, they were presumably not very keen to resist the strengthening of the rules on restrictive trade practices, because this resistance would cost too much politically. Indeed, the government did not appear to encounter any great opposition from the business sector when it brought in the 1968 Act. By contrast, given their preference for industrial concentration, British businesses were understandably intolerant of the development of merger control, especially the *ex post facto* examination proposed in the Commission for Industry and Manpower Bill by the Labour government.

The Conservative government's Fair Trading Bill appeared to be less radical, and less harmful to British business. In light of its preference for merger activities, however, British business was unlikely to be happy with such measures as the strengthening of the regulatory criteria for mergers and the establishment of the new regulatory body proposed by the Bill.

Thus the proposal by British business for reforms based on the EC system is better explained by the absence of strong regulation in the European system, rather than any preference for international consistency. Indeed, it was revealed that business leaders envisaged that the RPC would be abandoned if the EC-based system were introduced.[34] In light of Britain's imminent accession to the European Community, at least some business leaders were probably genuinely concerned about the convergence of competition law. On balance, however, it did not appear to be the main issue in policy discussions at that time.

In Japan, business leaders did not hesitate to protest against the reinforcement of competition policy, simply because they were less scrupulous about their

anti-competitive practices. Reflecting their strong preference for inter-firm collusion, in particular, Japanese businesses were very antagonistic to the introduction of the administrative surcharge system for cartels. They also opposed strengthening of the shareholding limitation, as that would hinder the formation of both vertical and horizontal *keiretsu*. It is true that they withdrew their open protest after recognising an unexpectedly strong anti-big business atmosphere (see Chapter 2). Yet they only changed their tactics, not their interest. They were persistently inimical to the rise in the regulatory power of the FTC, over which they could not exert any strong control.

Given the large gap between business interest and competition policy as such, it is remarkable that Japanese businesses eventually gave up protesting against the establishment of the asset divestiture order for dominant companies, even though this was a serious penetration of their management system. This may be explained at least partly by the lack of any strong interest in industrial concentration among Japanese businesses. It is symbolic that Junji Hiraga, who held an opinion that was too antagonistic towards competition policy even to be accepted by *Keidanren* leaders (see Chapter 2), admitted the necessity for discussion about the order of asset divestiture, whilst opposing all other proposals.[35]

The context of party politics and industrial policy

Positions of the major political parties on competition policy: Britain

As discussed in Chapter 2, the development of British competition policy in the post-war era was a result of the combined efforts of the two major parties. Indeed, the 1948 Act, the 1965 Act and the 1968 Act were set up by the Labour government, while the 1956 Act and the 1964 Act were established by the Conservative government. These items of legislation were generally consistent with each other. Despite the two parties' persistent ideological differences, competition policy was not an issue of great contention. Thus, typically, the Labour government of the late 1960s carried out a reform of competition law without publishing its own White Paper, but instead followed the White Paper published by the Conservative government in 1964.

This does not mean, however, that British politicians were always in agreement over the development of competition policy. With regard to the 1964 Resale Prices Act, for example, a Labour MP made the following comment:

> With the exception of the Liberal Party, which I believe is unanimous in this matter, I think that there are divisions among hon. Members on both sides of the House. I have every reason to believe that there are hon. Members opposite who do not like the [Resale Prices] Bill despite the fact that they are allowing the Second Reading to go by. I am certain that there are hon. Members on this side who do not like the Bill at all.[36]

A cabinet minute of 1964 also revealed that the Conservative leaders were not always agreed on a hard-line strategy against monopolies and mergers,[37] even at the time that they published the 1964 White Paper.

As the organisational actors, the major British parties nevertheless took a similar, more or less moderate or pragmatic stance on competition policy. The Conservative Party was ideologically less inclined to intervene in business activities than the Labour Party. Yet some Conservative politicians did not hesitate to say that they were worried 'about the wickedness of asset-stripping and other takeovers that produced capital gains for shareholders and quick profits for the strippers…but the loss of jobs and closure of supposedly workable businesses'.[38] As for the Labour Party, its politicians did not consider monopolies and mergers as harmful *per se*, and they were not very active in protecting market competition from industrial concentration. On the contrary, the Labour government was even engaged in the promotion of industrial concentration under the 'national champions' scheme.

Accordingly, it would be better to say that neither Conservative nor Labour Party traditionally held a clear-cut position on the scope of competition policy. Debates in Parliament were normally such that the opposition would criticise the government for minor faults and loopholes in a Bill, whichever party was in power. As a result, the development of competition law, at least up to the 1960s, supported Gamble's observation that '[w]hen the whole field of economic policy is surveyed and not merely selective aspects then the evidence suggests more continuity than discontinuity in economic policy – overwhelmingly so in the period between 1945 and 1959, but also in the period 1959–83'.[39]

Positions of the major political parties on competition policy: Japan

In Japan, there had been a considerable political gulf between the Liberal Democratic Party (LDP) and the other parties ever since the 'Great Consolidation' of 1955.[40] Three main issues separated them. First, the LDP preferred a foreign and defence policy based on Japan's alliance with the West, while other parties advocated a neutral position on disarmament. Second, the LDP favoured strengthening the police force to maintain social order, while the other parties resisted such a move in order to protect freedom from state authority. Third, the LDP tried to modify the 'democratisation' policies introduced by the occupation forces, while the other parties tried to maintain them. The other parties did not form a monolithic bloc, but they often joined together in opposition to the LDP.

Since competition policy was an important part of the contentious issue of 'democratisation', it was often the cause of serious conflict between the LDP and the other parties. The typical pattern was that the LDP would try to relax the existing rules in line with the interests of businesses and MITI, and the other parties would try to prevent this. Whilst in Britain the two major parties cooperated to some extent in the development of competition policy, their inherited political positions concerning 'economic democratisation', and the memory

of subsequent conflicts, caused the Japanese political parties to be rather sensitive to the issue of competition policy.

However, the LDP was not totally against competition policy. It is true that its politicians were generally reluctant to commit themselves to the development of competition policy, but, as time went by, their collective policy preferences became less clear-cut in consequence of having to accommodate various interests as a 'catch-all' party. In other words, LDP politicians became less adamant about sticking to their original position and more flexible in their response to competition policy. The eagerness of Prime Minister Miki and some other LDP politicians in 1975 for the reform of competition law, as well as the flexible adoption of the Reform Bill by Prime Minister Fukuda, should be understood in this context.

With regard to non-LDP parties, the Socialist Party, the largest opposition party at that time, played a central role in the debate about competition policy. Leftist groups such as the Communist Party were apparently reluctant to give much support for competition policy because the fundamental aim of the policy is 'to maintain and develop capitalism, and thus it works just within the boundaries of capitalism'.[41] While leftist politicians were sceptical about competition policy itself, nonetheless, they often supported the FTC and the Anti-monopoly Act (AMA) with views such as the following:

> Our view is different from those who support competition policy in order to achieve the principle of a market economy.…Our support for the FTC's [reinforcement] plan for the AMA was an interim measure at one phase in its history.…However, we have to struggle against the adverse effect of monopolies in order to protect our lives, at least under the existing form of capitalism dominated by big business.…This is why we support the FTC's plan as a minimum.[42]

In addition, centrist political parties such as the Democratic Socialist Party and the Clean Government Party persistently maintained their alliance with their 'progressive' colleagues on the issue of competition policy, at least in the 1970s. They often made compromises with the LDP on other issues, but they went with the left on this issue, because competition policy was something that appealed to their major supporters: small businesses in urban areas. It is true that most Japanese businesses were part of the *keiretsu* network that tended to give support to business leaders, but this was less often the case with smaller businesses. On top of that, smaller businesses would by nature favour anti-monopoly measures.

Industrial policy and competition policy in Britain: the interests of politicians and industrial policy officials

When the Wilson government announced the CIM plan at the end of 1969, there were two political issues relevant to both industrial policy and competition

policy. The first concerned the promotion of mergers by the Industrial Reorganisation Corporation (IRC). The IRC was established in 1966 as a special organisation in order to promote mergers for such purposes as rationalisation and technological development. Until it was wound up in 1971 by the Conservative government, the IRC had involved itself in fifty-three mergers and rationalisation schemes with a total expense of £120 million, under the 'national champions' banner. While 'the IRC's work was not related to a concept of an ideal industrial structure',[43] it inevitably overlapped with the work of the competition policy officials. Yet competition policy enjoyed relatively minor support. For instance, Edmund Dell, who was in charge of the Board of Trade under the Wilson government, observed:

> The Wilson government in the 1960s was a highly interventionist government, and regarded competition policy as really low, fuddy-duddy, and the IRC was very influential in the government's direction for competition policy. That was the fashion of that time. There were some few people in the government who – I was one, and I suppose Anthony Crosland was one – actually believed in competition policy and who did not [believe in] anything about IRC and industrial policy.…I think competition is a good idea, but this is a very minority view. The predominant view was 'bigness' and such sorts of idea.[44]

Given the Wilson government's prioritising of the 'national champions' policy, the government's initiative on the reform of competition policy cannot be explained by a motivation to promote competition policy itself. A better explanation would be that the government wanted to increase its control over businesses in order to facilitate its industrial policy.

Inflation was the second issue concerning both industrial policy and competition policy. In the late 1960s Britain suffered from growing financial expenditure, strong demand for wage increases (which was at that time quite difficult for the Labour government to ignore) and increasing cost of imports. All of these problems were both the cause and the result of inflation and devaluation. As shown in Figure 3.5, the annual growth rate of consumer prices moved generally upwards from the late 1960s. Against this background, the National Board of Prices and Incomes was established to keep prices down, although it 'lacked channels of influence beyond exhortation and publicity'.[45]

To alleviate inflation, the Wilson government also tried to persuade trade unions to accept formal rules for strikes and other industrial action, rules underpinned by financial penalties for disobedience. Barbara Castle took charge of this project, but she failed to persuade trade unions with her proposal, named *In Place of Strife*,[46] in January 1969, and she lost their support. According to Dell:

> There was a question of restoring Barbara Castle's morale at that time. She had lost on *In Place of Strife* and she had to be given something to do with the problem of employment and productivity, because they were not very good

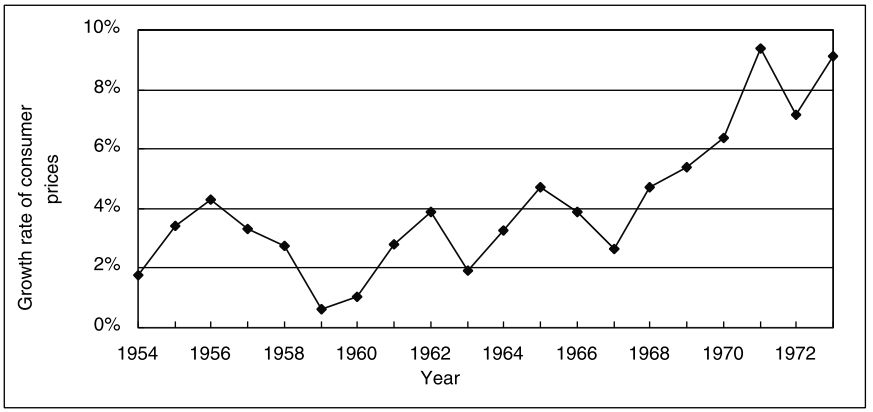

Figure 3.5 The growth rate of consumer prices in Britain, 1954–73
Source: IMF, *International Financial Statistics Yearbook*

> at sorting out industrial disputes, and they were very anxious about unemployment, which was rising. Partly because they had defended the Department of Employment, ministers had to defend themselves from attacks about unemployment in the House of Commons.…I remember that Barbara Castle was terribly interested in the legislation.[47]

In other words, the Labour leadership wished to extend Castle's power to intervene in the price management of businesses so that she could manage inflation without controlling wages. In light of the coming election, the Labour Party had to make every effort to regain credit with trade unions and voters. In fact, Wilson's diary indicates that he considered competition policy in the context of prices and incomes policy.[48]

Besides the Labour leadership's concern to restore Barbara Castle's morale, the government's CIM proposal was also explained by the wish of industrial policy officials to extend the scope of intervention. Since traditional measures had turned out to be insufficient to deal with the emerging economic problems, industrial policy officials at the Department of Employment and Productivity (DEP) envisaged promoting competition policy as an alternative to the traditional measures. After all, with such highly technical and complex issues as competition policy, the government proposal was unlikely to be prepared only by politicians. It naturally reflected the ideas of the industrial policy officials, at least to some extent.

Given its less interventionist position, at least initially, it is not surprising that the Conservative government was to emphasise the importance of the original function of competition policy, and criticise the approach of the preceding Labour government. As the Conservative Party declared in its election manifesto:

> We will pursue a vigorous competition policy. We will check any abuse of dominant market power or monopoly, strengthening and reinforcing the machinery which exists. We reject the detailed intervention of Socialism which usurps the function of management and seeks to dictate prices and earnings in industry. We much prefer a system of general pressures, creating an economic climate which favours, and rewards, enterprise and efficiency. Our aim is to identify and remove obstacles that prevent effective competition and restrict initiative.[49]

In accordance with the slogan 'free from intervention, free from interference, but responsible' in Heath's own speech,[50] the Conservative government dismantled the IRC and the NBPI, as they were the measures of state intervention by the Labour government. The Department of Trade and Industry (DTI) replaced the DEP to refresh the interventionist atmosphere. The industry secretary, John Davies, in 1970 stressed his non-interventionist position, saying that 'the essential need of the country is to gear its policies to the great majority of people, who are not lame ducks, who do not need a helping hand'.[51] His emphasis on non-intervention was initially viewed as a sign of the Conservatives' belief in market competition, and hence their respect for competition policy.

As time went by, however, the government seemed cautious in introducing new competition law. Although it was promised in the Queen's speech and had reportedly been 'already in draft',[52] the Bill on competition policy was shelved in the 1971–2 session. In retrospect, this is explained by the fluctuation of the government's attitude towards state interventionism and competition policy.

The ongoing economic difficulties were so severe that Conservative politicians could not maintain their intervention-free strategy. By early 1972, the industrial secretary had changed his position to such an extent that he 'decided to take powers to help industry to modernise, adapt and rationalise to meet these new and changing circumstances'.[53] This 'U-turn' induced many criticisms, such that 'the government have moved at a stroke from the extreme of disengagement on the one hand to selective squandermania at the other extreme without precedent and without parliamentary control'.[54]

Following this change, there were certain significant replacements of staff at the industrial policy agencies. The most remarkable was the resignation from the DTI of Nicholas Ridley and Sir John Eden, who greatly supported the free market and competition policy,[55] after the cabinet reshuffle of April 1972. While the idea of competition law reform was still alive, the emphasis of policy discussion appears to have shifted from the promotion of market competition to the prevention of harmful mergers and acquisitions and the protection of consumer interests.

The priority on consumer protection was consolidated when Peter Walker replaced Davies as industry secretary, and Sir Geoffrey Howe was appointed as the new Minister for Trade and Consumer Affairs. This was reflected in the 'eccentric'[56] arrangement of combining competition policy and consumer protection under a new independent agency, the Office of Fair Trading (OFT).

From the viewpoint of industrial policy officials at the DTI, it might not have been desirable to establish such an independent body as the OFT, which could possibly reduce the scope of the DTI's own authority. However, the OFT was not so independent as its European counterpart, DG IV of the European Commission (see Chapter 5). In this context, the government's rejection of an EC-based model may also reflect the intention of DTI officials to keep significant control in their hands.

Industrial policy and competition policy in Japan

Japan enjoyed an era of high economic growth throughout most of the 1960s under the LDP government. During that period, industrial policy officials at the Ministry of International Trade and Industry (MITI) appear to have gained more credit with politicians and increased self-confidence. For example, the following comment of Sahashi, one of the leading MITI officials in the 1960s, indicates his self-confidence as a dominant player in post-war policy management:

> There was virtually nothing just after the War. Nobody could have anticipated the current prosperity of the Japanese economy. It may not be too much to say that this surprising change owes very much to the industrial policy of MITI.…Many foreign countries call us 'notorious MITI'.…[Yet] if they praise us as sensible, we should regard this as a compliment or comfort to a loser.…We did not make a serious mistake, nor did we set up the wrong policy direction.[57]

The 'High Economic Growth Era' turned into economic slowdown and inflation in the early 1970s (Figure 3.6), but MITI officials did not lose their confidence. On the contrary, they were high-spirited in the face of adversity.

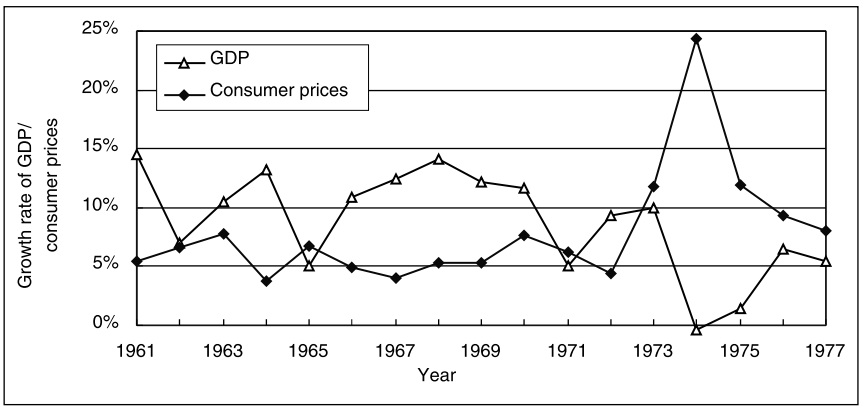

Figure 3.6 The growth rate of GDP/consumer prices in Japan, 1961–77

Source: IMF, *International Financial Statistics Yearbook*; OECD, *National Accounts*

From MITI's viewpoint, it was necessary to integrate competition policy into industrial policy in order to overcome economic difficulties. In the case of restrictive trade practices, MITI took a great interest in controlling them. Inter-firm cooperation was one of the key tactics of Japanese trade and industrial policy, particularly when companies needed to protect themselves from 'excessive competition'. Even MITI officials knew that some control was necessary, but they envisaged managing that control by themselves in order to remain consistent with other industrial policies managed at the ministry. Indeed, MITI organised cartels with its administrative guidance under such labels as *kankoku-sotan* (recommended operations cut-back) and *Shin Sangyo Chitsujo* (new industrial order). It should be noted, however, that *kankoku-sotan* did not prosper for long, because companies came to avoid the controlling ambitions of MITI.

With regard to the control of industrial concentration, there were apparently only few cases of mergers, such as the Nissan/Prince merger in 1965, sponsored by MITI. Nonetheless, this was not because MITI had little interest in any kind of 'national champions' idea such as that observed in Britain. On the contrary, the ministry tried to extend the scope of its authority. Indeed, the report to the Industrial Structure Council in 1968 clearly indicated their will to apply a 'national champions' policy:

> Most Japanese industries have not escaped the 'many small companies' structure. If the capital market is liberalised without paying any attention to this, it is very likely that a monopolistic system with foreign companies at the peak will be established easily, and that the independence of the national economy and its sound development will be damaged. We have to learn from European countries, where industrial reorganisation and rationalisation have been pursued under a strong governmental initiative in order to counterattack the growth of American capital.[58]

Thus the absence of a 'national champions' policy is better explained by the reluctance of Japanese businesses to conduct mergers, as discussed earlier in this chapter. Given MITI's strong yet unfulfilled interest in this field also, it is not surprising that MITI wanted to retain control over competition policy, regarding both restrictive trade practices and industrial concentration.

It should be remembered, however, that MITI failed to emasculate competition law, despite its repeated efforts in the late 1950s and 1960s. As shown in Chapter 2, for instance, MITI tried to extend its scope in managing the 'national champions' policy, and proposed the Specific Industries Promotion Bill in 1963, but the Bill was eventually dropped. While the LDP government often left much of the management of industrial policy to MITI's discretion, it was not very positive when it came to MITI's encroachment into competition policy. Presumably, it was felt that to dominate the whole sphere of industrial control was too big a task for MITI.

The case of the 1970s reforms seems to support this theory. The LDP made their amendment plan more modest in response to strong opposition from MITI

and business leaders, but the final policy output suggests that the interests of government politicians were still a long way from those of industrial policy officials.

The main reason for this was that the LDP politicians were extremely concerned about popular support, particularly in those days. The socio-economic unrest caused by economic slowdown and inflation had discredited the LDP as the party of government. Worse, revelations of political scandal, particularly with regard to Prime Minister Tanaka and his 'Lockheed bribery', seriously damaged the reputation of the LDP. Strong popular criticism was also directed to the conspicuous and complex inter-party structure. The LDP also suffered from a breakaway of its younger members, who established the New Liberal Club in 1976.

According to an opinion poll, 39 per cent of the public knew something about the AMA reform.[59] Although the figure did not represent a majority, it was fairly high, despite the highly specialised nature of competition policy. It is true that competition policy was too complex for people to easily grasp, and that its effects would be less perceptible than those of other policies. Nevertheless, as a high-ranking LDP member commented, the social atmosphere was felt to be such that 'the achievement of reform would not gain votes, but the failure to reform would surely lose votes'.[60] While the traditional literature of Japanese political economy often stressed the strong ties between the LDP and MITI, this was not always the case. In reality, the LDP government became very cautious, especially when MITI's interest conflicted with public opinion.

Policy implementation of competition law

At least until the mid-1970s, the mainstream theory of competition policy was that market performance was ultimately dependent on market structure, so that competition policy should consider market structure. This traditional 'structuralist approach' originated from the 'Harvard school'. According to Joe Bain,[61] one of the original school, the profitability of businesses, as a measure of *market performance*, is positively and significantly correlated with the indicators of *market structure*, such as the seller concentration ratio and the height of barriers to new entry. In this framework, monopolistic or oligopolistic market structure may cause anti-competitive *market conduct*. Anti-competitive *market conduct* included price control and prevention of new entry, either by a manoeuvre of one dominant firm or by collusion between several firms, which may then impair *market performance*. This framework, generally called the *Structure-Conduct-Performance* paradigm, had been similarly influential on competition policy not only in the United States but also in Britain and Japan. Yet the level of actual implementation varied from one country to another, as shown below.

The enforcement level of competition law in Britain

In general, British controls over restrictive trade practices, based on the 1956 and 1968 Acts, performed well from the beginning. Between December 1956

and June 1972, 2,945 agreements were examined, only 215 (7.3 per cent) of which were regarded as valid (Table 3.3). This means that the rest of the agreements, which accounted for over 90 per cent, were made invalid by the RRTA. Furthermore, 400 agreements were referred to the RPC, but of those the RPC protected only forty cases (10 per cent). Those results suggest that the competition policy officials were not very lenient. Given a high percentage of settlement (93.8 per cent in June 1972), in addition, the RPC's performance in terms of its transaction speed was generally very good.

Against this background, the competition policy officials at the office of the RRTA seemed content with their system. The RRTA recognised that most of the important cartels had been abandoned in the ten years since its establishment.[62] Its satisfaction was endorsed by some economists, such as Swann *et al.*, who concluded from their economic analysis of major industries that

Table 3.3 Restrictive practices regulation in Britain, 1956–72

	Dec. 1956 –Dec. 1959	*Jan. 1960 –Jun. 1961*	*Jul. 1961 –Jun. 1963*	*Jul. 1963 –Jun. 1966*	*Jul. 1966 –Jun. 1969*	*Jul. 1969 –Jun. 1972*
Registered agreements	2,240	125	90	145	130	215
Total (A)	2,240	2,365	2,455	2,600	2,730	2,945
Abandoned/ modified agreements	680	570	360	500	270	350
Total (B)	680	1,250	1,610	2,110	2,380	2,730
Valid agreements (A-B)	1,560	1,115	845	490	350	215
% of valid agreements (1-B/A)	69.6	47.1	34.4	18.8	12.8	7.3
References to the court	93	34	33	120	41	79
Total (C)	93	127	160	280	321	400
Judgement of the court (D)	43	35	36	102	70	89
Total (E)	43	78	114	216	286	375
% of settlement (E/C)	46.2	61.4	71.3	77.1	89.1	93.8
Protected agreements (F)	7	9	10	7	1	6
% of protection (F/D)	16.3	25.7	27.8	6.9	1.4	6.7

Source: Registrar of Restrictive Trade Agreements, *Report of the Registrar*, London, HMSO

> it seems clear that the 1956 Act has had a significant effect on resource allocation, and that this effect has been almost entirely for the better.…Due to the diligence of the Registrar and his staff a series of cases…have succeeded in strengthening the law and closing the major loopholes; and the 1968 Act, despite its undoubted defects in a number of respects…set the seal upon the Registrar's efforts.[63]

However, British competition policy officials did not see the regulatory system as perfect. There were two major defects at that time. The first was the lack of an effective penalty system. The Registrar had the power to find unregistered registrable agreements and to bring them to court, but firms were not accused of failure to register in itself. The only punishment that could be imposed was that for disobedience of a court order, i.e. contempt, which was too formalistic and far from convenient.

Another problem was the existence of the National Board of Prices and Incomes (NBPI). The NBPI was completely separate from either the Registrar of Restrictive Trade Agreement (RRTA) or the Restrictive Practice Court (RPC), but its function often overlapped that of the competition policy agencies. After all, the NBPI also intervened in companies' price policy for the sake of the public interest, although not to break price cartels but rather to promote them. Naturally, there was a conflict between the NBPI's price policy and competition policy.

With regard to controls on industrial concentration, the number of references was increased sixfold and the average time taken to report was halved after the establishment of the 1965 Act, as proudly announced by the Labour industry secretary.[64] Moreover, the Monopolies Commission was not so hesitant in blocking proposed mergers. As indicated in Table 3.4, the Monopolies Commission concluded that the proposed merger was against the public interest in nine out of twenty-six cases from 1965 to 1973. In particular, it may be noteworthy that during the Heath government of 1970–3, the Monopolies Commission allowed no mergers. There was no clear-cut relationship between the general direction of the government and the individual decisions of the Monopolies Commission, but the implication may be either that the Conservative government allowed the Monopolies Commission to intervene despite its slogan of non-intervention, or that the Monopolies Commission was sufficiently independent to avoid political interference.

Nonetheless, there were several shortcomings whereby monopolies and mergers control was seen as even more problematic than restrictive trade practices control. First, the Monopolies Commission was not able to investigate mergers without the consent of the Mergers Panel at the industrial policy agency. Second, the Monopolies Commission received severe criticism about its slow operation, although its performance had improved since its establishment in 1965. For example, *The Economist* in March 1972 argued that '[t]he Government really must get on with its promised facelift of Whitehall's anti-monopoly machinery, because the proceedings of the present Monopolies Commission are

Table 3.4 Merger references to the Monopolies Commission, 1965–73

Year	*Referred parties*		*Public interest*
1965	BMC	Pressed Steel	Not against
1966	Ross Group	Associated Fisheries	Against
1966	Dental Manufacturing	Amalgamated Dental	Not against
1966	Dentists' Supply Co.	Amalgamated Dental	Not against
1966	GKN	Birfield	Not against
1966	BICC	Pyrotenax	Not against
1967	UDS	Burton	Against
1968	Barclays	Lloyds	Against*
		Martin's	
1968	Thorn	Radio Rentals	Not against
1969	Unilever	Allied Breweries	Not against
1969	Rank	de la Rue	Against
1969	Marley	Redland	Abandoned
1970	Burmah Oil	Laporte Industries	Abandoned
1970	British Sidac	Transparent Paper	Against
1971	Reed International	Bowater Paper	Abandoned
1972	Beecham	Glaxo	Against
1972	Boots	Glaxo	Against
1972	Sears Holdings	William Timpson	Abandoned
1973	Tarmac	Wolseley-Hughes	Abandoned
1973	Glynwed	Armitage Shanks	Abandoned
1973	Whessoe	Capper-Neil	Abandoned
1973	British Match	Wilkinson Sword	Not against
1973	Bowater	Hanson Trust	Abandoned
1973	Davy	British Rollmakers	Against
1973	Boots	House of Fraser	Against
1973	London & Country Securities	Inveresk	Abandoned

Source: Board of Trade/Department of Trade and Industry, *Monopolies and Mergers Acts 1948 and 1965: Annual Report*, London, HMSO; Department of Trade and Industry, *Fair Trading Act 1973: Report by the Secretary of State for Trade and Industry*, London, HMSO

Note: *The Commission blocked the proposed mergers between Barclays and Lloyds and between Barclays, Lloyds and Martin's in 1968, but stated that it would not block either large bank merging with Martin's. The findings were not by the requisite two-thirds majority, but were nonetheless complied with.

turning into a joke'.[65] The evidence was that the Monopolies Commission 'has not finished investigating one industry referred to it five years ago, in 1968, or another referred to it in 1969'.[66] The delay in decision-making severely damaged the reputation of the Monopolies Commission, amongst both business and consumers. According to Dell, 'if the Monopolies Commission had had its way, the CIM would not have been introduced'.[67]

The enforcement level and problems of competition policy in Japan

Compared with that of Britain, the regulatory system of restrictive trade practices in Japan was by and large less successful until the early 1970s. Between 1953 and 1972, the FTC made judgements in only eighteen cases per year. As for any formal indictment, it brought just one trivial case to the High Court (for misleading representation) during that twenty-year period.

Under its more active Chairman, Takahashi, however, the FTC started taking a hard line against the surge of illegal cartels in the early 1970s. At that time, various companies engaged themselves in illegal cartels and kept their prices high in order to avoid losses due to inflation, which was in turn amplified by those cartels. The Oil Crisis had exacerbated this. Since this vicious circle was so problematic, the social atmosphere was more supportive to competition policy and the FTC than to industrial policy and MITI. Against this background, the FTC made sixty-nine and sixty judgements in 1973 and 1974 respectively, more than three times as many as the average for the previous twenty years. In February 1974, furthermore, the FTC stuck the knife into the oil company cartels, and eventually brought them to the High Court. This was 'quite exceptional',[68] not only because this was the first case of cartel accusation in the twenty-five-year history of Japanese competition policy, but also because the oil companies were central to Japanese business.

Japanese competition policy officials might have been very satisfied with their active policy implementation, at least under Chairman Takahashi. When they implemented the regulatory system to its full extent, however, they paradoxically found certain limits to the existing legislation.

One of the major problems they recognised was the lack of an effective penalty system, as in the case of Britain. For instance, Chairman Takahasi once complained that 'our recommendation is totally useless because it just leads businesses to put a public announcement in a newspaper that they have abandoned their cartels'.[69]

Furthermore, Japanese restrictive practices control was degraded by the FTC-authorised cartels and other exempted cartels. As Table 3.5 indicates, the FTC itself authorised annually an average of ten cartels to protect companies from depression or to promote the rationalisation of companies.

On top of that, there was a large variety of cartel exemptions by sector-specific laws. Since those laws were provided under the authority of other ministries, the FTC had virtually no power to break cartels based on them.

Table 3.5 The number of authorised cartels in Japan, 1955–74

Year	*Depression cartel*	*Rationalisation cartel*	*Total*	*Annual average*
1955–9	7	24	31	6
1960–4	10	54	64	13
1965–9	19	66	85	17
1970–4	11	52	63	13
Total, 1955–74	47	196	243	12

Source: FTC, *Koseitorihikiiinkai Nenjihokoku (Annual Report of the FTC)*, Tokyo, FTC/Koseitorihikikyokai

Particularly in the early 1960s, companies tended to consult those ministries, rather than the FTC, to ask for the exemption of their cartels. Consequently, the number of exempted cartels jumped up in that period, and culminated in over 1,000 in the mid-1960s (Figure 3.7). Besides those legislative arrangements, MITI's administrative guidance (*kankoku-sotan*) also reduced the regulatory scope of the FTC, although this effect should not be overestimated, as discussed earlier.

As for mergers control, Article 15 of the AMA provided that the FTC should directly be notified of mergers at least thirty days before their pursuit, regardless of the size of their assets. Theoretically, therefore, FTC officials were able to investigate any national merger, unlike their British counterparts. Yet again in contrast to Britain, mergers have never been blocked in Japan. The FTC even permitted the merger of two giant companies in the steel sector, Yawata Steel and Fuji Steel, although it ordered the divestiture of some assets in order to avoid the new company's dominance in several product markets.

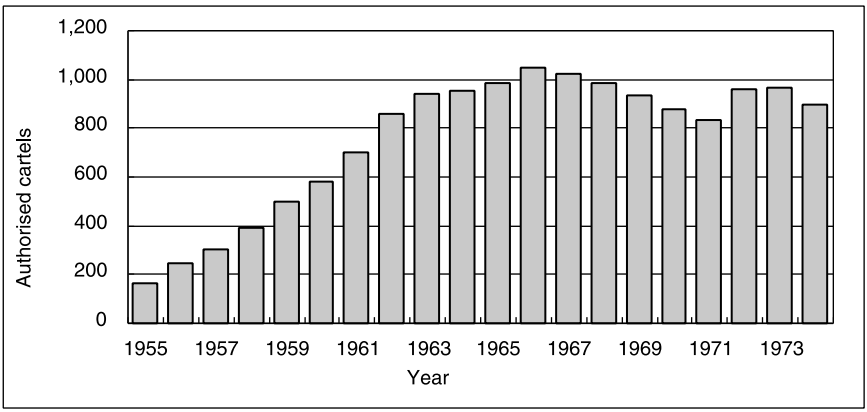

Figure 3.7 The number of exempted cartels other than depression cartels and rationalisation cartels in Japan, 1955–74

Source: FTC, *Annual Report*

This does not necessarily mean that FTC enforcement was ineffective, nor that FTC officials were subservient to political pressure. Above all, it is necessary to remember that Japanese companies were generally reluctant to merge, and that they were not so interested in market dominance in defiance of *keiretsu* boundaries. It is true that several cases, including the Yawata/Fuji merger, resulted in the creation of big companies, but most of those cases concerned the reintegration of companies broken up by the occupation forces. Even in those cases, FTC officials seemed to believe that their judgement was 'completely justifiable'. With regard to the Yawata/Fuji merger, for example, Michiko Ariga, one of the commissioners who investigated it, commented:

> When I went to the conference on competition policy at the OECD after that merger, one representative told me that 'from the beginning, you intended to make the company larger than the US Steel, didn't you?' I was furious at this, and frantically contended that we rightly applied the law and the process was completely justifiable.[70]

Ariga's confidence in the judgement of the FTC in that merger case was particularly valuable because she was not a 'layperson commissioner' (see Chapter 4) but was a competition policy expert who had been promoted directly from the FTC secretariat. Of course, she might bend the truth in order to keep up appearances, but there was no reason to reject her statement. Therefore, the absence of any merger case being blocked may be a problem, but it should not be overemphasised.

The degree of satisfaction of British and Japanese competition policy officials with the 1970s reforms

In light of a number of shortcomings in the existing system, it may be natural that the main interest of competition policy officials was in reform. As a part of the assessment of the interests of competition policy officials, this section considers the extent to which competition policy officials were satisfied with the new legislation from this point of view.

In Britain, it may be presumed that neither the RRTA nor the Monopolies Commission were very happy with the CIM plan, even though additional regulatory power and resources would be provided for them. After all, the CIM was to be established by merging them with the NBPI, and the NBPI section was supposed to predominate over the competition policy section within the CIM. For this reason, according to Edmund Dell, the Monopolies Commission chairman in fact strongly opposed the CIM plan.[71]

Compared with the CIM plan, the Fair Trading Act was more likely to be favoured by competition policy officials. Now the NBPI was dissolved, and the new legislation had established a semi-independent body just for their sake. The Fair Trading Act also included some arrangements to extend the regulatory

scope of competition policy, such as lowering the criterion for monopoly investigation.

It should be remembered, however, that there remained the major problems discussed earlier, such as the absence of a penalty system for restrictive trade practices and the Monopolies Commission's lack of investigatory power (even though it was renamed 'Monopolies and Mergers Commission'). Since the Fair Trading Act provided no significant extension of the regulatory scope for restrictive trade practices, Sir Rupert Sich, the then Registrar, offered the mild criticism that 'it will be prudent to consider whether further steps can be taken to deter the making of collusive agreements or to aid detection'.[72]

Furthermore, the new regulatory body, the OFT, included consumer protection in the scope of its authority. That was not what the competition policy officials had demanded. On the contrary, the competition policy officials would see it as rather problematic because it might well dilute their resources. While the OFT obtained more resources than its predecessors, therefore, it was questionable if this improved the resource allocation for competition policy.

In the case of Japan, Japanese competition policy officials might not be satisfied with the final policy output, given that many points of their initial proposal were revised during the policy-making process. Indeed, some of their initial proposals, including the price reduction order and the information disclosure order, were eventually removed. Likewise, some other proposals, such as the asset divestiture order, were made less harmful to businesses.

Yet the result should not be underestimated. Given the strong preference of Japanese businesses for cartels and the *keiretsu* relationship, it was particularly important to achieve the establishment of an administration surcharge system for cartels. It might be a pity that the final policy output dropped such provisions as the publication of cost structure for cartel-suspected companies, and the restoration of original price levels, but those arrangements were viewed as too interventionist even from the viewpoint of competition policy. Therefore, the competition policy officials would be satisfied with the result.

It is true that the reforms could have included more radical measures on industrial concentration. In particular, the government was criticised for its effort to reduce the applicability of the asset divestiture order (see Chapter 2). Yet it should be remembered that the level of industrial concentration was not very high, and that it was not really a main concern among Japanese competition policy officials. Indeed, the FTC did not appear to envisage any genuine implementation of the asset divestiture order. The asset divestiture order was often compared to *Takemitsu*, one of the famous traditional Japanese swords which were often used merely for decoration. Perhaps it was too obedient of the Chairman to promise that the FTC would not order asset divestiture in the foreseeable future,[73] but the significance of the passage of that provision was generally considered more symbolic than practical.

On top of that, it should be stressed that the reforms strengthened Japanese competition law for the first time in the history of the AMA. Whereas its legal

and economic benefits were debatable, there was no doubt that the reform process itself represented the backlash of competition policy. Many competition policy officials seemingly appreciated the process solely for that reason.

Conclusion

Briefly speaking, the level of the cohesion of the core actor interests in the competition policy network was very low both in Britain and Japan. In particular, there appeared a large gap between the interests of businesses and those of politicians. On the one hand, there was a strong preference for mergers among British companies and for restrictive trade practices among Japanese companies. On the other hand, British and Japanese government politicians were collectively (although far from unanimously) concerned to combat those business practices against a background of inflation and popular frustration.

It is important to remember that in both Britain and Japan, businesses and governments were not very cohesive on the issue of competition policy in the 1970s. In general, businesses were quite important to politicians, not only for their taxes and political donations, but also for their role of generating economic prosperity, which would greatly contribute to a government's electoral popularity. Nonetheless, our competition policy cases have shown that in neither country was government always obedient to business interests. To explain this poor reflection of business interests in policy output, the lack of cohesion between business and politicians is an important factor.

The sporadic feature of the competition policy network, which was discussed in Chapter 2, also hindered cohesion between core actors. The original lack of cohesion helped further diffusion of actor interests. As Daugbjerg has suggested, '[a] low degree of cohesion implies that outsiders have better opportunities for successful changes'.[74] In particular, the low degree of cohesion allowed new ideas to affect the interests of politicians. Businesses could have controlled political interests more successfully if the competition policy network had originally been more cohesive, but this was not the case in reality. It can also be argued that the absence of any international policy standard on which they could agree contributed to the low degree of cohesion in the competition policy network.

Weak cohesion in the competition policy network implies that the pattern of strong cohesion in industrial policy was not automatically transferred to competition policy. This was particularly remarkable in Japan. There were quite cohesive policy networks, labelled 'iron triangles', in the area of industrial policy, but this was not the case for competition policy.

Yet a more significant implication of weak cohesion is the importance of the relational structure to the competition policy network. When cohesion of actor interests is weak, the policy-making process tends to be more pluralistic (competition-oriented) than corporatistic (consensus-oriented). This means that the power relationship between core actors plays a more significant role in deciding policy direction. The next chapter focuses on this dimension.

4 Distribution of power resources in the competition policy network of the 1970s

Besides the interests of actors, the distribution pattern of power resources constitutes another key factor in characterising the competition policy network. From this dimension, the failure of business leaders in the 1970s to have their position reflected in the final policy output, as described in Chapter 2, may be explained by their lack of sufficient power resources, at least to some extent. However, it is not clear whether this explanation is supportable. The aim of this chapter is to examine the relational structure within and between the core actors in order to assess such an interpretation.

The first section investigates the organisational structure of the leading business associations, particularly the Confederation of British Industry (CBI) and the *Keizai Dantai Rengokai* (Federation of Economic Organisations, or *Keidanren*), since they represented the power base of business in its dealings with politicians and civil servants. The second section examines the structure of the relationship between politicians both within and across major parties. This is followed by a threefold analysis of the strength of the triangular relationship between business, politicians and public officials. Regarding public officials, attention is focused mainly, though not exclusively, on industrial policy officials, that is, civil servants in charge of industrial policy. Then our focus turns to the power resources of competition policy officials, that is, civil servants in charge of competition policy. Specific items discussed include the division of authority between industrial policy and competition policy, and the personnel system of competition policy officials.

Businesses: power resources of the CBI and *Keidanren*

Representative authority and financial resources

The CBI had a wide spectrum of membership, ranging from the largest companies to very small ones. At the end of 1973, its membership covered as many as 11,624 companies (including public sector members), 244 employers' organisations/trade associations and 15 public sector members.[1] Initially, service industries and nationalised industries were not admitted to full membership – they only obtained 'associate membership'. However, that limit was abandoned in 1969.

Consequently, according to Grant and Marsh, 'the range of the CBI's membership has been considerably extended beyond the field of manufacturing industry'.[2] Yet they also stressed that 'despite of this development the CBI is still, and is likely to remain, primarily concerned with the interests of manufacturing industry'.[3] On the other hand, the CBI could not succeed in persuading the leaders of the City to form one representative body. What the CBI was able to do at most was to invite major merchant banks and insurance companies to become members. Those sectors had already developed their own representative bodies and channels, understanding that the CBI basically represented manufacturers' interests.

Thus the CBI had some weakness as a representative organisation at that time. With specific regard to competition policy, the CBI's standing committee on competition policy, the Trade Practices Policy Committee, was almost exclusively composed of manufacturers when the reform of competition law came onto the agenda.[4] Since competition policy basically affected all business sectors, it was not surprising that the government should consult business groups other than the CBI. This seems to have diluted the strength of the CBI's claim to be representative. The unity of business was also damaged by the independent action of some members within the CBI. For example, the Industrial Policy Group stood 'in a directly opposing position to both the Government and the CBI, who have given tacit support to Whitehall for their as yet unofficial plans for radical reform of Britain's monopoly and merger legislation'.[5]

By contrast, the *Keidanren* was comprised of a relatively small number of companies. In 1973, it included 770 companies, 105 employers' organisations/trade associations, 13 national/local companies and 69 special advisors.[6] According to the secretariat of *Keidanren*, there was no fixed condition for membership.[7] In reality, however, membership was limited, and only the largest companies were allowed to become members. In other words, the *Keidanren*'s small size was not due to lack of popularity but to its selective membership. This was also reflected in the stagnant growth of this membership. From 1963 to 1973, the number of company members increased from 752 to 770, that is, only eighteen companies were added in ten years. Such a 'high threshold' was not the case in the CBI, which accommodated a wide range of businesses.

Whereas the *Keidanren* shared the characteristics of manufacturer-oriented membership with the CBI at least until the 1970s, it did not suffer from the division between manufacturing and non-manufacturing sectors such as the retail sector and the financial sector, like its British counterpart. The *Keidanren* accommodated all leading non-manufacturers from the beginning. The close inter-firm ties known as *keiretsu*, discussed in the last chapter, also facilitated the cooperative relationship between manufacturers and non-manufacturers.

It is true that there were a number of significant business associations besides the *Keidanren*, namely, the *Nihon Keieisha Dantai Renmei* (Japanese Federation of Employers' Associations, *Nikkeiren*), the *Keizaidoyukai* (Japanese Committee for Economic Development) and the *Nihon Shoko Kaigisho* (Japanese Chamber of Commerce and Industry, *Nissho*). Generally speaking, however, they rarely came

into conflict with the *Keidanren*. With regard to the *Keidanren* and the *Nikkeiren*, there was a clear functional division between the two. The *Nikkeiren* is exclusively engaged in labour management, while the *Keidanren* held no mission for that area. The *Keizaidoyukai* was composed of relatively young business leaders, and often advanced relatively progressive opinions. As a result, the *Keizaidoyukai* often debated with the *Keidanren*, but they were far from antagonistic. After all, the *Keizaidoyukai* was expected to voice different opinions than those of the *Keidanren*, so that businesses could eventually obtain better ideas. Their debate was 'a game between friends' in most cases.

The *Nissho* was once a member of the *Keidanren*, but became independent in order to make clear its support for small- and medium-sized businesses. Given the difference of the interests between large firms and small- and medium-sized firms, it is not surprising that the *Nissho* would collide with the *Keidanren*. Nevertheless, since many *Nissho* members had close inter-firm/*keiretsu* connections with *Keidanren* members, they tended to avoid sharp dispute. Under those circumstances, the *Keidanren* held a strong representative position without much difficulty.

As for financial resources, Table 4.1 compares the CBI and the *Keidanren* on this point. The comparison of overall financial size indicates that the CBI was 30 per cent larger than the *Keidanren* (it should be noted that the CBI reformed its subscription system in 1973 and considerably increased its revenue thereafter). On the other hand, the small size of the *Keidanren*'s membership made its budget size per member nearly ten times larger ($3,173) than that of the CBI ($330).

Whereas it may be difficult to say which one was better off than the other, the CBI normally suffered from a shortage of resources while the *Keidanren* enjoyed a large budget.[8] The CBI naturally incurred a larger administration cost than the *Keidanren*, since it had more members. The maintenance of local offices was also costly. According to Grant and Marsh, 'the CBI official, with inadequate information and limited research facilities, is at a considerable disadvantage', and 'in certain areas the regional organisation is small and is unable to spend sufficient time recruiting and retaining members'.[9] By contrast, an abundant financial base supported the *Keidanren*'s stable position. Regarded as Japan's chief business association, the *Keidanren* was recognised as worthy of high subscriptions. In the

Table 4.1 Financial resources of the CBI/*Keidanren* in 1973

	Financial size, local currency	*Financial size, dollars*	*Membership*	*Financial size/member*
CBI	£1,600,000	$3,923,520	11,883	$330
Keidanren	¥824,972,000	$3,036,334	957	$3,173

Source: CBI, *Annual Report 1973*, London, CBI; Nihon Keieishi Kenkyujo (ed.) *Keizai Dantai Rengokai Sanju Nenshi (The Thirty-year History of the* Keidanren*)*, Tokyo, Nihon Keieishi Kenkyujo, 1978

Note: 'Financial size' here means the annual revenue of the CBI and the annual expenditure of the *Keidanren*

early 1980s, for example, the largest subscription to the *Keidanren* (from Toyota) was ¥24.6 million ($100,000), this being twenty times larger than the corresponding figure for the *Nikkeiren*.[10]

Internal unity

Besides representative authority and financial resources, internal unity is also an important aspect in measuring the power of business associations. Internal unity is often complementary to representative authority. A rise in internal unity, that is, a rise in the executives' leadership, enables a business association to be seen as more powerful, which may enhance its negotiation powers *vis-à-vis* such external actors as their competitors and the government. Conversely, if a business association were more representative than others, its leaders would attract more of its members' credit with their performance, and thus strengthen the centripetal force towards them. It may also be the case that a decline in external authority stimulates a sense of crisis among members and increases organisational unity.

As for internal unity, the CBI was not apparently as strongly united as its Japanese counterpart. There are several reasons for this. The first relates to its origins. The CBI was established in 1965, as a product of the merger of three major business associations at that time: the Federation of British Industries (FBI), the British Employers' Confederation (BEC) and the National Association of British Manufacturers (NABM). Despite their eventual amalgamation,[11] it may be incorrect to suppose that they had enjoyed a quite amicable relationship up until then. The relationship between the FBI and the BEC was not very good in reality. After all, the BEC was basically composed of those who 'were suspicious of the quasi-syndicalist ideas of some of the FBI's leaders'.[12] While the BEC had previously concentrated on labour matters, it 'widened its range of concern so that it began to trespass on the preserves of the FBI', since the Trades Union Congress (TUC) 'became involved in a wider range of economic problems'.[13] Meanwhile, the NABM was mainly comprised of small firms, and its interests often differed from those of the other two organisations. It is true that the merger would increase its bargaining power *vis-à-vis* trade unions and the government, but there was a persistent concern among members 'that the special problems of smaller businessmen would not be taken sufficiently into account by new organisation'.[14] The CBI was less than ten years old when it discussed the reform of competition law in the early 1970s, and internal dissidence between members with different roots may have weakened its organisational powers.

The second reason for weak internal unity is wide-ranging membership. There may well have been much tension between leaders and other members, because the former normally came from large companies whilst the large majority of members were from small companies. Over half of the revenue came from a small number of large (over 1,000 employees) manufacturing companies,[15] and CBI leaders tended to follow the interests of those members. Yet they could not always do so, due to the possibility of 'democratic protest' by smaller members.

Another membership problem came from the participation of nationalised industries and financial sectors. The CBI's broad membership was probably helpful in enhancing its representative position, but obstructive to cohesion among members.

Furthermore, the CBI's internal unity suffered from the frequent replacements of managers of member companies. Managers of British companies were more likely to be replaced, as a result of shareholder pressure or merger, than their Japanese counterparts. Frequent replacements caused instability in the membership of CBI committees, where 'the main task of policy-making rests'.[16] Cohesion among committee members was weakened by an ever-changing membership, thus consensus was difficult to build. The issue of competition policy was never free from this problem, for it was discussed in one of those committees, the Trade Practices Policy Committee.

In contrast to the CBI, the *Keidanren* enjoyed its limited and relatively stable membership. One potential obstacle to the *Keidanren*'s internal unity was the existence of the *keiretsu* business groups, which threatened to create factionalism within the *Keidanren*, which might well weaken the overall internal unity. In fact, business groups were often concerned about the distribution of power resources within the *Keidanren*. To avoid giving a dominant position to one group, for example, the President of the *Keidanren* was elected from those companies with no strong affiliation with any particular business group.[17]

However, that inter-*keiretsu* dissidence was not very important in the political discussions, because all of the largest business groups were more or less similar. Each group accommodated a wide range of business sectors, and there was a clear hierarchy topped by the largest companies. In other words, in its policy discussions the *Keidanren* was free from any serious division between large and small companies, or between different sectors, as was the problem in the case of the CBI.

Furthermore, it appears that the *Keidanren*'s internal unity was further strengthened when it came to competition policy. Since the *Keidanren* had long been resistant to the Anti-monopoly Act and considered it a most formidable evil, internal unity was automatically strengthened when the Act was on the political agenda. In other words, the *Keidanren* had long consolidated a united policy position with regard to competition policy, and this was not the case for the CBI.

Politicians: relational structure within and between major parties

Internal structure of major parties

Due to their large scope of membership, some internal dissidence was found in the major political parties, such as the Conservative Party and the Labour Party in Britain, and the Liberal Democratic Party in Japan. Yet the pattern of dissidence was quite different among those parties. In Britain, the most divided in the

late 1960s and 1970s was the Labour Party, which Rose labelled as 'a party of factions'.[18] The party suffered divisions between trade union members, constituency members and parliamentary members. The party leadership appeared to be seriously damaged, especially when left-wing constituency members allied themselves with some trade union leaders in opposition to the parliamentary leadership, which was naturally more pragmatic as the actual navigator of government.

In fact, the Labour cabinet suffered from serious dissent at the end of the 1960s, and this was closely connected with its proposals to reform competition policy. At that time, Barbara Castle, then Secretary of State at the Department of Employment and Productivity, found herself under severe criticism over her treatment of trade unions. Her attempt to reform the framework of industrial disputes was viewed as very hostile to trade unions, and she encountered strong opposition from many party members, even including some in the cabinet. She, and her strong supporter, Prime Minister Wilson, needed to rebuild her damaged reputation within the party. Since the main aim of the attempted reform of the framework for industrial disputes was to slow down inflation, it is not surprising that the reinforcement of competition policy occurred to them as an alternative, but labour-friendly, measure.

In contrast to the Labour Party, the Conservative Party was labelled as 'a party of tendencies'.[19] Of course, the party was not free from internal dissidence, but

> [s]uch disagreements as arise are struggles between ad hoc groups of members who may be left or right on specific questions; but as new controversies break out, the coherence of the former groups dissolves, and new alignments appear, uniting former enemies and separating old allies.[20]

Thanks to the absence of persistently consolidated factions, Conservative leaders were less likely to face serious difficulties as their Labour counterparts at that time. Moreover, the leadership of the Prime Minister was very strong when Edward Heath was in place. Kavanagh noted that the cabinet under Heath 'appears to have been very loyal to him personally and to have been more politically homogeneous than many other Cabinets'.[21] Norton even remarked that 'Mr Heath dominated his Cabinet and Government'.[22]

With regard to the LDP in Japan, the party always lacked unity due to its numerous factions, but this factionalism was worst in the 1970s. According to Ishikawa, the 1970s was 'the era of small- and medium-sized factions'[23] in the LDP. There were nine factions from 1972 to 1978, five of which were relatively large, but none of them retained a dominant position. The formation of those factions is explained by several phenomena: the large size and 'catch-all' character of the party; its roots in a merger between different parties; the medium-sized constituencies system of election in which the party fielded more than one candidate per constituency; and the necessity for individual members of parliament to find a patron for financial support. The factions competed

fiercely for the mainstream position within the party or, more directly, for the post of Prime Minister for their particular leader. The major five factions seemed to have been well balanced, in that leaders from each – Tanaka, Miki, Fukuda, Ohira and Nakasone – held the Premiership during the 1970s and 1980s.

Despite its common 'party of factions' label, the LDP was quite different from the British Labour Party. The factions of the LDP were not really groups of politicians sharing the same ideology and policy preferences, as were those of the Labour Party. After all, their cohesion was basically maintained by human and financial relationships. Good human relationships may easily be established between people with the same ideology and policy preferences, but there are many other aspects to human relationships. Furthermore, 'the need to form coalitions with other factions to win a majority vote in the Prime Ministerial competition also creates an incentive to be a "median" faction'.[24]

Since the collective forces of factional leaders decided the main direction of the party, in Britain the Prime Minister's leadership was relatively weak. For instance, the Prime Minister did not have much discretion in choosing the makeup of the cabinet, taking into account the need for factional balance. Likewise, the Japanese Prime Minister could rarely dismiss cabinet members. Cabinet members represented their faction, and their dismissal would risk the fury of this entire faction.

The lack of strong prime ministerial leadership was typically shown in the case of the competition law reforms of the 1970s. While Prime Minister Miki was seriously concerned with reform,[25] he was not able to manage it partly because his faction was the smallest and least influential among the major five factions. Conversely, the amendment Bill was passed rather smoothly under Prime Minister Fukuda, leader of a relatively large faction. He did not appear to have much interest in competition policy, but was able to mobilise the crucial support of party members.

The structure of inter-party relations

The possibility of a change in the ruling party was perhaps the first and most important character of the difference in inter-party relationships in Britain and Japan until the 1970s. In brief, Britain witnessed more frequent changes in the party of government than did Japan. The two countries are two contrasting cases of the relationship between the prospect of change in the ruling party and the degree of popular tolerance for any perceived high-handed attitudes of government.

In Britain, both electorate and political parties could normally anticipate a change in ruling party via elections, thus the government party did not have to compromise so frequently with opposition parties. The opposition parties knew that they could change unfavourable policies when they took office, and the electorate may well have considered that the current government was its choice, and that it would be able to make another choice if it came to disapprove of the present incumbent. In Japan, on the other hand, there was a general consensus

that the LDP would remain in government at least in the near future. The system of support for that party was very stable, while the other parties apparently lacked the competence to run the government even if they were to be in office. Against this background, the LDP was expected to take a conciliatory attitude towards the opposition parties in exchange for its permanent incumbency in government. Iwai showed in his empirical study that the average probability of the passage of government bills was different in Britain and Japan.[26] He pointed out that the Japanese government was less likely to railroad its own bills than its British counterpart, showing that even when a bill was passed, opposition parties could often draw significant compromises from the LDP.

In the 1970s, the LDP's relational strength appeared to be further weakened as the LDP's dominant position became less stable – the party was in the 'period of instability and confusion'.[27] As Figure 4.1 shows, the party's share of seats was reduced from 59 per cent to 55 per cent in 1972, and it did not regain its majority position in the next two elections (1976 and 1979). This was a great shock to the party, for it had never failed to do so since 1955. Although the non-LDP parties were unlikely to form a coalition government, LDP politicians were very keen to regain their overall majority so that they would have less difficulty in managing the Diet. Their long period in government seems to have made LDP politicians more fearful of leaving office than their British counterparts.

The bargaining power of the opposition parties was therefore enhanced. This is evidently shown by the change in the agreement rate of opposition parties with government bills. According to Iwai,[28] the share of unanimous decisions was 28.0 per cent when the LDP held a majority of seats under Prime Minister Sato (1965–72), but the figure then rose to 49.0 per cent under Prime Minister Miki, and 59.6 per cent under Prime Minister Fukuda. The general rise in

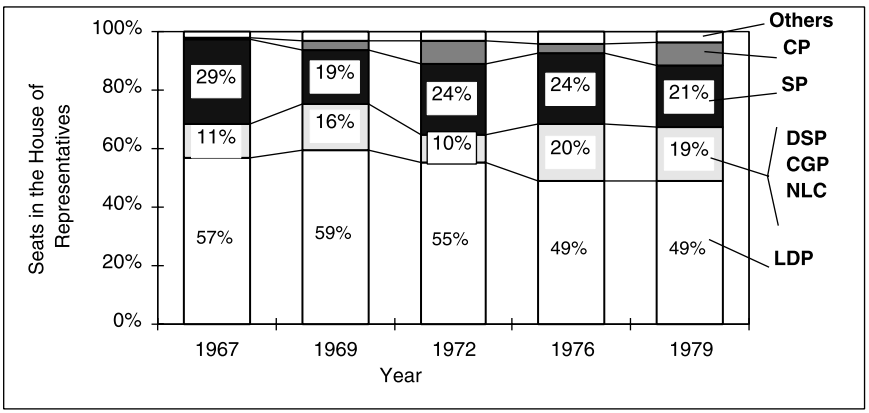

Figure 4.1 Seats in the House of Representatives, 1967–79

Note: LDP=Liberal Democratic Party; NLC=New Liberal Club; CGP=Clean Government Party; DSP=Democratic Socialist Party; SP=Socialist Party; CP=Communist Party. The figures represent each party's proportion of total seats in the House of Representatives at the time of the election.

the agreement rate is better explained by the growth of compromise on the part of the LDP rather than the opposition parties, since it was clearly correlated with the decrease of the LDP's electoral popularity, as shown in Figure 4.1.

Iwai has also pointed out that Japan was unique in the sense that the most important process for the passage of legislation was the informal discussion before the formal reading in the Diet.[29] The opposition parties were usually informed of the contents of draft bills in advance so that their opinion could be taken into consideration by the LDP government. Of course, the government party had discretion to decide whether the bills should be modified according to the response of the opposition parties, but it was much easier for opposition parties to inject their ideas into the bills in the informal discussion than in the formal reading in the Diet.

Another important factor which enhanced the bargaining power of the opposition parties was the Diet's committee system.[30] The party distribution of Diet committee membership was not always identical to that of the Diet itself, and the LDP did not have a majority on some committees even when it might marginally have a majority in the Diet. This enhanced the bargaining power of the opposition parties, not only on those committees but also on other committees, because opposition parties could trade off control of those committees for control of other committees.

Given all those factors, Japanese opposition parties had significant bargaining power when up against the LDP, particularly in the mid-1970s. It is true that there were some limits to this power, for they did not ultimately hold any formal powers of decision-making. Nonetheless, the power of the opposition parties was more significant in Japan than in Britain, where the government/opposition relationship usually took an antagonistic form. In Britain, parties criticised each other in parliamentary debates, even when their policy positions did not fundamentally differ. The government party was less likely to make concessions to the opposition. Opposition parties were usually expected to criticise the proposals of the government party, even though they might make more or less similar proposals when in office.

National models of the triangular relationship between businesses, politicians and public officials

The first side of the triangle: businesses and politicians

The relationship between business and politics is one of the major factors in explaining the political reaction in the debate on competition policy. The relational pattern varies across different parties and across different countries.

Let us look at the British Labour Party first. The party has had far closer connections with trade unions than with businesses. For political donations, the Labour Party was 'believed to receive 85–90 per cent of its main income from trade unions'.[31] On top of that, trade union members constituted nearly 90 per cent of party membership, and trade unions were formally incorporated into the

decision-making process. Whereas party leaders did not entirely obey trade unions nor totally ignore business, it was natural for them to prioritise the interests of trade unions over those of business. It is true that the Labour Party sometimes tried to conduct a policy which was against the mainstream interest of trade unions, and Barbara Castle's attempt to reform the framework for industrial disputes is a case in point. As noted above, however, her attempt failed, while the Labour Party leadership lost credit with trade unions. Consequently, party leaders were very anxious to regain their credit, and therefore less inclined to listen to the voice of business.

The unification of business associations into the CBI often functioned disadvantageously at that time. While the concentration of power into one representative body would favour businesses in their negotiations with politicians, the smaller number of business groups made it easier for politicians to impose their will on businesses. After all, politicians did not have to go and consult a host of different business associations, and could merely consult the CBI in order to lend authority to their decisions. This confirmed the view of Conservative MP Enoch Powell. Just before the formation of the CBI, he warned:

> Remember Caligula, who wished the Roman People had one neck, so that he could cut it off? The Association of These, and the Federation of That, present just that one neck to the Socialist garrotter (and now, not content, these employers seem to be bent on all amalgamating into one great, soft, vulnerable neck!).[32]

The Conservative Party had far closer ties with business. According to a report of the Constitutional Reform Centre in 1985, '[o]ver 55–60 per cent of central Conservative Party funds…are provided by companies'.[33] Moreover, there was certain direct personal interchange between the Conservative cabinet and business. In particular, the CBI had its former Director-General, John Davies, as industry secretary from 1970 to 1972, when competition law reform was put on the agenda.

Nonetheless, such a relationship did not seem to work so favourably for businesses as far as their influence on a Conservative government was concerned, for several reasons. First of all, although political donations to the Conservative Party came from some of its members, the CBI was not in itself a donor. Second, since the Conservative Party was 'a party of tendencies' as noted above, it was often difficult for businesses to find specific patronage groups who would give them persistent support. With particular regard to the CBI under the Heath government, furthermore, the CBI did not appear to make effective use of such financial and personal connections. The strong leadership of Prime Minister Heath was detrimental to the efforts of business. Unless business could establish a direct connection with the Prime Minister, it would be difficult to influence the government's final decisions. Yet the Prime Minister seldom heeded the interests of business exclusively.

Personal connections did not work successfully either, especially regarding John Davies. Despite his working experience at the CBI, Davies 'seemed to be less willing to ask the CBI for its views, assuming that he knew what it would say', according to Grant and Marsh.[34] Yet CBI members realised that they had been better off with their former executive in the government when the new Secretary for Trade and Industry replaced Davies. In his discussions on competition policy, the new industry secretary, Peter Walker, did not consult the CBI exclusively. Instead, he extended the scope of his consultation to such other business associations as the National Grocers' Federation, the Cooperative Wholesale Society and the Retail Fruit Trade Federation.[35] This consequently impaired the representative authority of the CBI.

In Japan, the central LDP funds owed around 60 per cent of their revenue in the mid-1980s to donations from businesses, while the other parties supported themselves mainly from membership fees and by such businesses as newspaper publishing.[36] Whereas the LDP had a more or less similar financial structure to that of the British Conservative Party, its politicians were more likely to support the interests of business. The main reason for this was the cost of elections, which was much higher in Japan than in Britain. This was largely because of differences in the voting pattern (i.e. individual-based voting in Japan in contrast to party-based voting in Britain), and because of the attitude of voters towards direct benefits (i.e. Japanese voters were more likely to expect money or other direct benefits in return for their vote). According to calculations based on data from the early 1980s by Tomisaki,[37] Japanese politicians' election expenses were well over five times greater than those of British politicians.

From this it naturally follows that the LDP had a far more stable and closer relationship with businesses. In fact, the merger of several conservative parties into the LDP in 1955 was at least partly the creation of businesses, as they wanted to have one dominant party working for their sake. Furthermore, political donations from businesses to the LDP were totally institutionalised. The *Keidanren* acted as broker, that is, it collected political donations from all industries and then gave it to the LDP collectively. This enhanced the representative strength of the *Keidanren*, as retrospectively admitted by Jimpachiro Hanamura, who had long been the top *Keidanren* official, playing a crucial role in that respect.[38]

It is true that the *Keidanren* once suspended its political donations to the LDP after that party lost in the 1974 election, and this suspension enhanced the bargaining power of business *vis-à-vis* the LDP government. Although the *Keidanren* resumed its donations in spring 1975, the experience of the suspension effectively threatened many LDP politicians. To avoid another suspension, the LDP was now, it seemed, more inclined to obey the interests of business. Symbolically, Etsusaburo Shiina, a senior LDP member who was responsible for negotiating with businesses over political donations, demonstrated his persistent opposition to the AMA reform.[39] This may at least partly explain the LDP's failure to pass the reform Bill in 1975, as well as its proposal of largely toothless alternatives in 1976.

Nonetheless, businesses did not always exert decisive control over the LDP government. Their influence was apparently restricted by the LDP's decision-making procedure based on the power relationship of its major factions. It is true that most faction leaders were willing to help businesses, but they were not monolithic in their policy position. The party's decision-making process was largely composed of the 'power game' based on calculations among faction leaders behind the curtain, and it was virtually impossible for businesses to control all of these.

From the viewpoint of individual sectors and companies, in addition, the collective donation system of the *Keidanren* was seen as disadvantageous from time to time. While business enhanced its collective power through the *Keidanren*, individual sectors and companies were prevented from establishing closer connections with particular factions. If particular sectors could give their donations to particular factions and mobilise them, this would be more effective if they were concerned with particular political interests. In this sense, the unification of power resources into the *Keidanren* was problematic, as was the case for the CBI.

The second side of the triangle: politicians and public officials

Just as in the relationship between business and politicians, the status of public officials *vis-à-vis* the politicians was also different in Britain and Japan. In Britain, the 1960s and 1970s was the remarkable period in this respect, for '[g]overnment departments were created, merged, abolished and took on or lost functions at sometimes bewildering speed'.[40] In particular, prime ministers Wilson and Heath both 'took an unusual interest in the reform of government'.[41]

This does not mean, however, that the politicians tried to reduce the autonomy of the civil service. On the contrary, their intention was to render the civil service more effective so as to maximise its utility. At one time, indeed, both Wilson and Heath themselves had been civil servants. For Wilson, his active use of governmental bodies such as the Ministry of Technology (MinTech) and the Industrial Reorganisation Corporation (IRC) underlined his belief in the abilities of public officials, although he was sceptical about the power concentration at the Treasury. According to Barbara Castle, Wilson 'had a natural appreciation of the work that civil servants do…when he became Prime Minister…his appreciation turned into something dangerously like an uncritical acceptance of the status quo'.[42]

Just like Wilson, Heath seemed to believe in the ability of the civil service, even though he promoted the rationalisation of government. '[H]is key advisors were top civil servants rather than politicians, party advisers or political cronies', and he 'hankered after a French style Civil Service with highly-trained officials not afraid to take a strong line'.[43] From these explanations, it follows that British public officials enjoyed a large degree of autonomy, at least where the reform of competition law was concerned. Indeed, there were such observations as 'major industrial policy legislation has been little altered in its passage through Parliament'[44] and 'parliamentary control of the executive was particularly weak' with regard to industrial policy.[45] Accordingly, it was very likely that industrial policy officials also kept tight control over government politicians with regard to competition policy.

In Japan public officials were reasonably autonomous, at least until the 1970s. It was partly due to the legacy of history that they operated in parallel with, but not under the control of, the Diet, as 'the servant of the emperor'. The occupation forces in the aftermath of the Second World War did not dismantle the basic governmental framework, particularly for economic ministries, as it prioritised economic recovery over accusations of responsibility for the War. The occupation forces purged only fifty-one high-ranking officials from the Ministry of Commerce and Industry, the Ministry of Procurement and the Ministry of Finance, while the Ministry of Home Affairs lost 70 per cent of its 1,800 staff.[46] In addition, since nearly 35,000 politicians had been purged and could not enter the political arena again, public officials became the most important source of succour for politicians, which led Johnson to argue that this 'has tended to perpetuate and actually strengthen the prewar pattern of bureaucratic dominance'.[47]

Compared with their British counterparts, indeed, Japanese public officials have evidently played a significant role in debates in the Diet. According to Nonaka, for example, 788 officials (more than the overall number of MPs) were invited to the House of Representatives in one Diet session in 1988, while only 204 LDP politicians and 85 Socialist Party politicians actually participated in a debate (i.e. made a speech).[48] Of course, this only focuses on the formal aspect of affairs and does not necessarily reflect the substantial strength of public officials. British ministers would probably follow the ideas of their department staff even if they made a speech by themselves. Nevertheless, it is plausible that Japanese politicians would be more inclined to fall in line with the ideas of public officials, and that Japanese public officials would be more inclined to regard themselves as main players in the policy-making process. Furthermore, the extent to which politicians are willing to take the lead from their civil servants may be higher when an issue is complex and difficult, as is often the case with competition policy.

In addition, British and Japanese public officials have had different ambitions regarding political power. In Britain, there have been few cases where public officials have seen their job as the first step to becoming a politician, while this has often been the case in Japan, where – at least until recently – the experience of high-ranking officials and the direct contact they have with politicians has been viewed as a distinct advantage for those wanting to enter politics.

Yet it would be misleading to say that the power of public officials was unlimited. It was still politicians, not civil servants, who made the final decisions. Hence public officials, as well as businesses, could never fully control the 'power game' and the calculations of faction leaders in the course of decision-making processes within the LDP.

By the 1970s, furthermore, the idea of bureaucratic dominance became less popular. Some commentators, notably Muramatsu, came to observe that the longstanding one-party dominance had improved the policy-making abilities of LDP politicians, hence reducing civil servants' scope for autonomy.[49]

This is in part shown by the change in the recruitment pattern of public officials going on to enter politics. According to data provided by Sato and Matsuzaki, the number of politicians with experience of work in the civil service

remained constant from the 1950s to the 1980s, but the share of those who left the civil service to enter politics at a younger age increased over time. For example, the share of those younger career-switchers was 26.8 per cent in the period between 1953 and 1960, but the corresponding figure rose dramatically to 69.4 per cent in the period between 1976 and 1983.[50]

There are two different interpretations of this change in recruitment pattern. First, many public officials became fed up with their low status (as 'brown rats'[51]), and thus tried to escape into the world of politics. Second, politicians came to prefer a younger, energetic elite, even though these people may have had less experience and fewer personal connections within the government. In either case, the trend may be regarded as a sign of decline in the status of high-ranking public officials as far as politicians are concerned.

The third side of the triangle: businesses and public officials

The relationship between businesses and public officials made for one of the clearest differences between Britain and Japan. In short, Japanese business had much stronger connections with public officials, especially industrial policy officials. There are a number of factors that help to explain this contrast. The first relates to the interest-sharing between business and government. In Britain, there was 'an unbridgeable gap between the [government and business] sides, incongruence of goals and values shaping decision-making, and a marked antipathy of business to politics'.[52] On the other hand, Japanese business and industrial policy officials had long been cooperative, with the guiding ambition of 'catching up with the West'.

When the DTI was established in Britain, furthermore, industrial policy officials had 'serious problems of internal co-ordination exacerbated by the continuance of different traditions – [Board of] Trade's free-trade outlook, and on the Industrial (former MinTech) side, a more interventionist impulse'.[53] Naturally, such internal dissidence hindered the formation of close relationships between business and industrial policy officials. In Japan, by contrast, MITI was composed of sector-based divisions with almost exclusive authority to supervise particular industrial sectors. In most cases, each division was able to set up its own policy goals, keeping in close contact with companies under their supervision.

Second, the *Keidanren* and three other top business associations in Japan were '[p]ervaded by bureaucrats' as van Wolferen points out.[54] Indeed, for example, the first three *Keidanren* presidents were in origin high-ranking public officials working for the pre-war imperial government. As is often pointed out, the business elite shared the same educational background as their bureaucratic counterparts (i.e. they were graduates of Tokyo University). In the mid-1970s, the majority of high-ranking officials were graduates of Tokyo University (especially its law faculty), and nearly 40 per cent of executives of the top fifty companies came from that university.[55] Traditionally in Japanese society, sharing the same educational background often helped create strong bonds and made it much easier for people to get access to each other. This similarity of educational background was also the case in Britain; that is, 41 per cent of CBI committee

chairmen from 1965 to 1973 had an Oxbridge education, while 84 per cent of senior civil servants were Oxbridge graduates.[56] Yet the connection between businesspeople and civil servants based on similarity of educational background was apparently not as strong in Britain as in Japan.

Finally, in Japan there was a near-institutionalised personal network of retired officials – the so-called *amakudari* ('descent from heaven'). According to the National Personnel Authority (NPA), more than 150 retired officials were constantly employed in the private sector through the 1970s (Table 4.2). While this may be sufficient to indicate the strong public/private connection, the real number of *amakudari* officials was considered much larger. After all, the NPA's estimate covered only those officials employed by the private sector within two years of their retirement. The majority were, on the other hand, employed by other pubic corporations or semi-public corporations for the first two years, and then moved to the private sector, in order to avoid the NPA inspection. It is also noteworthy that the ministries themselves were heavily involved in finding re-employment for their retirees, almost as a part of their personnel management.

It is true that British officials, particularly younger, high-ranking ones, did forsake the civil service for the private sector, but there was apparently no long-standing, routine pattern. 'Fears have been expressed that large companies may secure access to privileged information of rivals through their ability to recruit holders of government posts to executive positions', according to Willis and Grant,[57] but the possibility of collusion between businesses and public officials on the grounds of such personal transfers was not discussed so frequently in Britain.

Table 4.2 The number of retired officials going into the private sector (based on an estimation of the National Personnel Authority) in the 1970s

	MoF	*MITI*	*MoC*	*MoA*	*MoT*	*Others*	*Total*
1970	42	30	17	20	21	63	193
1971	44	17	10	18	22	56	167
1972	42	14	17	21	11	71	176
1973	33	32	24	20	16	55	180
1974	59	18	21	12	15	64	189
1975	47	13	21	15	18	62	176
1976	44	14	10	14	15	61	158
1977	49	17	21	16	17	77	197
1978	46	17	16	17	16	84	196
1979	47	17	26	25	24	94	233
Total	453	189	183	178	175	687	1,865

Source: National Personnel Authority, *Public Officials White Paper 1983*, Tokyo, Ministry of Finance Printing Bureau, 1984

Note: MoF=Ministry of Finance; MoC=Ministry of Construction; MoA=Ministry of Agriculture, Forestry and Fisheries; MoT=Ministry of Transport

Competition policy officials: relational power and human resources

Relations between competition policy officials and industrial policy officials in Britain

Before the 1973 reforms at least, British industrial policy officials had significant powers to confine the authoritative scope of competition policy officials. With regard to restrictive trade practices control, final decisions came from the Registrar of Restrictive Trading Agreements (RRTA) and the Restrictive Practices Court (RPC), but industrial policy officials determined the sequence in which agreements were to be registered, as well as the dates by which registration was to take place.[58] If industrial policy officials did not favour a decision, they could delay its registration for as long as they liked.

As for monopolies and mergers control, the Monopolies Commission had no power to examine a merger if industrial policy officials should decide not to put it under the Monopolies Commission's scrutiny. There was a non-statutory body called the Mergers Panel involved in this process. The Mergers Panel was composed of various government agencies, principally the industrial policy agency, depending on the case in question. It was responsible for examining cases where the merged assets exceeded the criterion of £5 million, to decide whether such a case should be referred to the Monopolies Commission.[59] During the period 1965–73, 930 cases were considered by the Mergers Panel, but only twenty-six were referred to the Monopolies Commission. The Mergers Panel had no legal status, nor any obligation to make public its decision-making process, but it actually played a role in 'the *de facto* public interest inquiry'.[60] It is true that the Mergers Panel was beneficial to the Monopolies Commission because it screened insignificant cases out of numerous mergers so that the Monopolies Commission could reduce its workload. At the same time, however, the Monopolies Commission was not able to undertake any investigation without the consent of the Mergers Panel. In light of this problem, it was argued that the Mergers Panel 'should be obliged to refer all major mergers and takeovers to the Monopolies Commission for investigation'.[61] The commissioners themselves had once complained of the Mergers Panel's decision in the case of the General Electric Company/English Electric merger,[62] but that was an exceptional instance.

Furthermore, the Monopolies Commission was formally empowered to produce reports, but it was not able to publish them. In fact, '[o]ften the document has been waiting weeks, perhaps months, in a minister's tray while various undertakings are extracted before publication…the task of dealing with tricky or controversial consequences devolves on the politicians and civil servants at the DTI'.[63] In the report on breakfast cereals,[64] for instance, the Monopolies Commission recommended that prices should be directly controlled, but the DTI considered such a recommendation too controversial and left it untouched for several months. Such informal treatment could be used to impair the independence of the Monopolies Commission, which was in principle provided with a formal right to present an independent view.

Those weaknesses in policy implementation corresponded with competition policy officials' lack of authority to draft bills. Occasionally, competition policy officials would identify problems in the existing regulatory framework. At least in the reform of competition law in the early 1970s, however, they did not apparently play any significant role in the policy-making process. In the CIM case, in fact, it was reported that '[n]either [Monopolies] Commission nor Prices Board members appear to have been formally consulted'.[65] Under the Heath government, competition policy officials were seemingly more favoured than under the previous Labour government. For example, it was reported that '[f]ull consultations are planned with…the existing Monopolies Commission' when the government first placed the reform of competition law on the agenda.[66] Nevertheless, it was not clear whether competition policy officials continued to be consulted thereafter, and how much their opinion was reflected in the draft bill. Industrial policy officials drafted the Fair Trading Bill, and they do not appear to have consulted their competition policy colleagues to any significant degree, to go by what competition policy officials have said in occasional statements to the media.

The personnel strength of British competition policy agencies

Besides the above intervention in policy implementation, industrial policy officials were able to intervene in the personnel management of competition policy officials. With regard to the RRTA and the RPC, they could not play a direct role in the appointment of assistant registrars, judges and other staff. However, the industry secretary could discharge the RRTA from his duty to instigate proceedings where the intervention of competition policy was considered unnecessary. Needless to say, industrial policy officials had every chance to persuade the industrial secretary to do this.

The Monopolies Commission was much more dependent on industrial policy officials for decisions on its personnel. The power to appoint the chairman and other commissioners was in the hands of the industry secretary. Even the appointment of office secretaries and other staff required the approval of the industry secretary. On top of that, the Monopolies Commission included many staff dispatched from the industrial policy agencies.

The dynamism of competition policy officials was also constrained by their reputation to a large extent. In comparison with other relevant policy agencies, the Monopolies Commission looked stagnant and 'less in fashion'.[67] The following description delivers the general atmosphere with regard to the Monopolies Commission at that time:

> The Commission…has a full-time chairman, Sir Ashton Roskill Q.C., a scrupulously fair-minded and self-effacing lawyer. The other 18 members are part time…. Though their pay was raised this year and younger men were recruited, it is still true that such a structure relies considerably on a certain devotion to public services and tends to attract older men. The

> contrast with the Prices and Incomes Board in the modern skyscraper by Victoria Station could not be more marked. Headed by Aubrey Jones, a man with considerable experiences of business and government, it rapidly moved into the limelight.[68]

In this context, competition policy officials, particularly those at the Monopolies Commission, did not participate greatly in policy-making discussions on the reform of competition law, even if the topic was directly concerned with their future. It is true that the RRTA articulated the problems of the existing system and called for reform, as in the case of the 1968 Act,[69] but he did not appear to be so active in any discussions about more than minor, technical changes. With regard to the Restrictive Practices Court, its membership was comprised of judges at the High Court and the Court of Session in Scotland, two industrialists, an accountant and a trade union official, all of whom came from outside of Whitehall. In addition to its non-political profile, the identity of the RPC discouraged staff from taking part in political discussions, although they might well take pride in contributing to competition policy in their role as enforcers.

Similarly, the Monopolies Commission was mostly composed of economists, lawyers, businessmen and trade unionists, but not policy-makers with self-confidence, draft-writing techniques and a sense of mission. According to Rowley, '[t]he Monopolies Commission can scarcely aspire to a position of real significance unless the nature of its membership is transformed'.[70] The following comment by Sir Ashton Roskill, Commission Chairman in the early 1970s, indicates the mood of the Monopolies Commission at that time:

> I have never thought it desirable that members of the Commission, including myself, should enter into the field of controversy whether in the press, or on radio or television, about any particular decision.…Controversial discussion is great fun, but, in the course of controversy, issues which had already been decided could become clouded or distorted and, indeed, development of future policy or discussions that might be in progress between any particular firm or group of firms and the Government could be prejudiced.[71]

The relationship between competition policy officials and industrial policy officials in Japan

In contrast to the case of Britain, Japanese industrial policy officials did not have any formal powers to intervene in competition policy. Thanks to its status of 'independent administrative commission' modelled after the American system, the FTC in Japan was positioned under the PMO, but not under MITI.

It is true, however, that the formal independence of the FTC has not always been advantageous to that agency. As Misonou points out, the FTC was often viewed as isolated from other agencies.[72] This was partly because the FTC was not included in the ordinary administrative structure, and partly because the

organisational framework of the 'independent administrative commission' was totally unfamiliar to the pre-war administrative system in Japan. As a result, it was often regarded as a symbol of American occupation (of which many senior public officials had bad memories). The peculiar status of independent administrative commission also led to the FTC being criticised as violating the Constitution of Japan. After all, the Constitution provides that 'the right of administration belongs to the cabinet' (Article 65). From that point of view, the FTC is illegal because it is independent of cabinet control in some senses. For example, the cabinet cannot remove an FTC chairperson from office.

At the same time, the FTC may well have suffered from lack of political representation in the cabinet. Unsurprisingly, the Prime Minister, who has formal charge of competition policy, cannot concentrate on competition policy, and so the absence of any special minister for this area was probably a disadvantage.

Despite those negative aspects, however, its organisational independence worked well for the FTC, especially in the mid-1970s. Thanks to this independence, the FTC could successfully resist pressure from MITI. The case of the 1970s reforms shows that the FTC could vigorously hold its own against MITI, at least for a time, provided that it gained support from the Prime Minister, although the Prime Minister's leadership was not strong enough to push through the reforms as easily as the FTC wished. The FTC did not have any formal powers to draft legislation, just as in the British case, but it enjoyed a relatively large scope for intervention in the policy-making process of competition law reform, in contrast to its British counterpart. Drafting legislation was the task of the PMO in principle, and the PMO was not obliged to consult the FTC. Nevertheless, it seems that the PMO lacked staff with special knowledge of competition policy, and consequently the FTC was eventually given substantial powers to draw up the proposals.

The personnel strength of Japanese competition policy agencies

With regard to the staffing policy of the FTC, it should first be noted that the chief competition policy official, i.e. the Chairman of the FTC, is fairly independent. As mentioned above, the Chairman cannot be removed from his office for at least five years, unless he reaches retirement age. Nobody, including the Prime Minister, has the right to dismiss the Chairman by force.

Yet the Chairman is not entirely independent. The Prime Minister has the formal authority to appoint the Chairman, but from the start there was a clear tendency to appoint retirees from the Ministry of Finance (MoF). Likewise, there was a clear pattern in the appointment of commissioners. Article 29 of the AMA provides that commissioners should be 'those with academic knowledge and experience in the legal or economic field'. This definition was interpreted quite broadly, so that candidates for the post of commissioner were not required to have special knowledge about competition policy. In consequence, the Commission came to be made up of retirees from other ministries and agencies. The commissioners typically came from the MoF, the Ministry of Justice/Public

Prosecutor's Office, the Ministry of Foreign Affairs, and MITI (see Table 4.3, for example). Obviously, those ministries intended to retain some influence over the FTC. In that sense, the FTC was never independent of other ministries, despite its organisational independence.

By the 1960s, that job-distribution system had almost become routine. Consequently, 'the FTC was viewed just as a post for *amakudari*'.[73] As the appointments practice became routine, politicians and ministries paid less attention to the ideology and aptitude of appointees. This often led to the creation of 'layman commissioners', that is, commissioners with little knowledge and interest in competition policy. Yet the practice was not entirely without benefit. Since politicians and ministries were not particularly cautious, they were equally likely to appoint those who would be over-enthusiastic about competition policy. Chairman Takahashi, the key figure of the reform movement, was a case in point. In fact, Prime Minister Tanaka (1970–2) once heavily criticised Takahashi's attitude and regretted his careless appointment after Takahashi revealed his activism.[74]

It should be remembered, however, that Takahashi's activism was not entirely based on his personality. There were two reasons for the MoF (Takahashi's previous employers) to favour the reinforcement of competition policy. First, the MoF was eager to bring down inflation, and competition policy was viewed as a good instrument for this among others. Second, MITI was very powerful in the government of that time, and presumably the MoF wished to put a brake on its expansion. Certainly, the MoF was not very sympathetic to MITI, and Takahashi did not seem to come under pressure from his former employers.

Yet one may wonder why Takahashi acted so vigorously against MITI, despite the fact that one of his FTC commissioners had previously worked for MITI. It is possible that the retirees' attachment to their original employers was not as strong as expected, thus even an ex-MITI commissioner could oppose MITI.

An alternative interpretation is that the Chairman was powerful enough to overcome the resistance of commissioners. It is true that he had no stronger decision-making powers than others of the Commission, that is, the Chairman's vote was equal to the others. Nonetheless, as Otake has pointed out,

Table 4.3 The Chairman and commissioners of the Fair Trade Commission in 1974

Chairman	Toshihide Takahashi	Ministry of Finance
Commissioners	Katsuyoshi Takahashi	Public Prosecutor's Office of the Tokyo High Court
	Tokuo Hashimoto	Ministry of International Trade and Industry
	Bunji Kure	Bank of Japan
	Masahisa Takigawa	Ministry of Foreign Affairs

Source: Printing Bureau of the Ministry of Finance, *Shokuin-roku*, Tokyo, Printing Bureau of the Ministry of Finance

> since the functions of individual Commissioners were not differentiated, nor were they placed at particular divisions of the Secretariat, the Chairman held an almost exclusive channel of communication with the Secretariat and with external parties, and this substantially put the Commissioners under the control of the Chairman.[75]

Because of the Chairman's strong leadership, in fact, the FTC was often called 'the Takahashi Commission'.

The Chairman's actions also reflected the strong sense of mission among the FTC secretariat at that time. As Yutaka Tanimura, Takahashi's predecessor and Chairman from 1969 to 1972, noted retrospectively, FTC officials were 'no less eager for, and faithful to, their work than the officials of either MoF or MITI'.[76] Their competence was also seen as so high that an official of the West German *Bundeskartellamt* once commented that 'The Japanese FTC Secretariat is affluent in human resources, and the officials are working pretty well'.[77] A main factor in the FTC's organisational development was the significant replacement of 'layman officials' previously seconded from other ministries with those who had a greater loyalty to the AMA and a strong sense of mission for their job. Seemingly, many FTC officials had been very frustrated by the dominance of MITI-led industrial policy over competition policy, and this must have rekindled their enthusiasm. Additionally, it should be noted that the FTC did not have the *amakudari* connection with business, unlike other ministries, and was therefore more at liberty to ignore the interests of business. The activism of competition policy officials, at least under the leadership of Chairman Takahashi, seems to have enhanced the relational power of the FTC *vis-à-vis* other actors in the policy-making network.

Conclusion: the power of business in the competition policy network in the 1970s

As stated at the beginning, the aim of this chapter has been to examine the relational structure within and between the core actors in the competition policy network. So how much does the network structure explain the failure of business leaders to include their ideas in the final policy output?

As for the organisational strength of business representatives, it may be said that, at least in comparison with the *Keidanren* in Japan, the CBI was not as strong in its external authority and internal unity. The CBI's large membership, including many small- and medium-sized businesses, was certainly helpful in strengthening its authority as a representative organisation. At the same time, however, this large membership seems to have seriously damaged the internal unity of the CBI. The lack of internal unity was problematic, particularly in such a newly established organisation.

By contrast, the *Keidanren* was strongly unified. Its membership was limited to large companies, but this limited membership did not appear to weaken its external authority. The reason for this was that many companies of various sizes

in many sectors were incorporated into business associations, and since the *Keidanren* was composed of the leaders of those associations, it was seen as representing virtually all companies belonging to business associations, even though the scope of actual membership was small.

With regard to the triangular relationship between business, politicians and public officials, the CBI was again less significant than its Japanese counterpart. The *Keidanren* played an intermediary role in the collective political donations of businesses, while the CBI did not. It should also be remembered that political donations had greater significance in Japan, since elections were far more costly in Japan than in Britain.

Compared with Japanese politicians, British politicians were also less dependent on public officials. Although British civil servants, at least during the 1970s, were strongly placed to advise politicians, they were not as powerful as their Japanese counterparts. As for the relationship between businesses and civil servants, moreover, their connection was not so close in Britain. Of course, there were various personal networks linking businesses and public officials, but they were not as highly formalised as the *amakudari* system in Japan.

All the above factors indicate the relative weakness of British businesses in their relations with other political actors. However, this does not necessarily mean that Japanese businesses were strong enough to control other political actors all the time. Indeed, the *Keidanren* also had a number of problems. The first relates to the internal structure of the LDP. Although the LDP was generally friendly with business, the interactions and negotiations among factions often affected the decision-making of that party, and thus business was unable to keep control from time to time. Under the consensual (or non-adversarial) style of inter-party relationship, furthermore, the government party (i.e. the LDP) made compromises with the opposition parties more easily and more frequently than its British counterpart.

On top of that, the relational power of Japanese business appeared to be weak, particularly in the competition policy network. The competition policy network in Japan, at least in the mid-1970s, had a number of structural characteristics detrimental to business. First, the absence of the *amakudari* practice in the FTC released competition policy officials from the obligatory relationship with business which was often the case in other agencies and ministries. Second, industrial policy officials could not exert any strong control over competition policy officials, due to the FTC's status of independent administrative commission. On this point, Japanese competition policy officials enjoyed much stronger standing *vis-à-vis* industrial policy officials than did their British counterparts. Once they became courageous enough to challenge their rivals, they were able to take the initiative. Although the FTC did not have any formal authority to draft the reform proposal, it was substantially allowed to do so since its senior authority was the Prime Minister's Office, which did not specialise in economic matters.

To conclude, all those features of relational structure served to restrict the influence of business in the policy-making process, not only in Britain but also in

Japan. With these findings from the study of cases in the 1970s, the next three chapters proceed to the scenario of the 1990s. Here the main questions include: how British and Japanese competition policy changed in the 1990s, how the competition policy network was transformed from the 1970s to the 1990s, and how the policy changes can be explained by that transformation.

5 External changes and the reform of British and Japanese competition law in the 1990s

Following the major reforms of the 1970s, competition law in both Britain and Japan was largely stagnant in terms of reform until the 1990s (it is true that British competition law underwent several reforms in 1976, 1977 and 1980, but these were rather minor changes). However, as briefly mentioned in Chapter 1, significant changes occurred in the 1990s. In Britain, the new Competition Act was established in 1998 after many twists and turns. The new legislation overhauled the regulatory provisions and institutions so as to increase their consistency with the EU system. As for Japan, there was no such fundamental reform, but instead various provisions were amended during the 1990s.

One of the common characteristics of the 1990s reforms was that they were by and large oriented to align with the models of neighbouring jurisdictions. In light of this, our discussion starts with the economic and political internationalisation influencing the reform of competition law in Britain and Japan. This is followed by an investigation into the process of British competition law reform. The third section examines the changes of Japanese competition law in the 1990s, highlighting the process of political pressure from the United States in the framework known as the Structural Impediment Initiative (SII), and the progress towards the 1997 reform which removed the prohibition on the establishment of holding companies.

The progress of economic and political internationalisation

Growth in international economic interdependence

The growth in international economic interdependence is among the most crucial factors in explaining the change of business interests regarding market competition. To assess the extent of this change, let us first look at the trend of international trade and investment among developed countries including Britain and Japan. As Figure 5.1 shows, the exports and imports of industrial countries have generally increased in the last twenty years. Likewise, the volume of outward and inward international investment has been on the rise in terms of both flow and stock through the 1980s and 1990s (Figures 5.2 and 5.3). Correspondingly,

the number of cross-border mergers and acquisitions has recently increased (Figure 5.4).

Such economic internationalisation is promoted by technological developments in such areas as transport and communication, leading to the development of transnational corporations. In parallel with this, national regulations are gradually liberalised so as to make it easier for foreign companies to enter the national market. The development of the international political framework in favour of trade and capital liberalisation is also significant. In particular, the World Trade Organisation (formerly the General Agreement on Tariffs and Trade) plays a significant role in removing the barriers to national markets, at least among developed countries.

The progress of international coordination of competition law

The growth in economic interdependence among nations has supplied a motive to improve the international coordination of competition law, at least among developed countries. As more businesses come to act beyond the national border, restrictive trade practices, monopolies and mergers are more likely to be pursued multinationally, i.e. among companies whose national bases are different from one another. In those cases, different judgements may well come down from

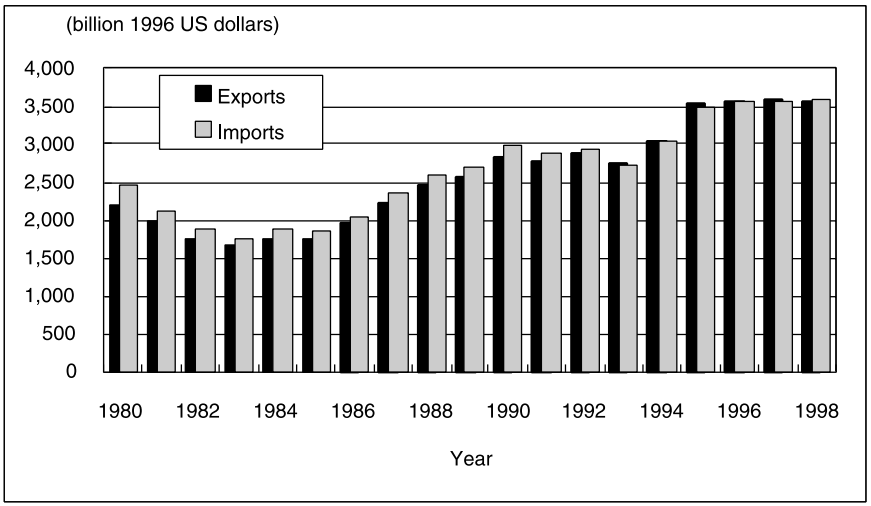

Figure 5.1 Exports and imports of industrial countries, 1980–98

Source: IMF, *International Financial Statistics Yearbook*; US GDP data from US Department of Commerce, Bureau of Economic Analysis

Note: According to the IMF's definition, 'industrial countries' include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States. Adjusted by US GDP deflator (1996 standard) to remove the effect of inflation.

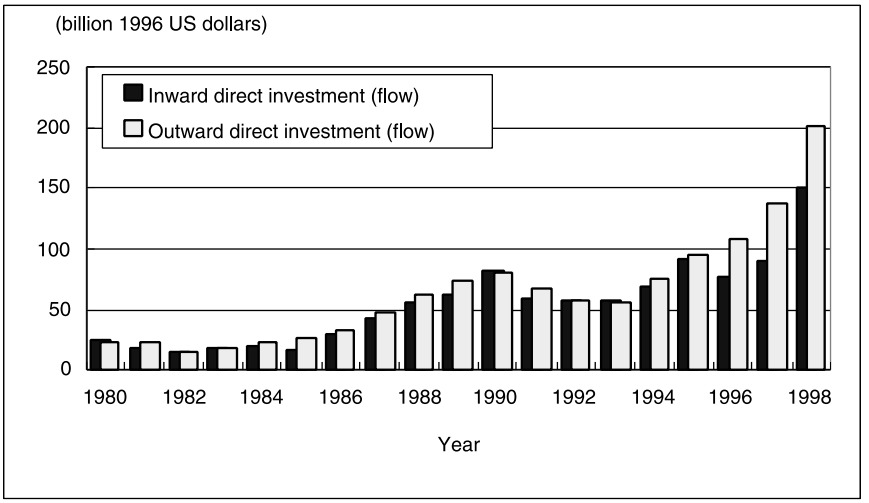

Figure 5.2 Flow of outward/inward investment from/to industrial countries, 1980–98

Source: IMF, *International Financial Statistics Yearbook*; US GDP data from US Department of Commerce, Bureau of Economic Analysis

Note: Due to data availability, countries included are restricted to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States. Adjusted by US GDP deflator (1996 standard) to remove the effect of inflation

different national authorities working on mutually different rules. Obviously, this is quite undesirable from the point of view of legal specialists. The multiplicity of regulation is also quite problematic to businesses, because they must take care of all the different regulatory criteria, which naturally increases business uncertainty and transaction costs. The division between national and international rules may be costly and cumbersome, unless it is particularly beneficial.

Furthermore, the rise in international economic interdependence has increased the chance of what Sylvia Ostry called 'system friction'.[1] If a country's restrictive practices regulation is so lenient that cartels flourish in its domestic market, this creates a substantial entry barrier to foreign newcomers, causing international tension. Such tensions may also arise in cases where a country permits a merger to form a giant company with so strong a market power as to impair both domestic and international market competition. It is natural, therefore, that the 'victim' companies and their home countries call for an international framework for the harmonisation of competition policy. Such an international framework is often preferable also to countries with a lower regulatory standard, because it will more likely provide an opportunity for general discussion than will bilateral, case-by-case negotiations.

Against this background, much effort has been made to develop international cooperation at bilateral, regional and multi-regional levels. There are three types of cooperation: unification, procedural cooperation and information exchange.

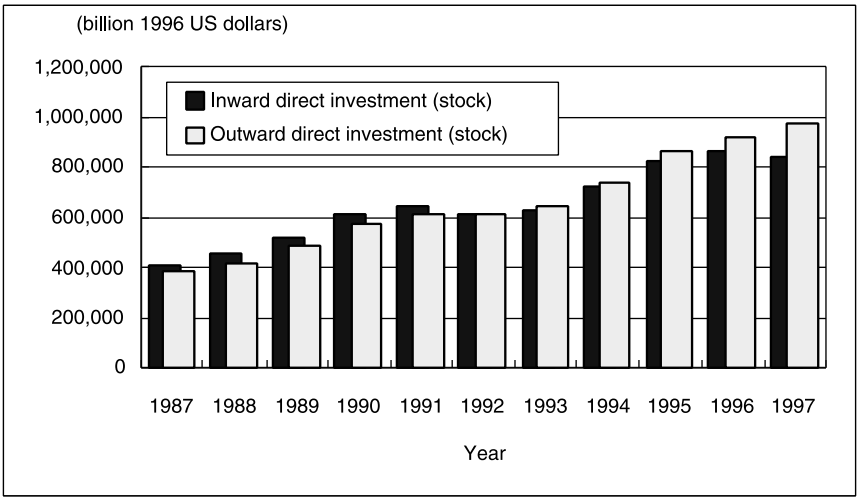

Figure 5.3 Stock of outward and inward investment in industrial countries, 1987–97

Source: IMF, *International Financial Statistics Yearbook*; US GDP data from US Department of Commerce, Bureau of Economic Analysis

Note: Due to data availability, countries included are restricted to Australia, Austria, Belgium, Canada, Finland, France, Germany, Iceland, Italy, Japan, the Netherlands, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States. Adjusted by US GDP deflator (1996 standard) to remove the effect of inflation

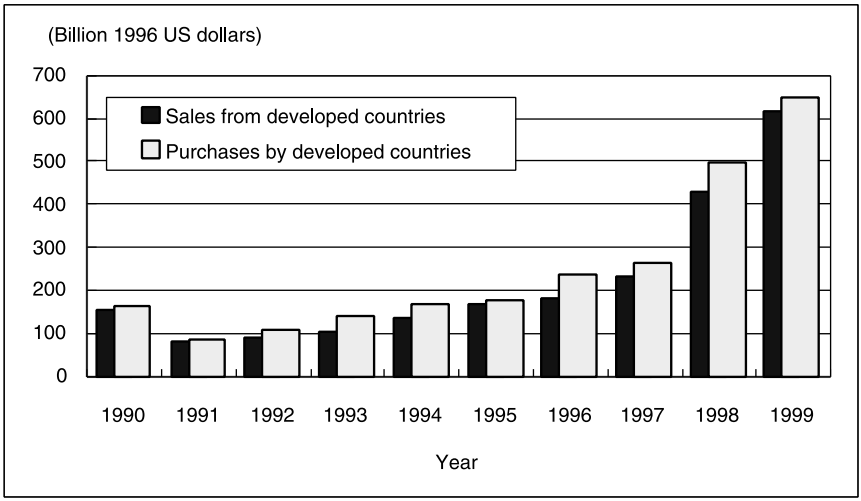

Figure 5.4 Cross-border mergers and acquisitions: sales from/purchases by developed countries

Source: UNCTAD, *World Investment Report*

So far, there is no unification or procedural cooperation of competition policy at multi-regional level. The WTO is a potential provider of the authoritative framework for the international coordination of competition policy, given a close connection between competition policy and trade policy.[2] To date, however, there is no consensus on whether the WTO should play an active role in competition policy.[3] There is a large gap in the recognition of the importance of competition policy between developed countries and developing countries. Even some developed countries, notably the United States, seem reluctant for international coordination on the grounds that it might reduce the scope for national discretion.

At multi-regional level, therefore, information exchange through the OECD is the only channel for international cooperation regarding competition policy. The OECD has long been playing a leading role in the sharing of knowledge and views on the practices of competition policy. The special committee for competition policy, the Committee of Experts on Restrictive Business Practices (later renamed the Committee on Competition Law and Policy), was established in 1961. The Committee has provided an arena for international discussion among national competition policy officials, politicians and academics. It has published various recommendations (Table 5.1) in order to encourage 'a common understanding about the nature and objectives of competition law'.[4] While the OECD has rarely been so influential as to directly affect the policy-making process, its efforts may partly explain why the need for international harmonisation has been advocated more frequently than before in many countries, including Britain and Japan.

Table 5.1 Committee recommendations adopted by the OECD Council

Year	*Recommendations of the Council*
1971	Action against inflation in the field of competition policy
1973	Anti-competitive practices affecting international trade (1st revised)
1978	Use of trademarks and trademark licences
1978	Restrictive business practices involving multinational enterprises
1979	Anti-competitive practices affecting international trade (2nd revised)
1979	Competition policy and exempted or regulated sectors
1986	Anti-competitive practices affecting international trade (3rd revised)
1986	Potential conflict between competition and trade policies
1989	Patent and know-how licensing agreements
1995	Anti-competitive practices affecting international trade (4th revised)
1998	Effective action against hardcore cartels

Source: OECD, *Recommendations of the OECD Council Related to Competition Law and Policy*, Paris, OECD, 2001, online at http://www.oecd.org/daf/clp/recommendations.htm (23 April 2001)

The development of European competition policy and the reform of British competition law in the 1990s

The development of European competition policy

European competition policy gradually gained strength in accordance with the advancement of European integration, fuelled by the idea that competition policy is helpful in removing non-tariff barriers between member states. The first step towards a Europe-wide competition policy was taken in 1951 when the European Coal and Steel Community was founded. Yet this was by definition concerned only with coal and steel. More significant was the second step, that is, a number of articles included in the Treaty of Rome which established the European Economic Community in 1958. The original framework has not been fundamentally changed since then.

European competition policy was rapidly developed in the late 1980s and the early 1990s, thanks to the accumulation of experience of the staff at the European Commission (DG IV) with 'the iconoclasm and missionary zeal'[5] and the strong political leadership of the Commissioners in charge of competition policy.[6] The most symbolic of these moves was the establishment of the Europe-wide Merger Regulation.[7] Consequently, the European Commission came to flatter itself that '[t]he Community was the first to practice a policy which tried to deal with the impact that distortions of competition had on trade'.[8] Cini and McGowan observed that European competition policy 'has withstood the test of time and has matured into a cohesive and an increasingly comprehensive competition regime', thus becoming 'one of the Commission's flagship policies'.[9]

This does not mean, however, that European competition policy has now become predominant and has marginalised national competition policies. The European Commission cannot intervene in cases which are seen as exclusively national matters, due to the subsidiarity principle.[10]

Yet the European system is becoming more and more convincing as a standard model, as the national markets of member states become more interdependent. Britain is not an exception in this respect. As shown in Figures 5.5 and 5.6, Britain has increased its ties with Europe in terms of both trade and investment.

The long-winded progress towards reform of British competition law

It was in June 1986 that industry secretary Paul Channon announced a review of the existing system of British competition law. An internal team was established to review its control over restrictive trade practices and mergers. This was the opening of a long-winded discussion which would last ten years.

Reflecting on the merger boom stimulated by the 'Big Bang' deregulation in the late 1980s, the discussion at that time was primarily concerned with controls over mergers. On the one hand, business leaders advocated setting up an

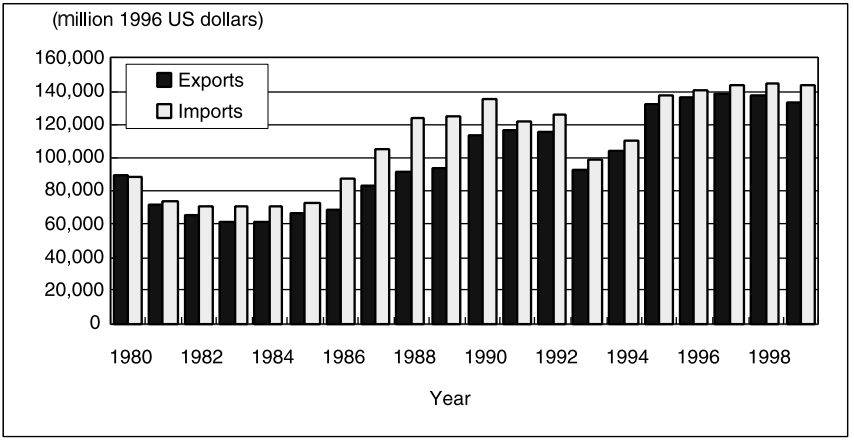

Figure 5.5 Britain's exports and imports to/from Europe

Source: IMF, *Directory of Trade Statistics*; US GDP data from US Department of Commerce, Bureau of Economic Analysis

Note: Adjusted by US GDP deflator (1996 standard) to remove the effect of inflation

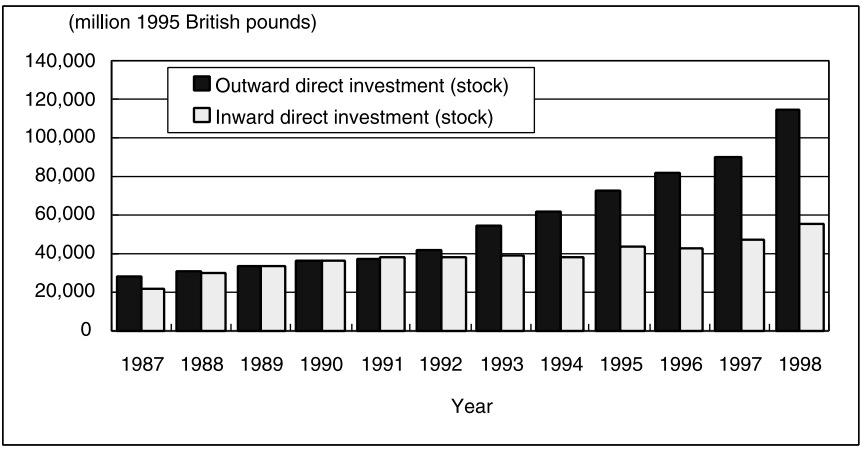

Figure 5.6 Britain's outward/inward direct investment (stock) to/from Europe

Source: OECD, *International Direct Investment Statistics Yearbook*; British GDP data from OECD, *National Accounts*

Note: Adjusted by British GDP deflator (1995 standard) to remove the effect of inflation

informal negotiation system with the Director General of Fair Trading (DGFT) in place of the formal investigation system at the Monopolies and Mergers

Commission (MMC). Against the background of the 'deregulation wave', companies wanted to remove the lengthy formal procedure for mergers. On the other hand, the Labour Party, in alliance with non-business interests such as consumer groups and academics, argued for the reinforcement of public control over mergers. They wanted an extension of the regulatory criteria beyond market competition, so that economically and/or socially undesirable mergers could be prevented.

The Conservative government generally favoured deregulation and the interests of business, although a number of scandals concerning mergers, notably the Guinness/Distillers case, made the government reluctant to give full support. There was lively discussion not only between different parties but also within the Conservative Party during 1987, and the Department of Trade and Industry (DTI) finally published the Blue Paper[11] in 1988. The Paper basically supported the business side, and this led to reform with the 1989 Companies Act. It should be noted, however, that the reform was minor and procedural. The government did not make any change to the central items of legislation, such as the Restrictive Trade Practices Act (RTPA) and the Fair Trading Act (FTA).

With regard to reform of the RTPA, the government published another paper in 1988: the Green Paper entitled *Review of Restrictive Trade Practices Policy*.[12] The Paper called for reform of the regulatory system over restrictive trade practices to the largest extent since the establishment of the system in 1956. It observed that the existing system 'is inflexible and slow, too often concerned with cases which are obviously harmless and not directed sufficiently at anti-competitive agreements', and that '[t]he scope for avoidance and evasion considerably weakens any deterrent effect the system has and enforcement powers are inadequate'.[13] The alignment of British legislation along the lines of EEC law was also suggested for the sake of consistency and simplicity.[14] At that time, there was a significant difference between the *form-based* approach of the British system and the *effect-based* approach of the European system. The British system specified certain specific *forms* of illegal practices in advance, whilst the European Treaty provides that illegality be judged on the basis of the *effect* of practices.

The White Paper was published in 1989.[15] Reflecting the considerations of the Green Paper, the White Paper proposed a fundamental reform of the restrictive trade practices control modelled on the European system. The recommendations included such provisions as a general prohibition of anti-competitive agreements, a *de minimis* exception for non-price-fixing agreements, and a civil penalty system of up to 10 per cent of the total British turnover (or £250,000 for those businesses with small turnover).[16] As for the enforcement bodies, the White Paper recommended the preservation of the DGFT and their office, the Office of Fair Trading (OFT). Nevertheless, it also envisaged the establishment of the Restrictive Trade Practices Tribunal, to hear disputes on the DGFT's decisions as well as to impose fines. It was recommended that membership of the Tribunal be drawn from the MMC. The White Paper on the whole was so radical that '[a]lmost the only element of continuity will be the institutions themselves, and the OFT would become a national DG IV'.[17]

Normally, such a white paper is followed by new legislation. However, the reform of competition law was not included in the agenda of the Queen's Speech that year, 'for reasons which have never been fully explained'.[18] Presumably there was internal controversy on that issue within the Conservative Party. Yet interest in the European model did not subsequently disappear. In 1993, for example, the DTI published a consultation paper in collaboration with the OFT, reporting that '[t]hose respondents who had regular dealings with the Restrictive Trade Practices Act 1976 (RTPA) were almost unanimous in their view that the RTPA should be repealed at the earliest opportunity'.[19] Nevertheless, the Conservative government appeared reluctant to make any major change.

Meanwhile, the discussion on controls over restrictive trade practices stimulated the debate on whether the European model should be introduced also to the controls over industrial concentration. For control of industrial concentration, the European model provided stronger regulatory powers, based on the idea that market dominance should be prohibited *per se*. That is, the European Treaty prohibits the abuse of a dominant position regardless of its real effect on market competition. By contrast, Britain had long taken an investigatory approach. The British competition authority could only make an investigation, and its power was at most to make a recommendation to the Secretary of State. Therefore, competition policy officials and consumer groups favoured the European model, while business leaders opposed it. Some legal/economic specialists appreciated the introduction of the European model, while others were sceptical, because the European model itself was not considered very successful.[20]

Against this background, in 1992 the government published a Green Paper entitled *Abuse of Market Power*,[21] to sort out the discussion on control of industrial concentration. The Paper did not reflect the position of the government, but instead suggested three options:

1 to strengthen existing British legislation;
2 to replace the British system with the European system;
3 to introduce the European system while keeping the monopoly provisions of the FTA.

According to the *Financial Times* at that time, '[i]nitial reading of the green paper suggested that the government favoured the third option' and '[t]his in itself was a big shift' from the traditional attitude of the Conservative government, which 'reflects growing pressure for comprehensive reform'.[22] After the consultation period, nonetheless, the government concluded that it would take the first option. Neil Hamilton, the then corporate affairs minister, stated in April 1993:

> The Government have decided that the best choice is to strengthen the existing system. With this strengthened regime we can retain the current wide scope and flexibility of powers without increasing the regulatory burden on firms.[23]

Reportedly, this result followed 'intensive lobbying by the Confederation of British Industry (CBI) and other industry representatives, which had expressed deep opposition to the prospect of fines for practices such as deliberately pricing goods too cheaply and refusing to supply certain outlets'.[24] Along with that most conservative choice, the government only referred to a procedural reform to increase the discretionary power of the DGFT, in its White Paper entitled *Competitiveness: Helping businesses to win*[25] of 1994. Accordingly, only a minor reform was carried out to extend the discretionary (but not regulatory) scope of the DGFT for control of industrial concentration. By the mid-1990s, therefore, the reform of competition law, for both restrictive trade practices and industrial concentration, was regarded as 'a wasted opportunity'.[26]

While government and business leaders were reluctant to introduce any large-scale reforms, however, competition policy seemed to attract growing interest from others. Obviously, competition policy officials, especially those at the OFT, were interested in the alignment of their system with that of the EC. For instance, Sir Gordon Borrie, DGFT from 1976 to 1992, once commented that '[m]y officials accompany their counterparts from the EC when they mount raids in Britain and come back telling me how useful wider investigative powers would be'.[27]

Paradoxically, the government's reluctance appears to have fuelled demands for reform. An open criticism was made by the next DGFT (in office from 1992 to 1995), Sir Brian Carsberg. In November 1994, he announced his decision to resign his post after he had learned that the reform of competition law would not be included in the Queen's Speech.[28] At that time, he denied any connection between his decision and the government's attitude towards competition policy. Yet his discontent was clearly inferred from his retrospective comment that '[p]eople speculated that it was really that I was frustrated by the government's apparent lack of interest in competition policy – well, I wish they had been more interested'.[29]

Growing frustration at the delay of reforms was also demonstrated by those politicians who favoured the reinforcement of competition policy. These included some Conservatives as well as members of the opposition parties. They established the 'Competition Forum' in 1994, which included some influential backbenchers under the leadership of John Watts, then chairman of the House of Commons Treasury Committee. The aim of the Forum was 'to press for tougher consumer-oriented competition policy and reform of the MMC'.[30]

The Labour Party naturally rode that wave. In May 1995, Gordon Brown, the then shadow chancellor, advocated establishing the Competition and Consumer Standards Office by merging the OFT and the MMC, as well as a separate panel to which companies could appeal if not convinced of the authority's findings. He also proposed restricting the power of the industry secretary to appoint staff, in order to minimise ministerial intervention. Furthermore, he reconfirmed Labour's traditional call to strengthen merger controls so that companies planning takeovers or mergers should be required to convince the competition authority that these were in the public interest.

The proposals for institutional reform and reduction of ministerial control were unanimously supported by the House of Commons Trade and Industry Committee, which published its report in the same month.[31] The Committee's report also recommended the adoption of option (3) of the 1992 Paper, i.e. the introduction of a European model with the retention of monopoly control under the FTA. Although Conservatives were on the Committee, and many other Conservatives supported its recommendations, government leaders did not adopt any of these,[32] which drew strong criticism from Committee members.[33]

Against this background, and also because of a change of industry secretary (Michael Heseltine was replaced by the less traditionally minded Ian Lang), the firmly traditional attitude of the government was somewhat relaxed in late 1995. At the same time there was a change of DGFT due to the resignation of Carsberg. The new DGFT, John Bridgeman (1995–2000), was not as pro-active as his predecessor, which helped make the government less wary of his agency.

As a result, the DTI published a new Green Paper in March 1996, one which was oriented to modest reform. The Paper confirmed the recommendation of the 1989 White Paper to introduce the EU-based approach for control over restrictive trade practices, stating that '[t]he current system of control…is widely recognised to be inefficient and ineffective'.[34] The new proposal was more stringent on some points. For instance, the highest civil penalty was raised from the £250,000 planned in the 1989 White Paper (see above) to £350,000.[35] With regard to controls on industrial concentration, however, the government still chose to avoid the European model with its '*per se* prohibition' approach. The government also denied a radical shake-up of the enforcement bodies.

While the government was still cautious about alignment with the European system, business leaders had changed their minds by that time. Now the CBI came to accept an albeit limited introduction of the European system. It was in August 1996 that the government finally published its draft Bill. The Bill included substantial legislative changes. The government also announced that it would take account of the possibility of introducing the European model for controls on industrial concentration.[36] Nevertheless, the government once again wasted an opportunity to raise this issue in the Queen's Speech of that year, without any convincing explanation. Once more the government encountered strong criticism, this time from all quarters.

The task then left the hands of the Conservative Party, after the Labour Party's election victory in 1997. The Labour government, led by Tony Blair, drafted the Competition Bill. The Bill was largely consistent with what the Conservatives had proposed, although the introduction of a European-style system of control was now confirmed for both restrictive trade practices and industrial concentration. The Bill also provided for new arrangements, such as the first-time introduction of civil penalties, the reinforcement of investigative powers including forcible entry, and the extension of third-party rights to challenge companies and seek damages. The MMC was restructured and renamed the Competition Commission.

On the other hand, the Labour leaders dropped a proposal that they had previously supported: the extension of the merger criteria beyond market competition for the sake of the public interest. Presumably, they decided to drop such a radical idea because of the realism that attaches to being in government. Indeed, the judgement based on the public interest was not congruent either with the direction of European competition policy or with the mainstream academic argument.[37]

The Labour government made several concessions during the parliamentary debate, so as to 'significantly reduce the burden on business'.[38] Yet these were limited to minor points. It is noteworthy that the Conservative Party greatly changed its attitude after leaving office. The party almost returned to the position it had held before the 1996 draft Bill. For example, the Conservative shadow industry secretary John Redwood wrote to the industry secretary, Margaret Beckett, and told her: 'I would urge you to think again and to adapt existing institutions without going in for such a comprehensive and potentially damaging and costly change in the law'.[39] Redwood even criticised the CBI for its amicable attitude towards the introduction of a European system. In the parliamentary debate, moreover, he denounced the Bill as 'a muddle, a rag bag, a mess, a mint with a big hole in the middle',[40] even though the Bill's prototype had been drafted under a Conservative government.

Due to strong resistance from the Conservatives, the passage of the Bill was somewhat delayed. It finally obtained royal assent in November 1998, more than ten years since the review of the existing system was announced in 1986.

Political pressure from the United States and the reform of Japanese competition law

The change in US/Japanese relations and competition law

At the end of the 1980s, Japan encountered strong political pressure from the United States directly regarding competition policy. The bilateral negotiation framework facilitating American pressure was called the 'Structural Impediment Initiative (SII)', meaning that Japan and the United States should take the initiative in removing structural impediments to rectify the trade imbalance between them. The value of US exports to Japan had not surpassed that of its Japanese imports since 1965. Whilst a large amount of 'Japan money' flew into the American market, the Japanese market appeared to be elaborately blocking the inflow of American capital, even though the government had long before announced the liberalisation of trade and capital.

Previously, business practices had not been regarded as a major cause of the trade imbalance. For example, according to the survey by the National Institute for Research Advancement in 1975[41] based on interviews with American businessmen, public officials, journalists, academics and consultants, neither trading customs nor distribution systems were considered as having an important influence on the trade imbalance (Table 5.2). The trade imbalance between

Japan and the United States had frequently been on the political agenda, even until the mid-1980s, but competition policy had not been incorporated into discussions of the trade imbalance.

In the late 1980s, however, the trade imbalance became so remarkable as to cause the American public to believe that there were serious 'structural impediments' in the Japanese market. Between 1984 and 1988, the sum of Japan's exports to the United States was more than twice that of its imports from the United States (Figure 5.7). The contrast between inflow and outflow was far more remarkable when it came to direct investment. The amount of outward direct investment to the United States was over fifteen times that of the inward direct investment from the United States. The imbalance of Japanese direct investment was quite salient in general, and concerned not just the United States, as shown in Figure 5.8.

While the weakness of the yen had previously been considered the main cause of the trade imbalance, this theory became less persuasive after the adoption of the floating exchange system following the 'Plaza Agreement' in 1985. The development of trade liberalisation under the GATT regime also highlighted the problem of the domestic system in Japan. It was now recognised that trade imbalance could not be rectified simply by trade liberalisation.

Meanwhile, a number of Japan-specialists, known as 'revisionists', disseminated the idea that the main reason for the trade imbalance was the structural impediments of the Japanese market.[42] By and large, they emphasised that the Japanese economic system was substantially different from that of United States and other Western countries, and that this was why American products and capital could not enter the Japanese market. The revisionists were quite influential,

Table 5.2 The influence of non-tariff barriers in the Japanese market

	Important	*Not important*
General state intervention in trade		
Government assistance	2	9
Public procurement	12	3
Administrative directives	4	10
Imports by government		5
Society, culture, trade customs		
Culture, trade customs	7	17
Preference for national products	3	17
Distribution systems	2	26

Source: NIRA, *Nihonjinno Boeki Hikanzeishoheki ni kansuru America-jin no Mikata (The View of Americans on Japanese Non-tariff Barriers)*, Tokyo, NIRA, 1975, 41

Note: The figures represent the number of respondents who clearly indicated their position on each issue. The total number of respondents was not specified, but at least fifty-six respondents were recognised according to other survey results.

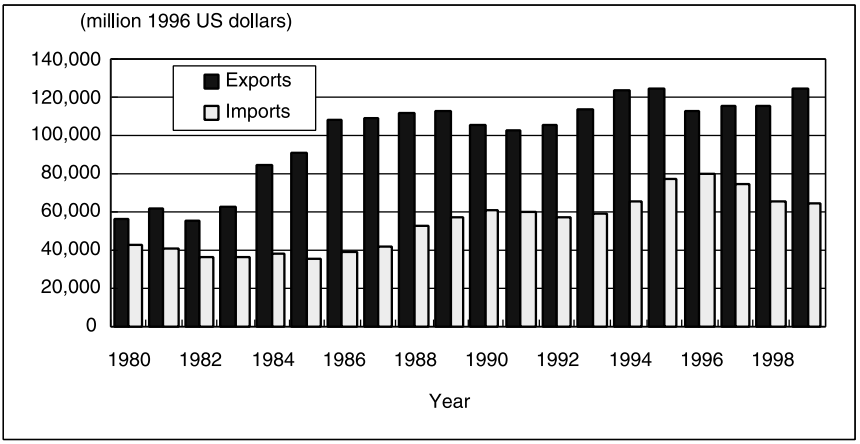

Figure 5.7 Japan's exports and imports to/from the United States

Source: IMF, *Directory of Trade Statistics*; US GDP data from US Department of Commerce, Bureau of Economic Analysis

Note: Adjusted by US GDP deflator (1996 standard) to remove the effect of inflation

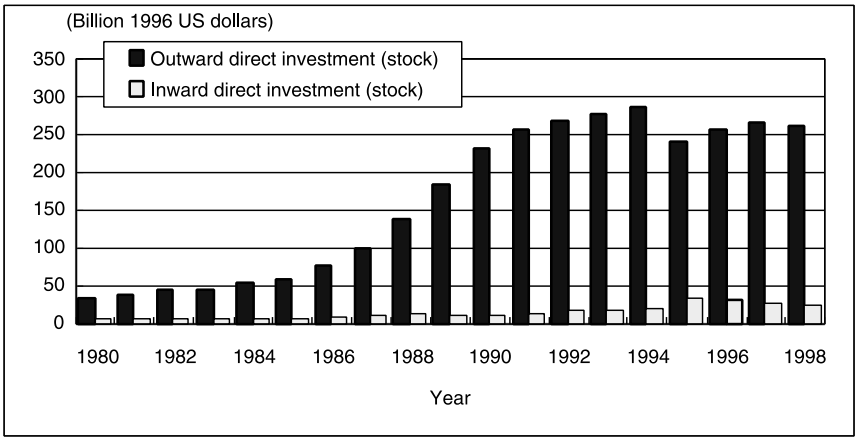

Figure 5.8 Japan's world outward/inward direct investment (stock)

Source: IMF, *International Financial Statistics*; US GDP data from US Department of Commerce, Bureau of Economic Analysis

Note: Adjusted by US GDP deflator (1996 standard) to remove the effect of inflation

at least in the forming of public opinion about the relationship between trade imbalance and structural barriers. By 1989, for instance, 68 per cent of American residents came to believe that the trade imbalance between the US and Japan resulted from unfair barriers embedded in the Japanese system.[43]

Whether they were really convinced by the revisionists or not, American politicians quickly took up their arguments, because they needed a scapegoat for popular frustration over such problems as industrial decline,[44] high unemployment and a large financial deficit.[45]

The first political effort to remove non-tariff barriers in Japan was the 'Market Oriented Sector Selective (MOSS)' of the mid-1980s. As its name denotes, however, the MOSS was concerned with non-tariff barriers in particular sectors, hence it did not lead to the revision of competition law. Despite certain achievements of the MOSS, the persistent trade imbalance kept frustrating many American businesses. Consequently, the executive branch of the United States government came under pressure to reform the Trade Act so as to justify retaliatory measures for the trade imbalance with Japan. The proposed provision was called 'Super 301', a modified version of Article 301 of the Trade Act that provided for a more moderate measure.

While using the possible application of 'Super 301' as a threat, however, US public officials generally considered that measure was too aggressive, and sought an alternative measure to deal with the trade imbalance. The idea of the SII emerged from this context. The Japanese government and businesses also welcomed the SII, as they feared the application of Super 301. They viewed the SII as a better framework, since it did not target particular products or sectors. Against this background, the SII was launched as a joint initiative between the United States and Japan, and Japanese competition policy was drawn into the arena of trade negotiations for the first time in its history.

There were six topics concerning the structural impediments of the Japanese market, and three of these (distribution, restrictive trade practices and the *keiretsu*) were closely related to competition policy. After continuous discussions for nearly a whole year, the final report was published, and included several 'promises' of the reform of Japanese competition law. These were

1 reinforcement of the penalty system so as to render it an effective sanction;
2 promotion of criminal as well as civil trials for the remedy of anti-competitive practices;
3 clarification of the enforcement guidelines of the Fair Trade Commission (FTC) regarding trading customs and *keiretsu* relations;
4 revision of the provisions for cartel exemption; and
5 relaxation of the rules which seemed disadvantageous to the entry of American businesses into the Japanese market, such as those in the Unreasonable Representation and Unreasonable Premium Act.

The SII was very different from previous trade disputes, not only in the sense that it is seen as 'moving beyond the border, to domestic policies',[46] but also in the sense that the 'promises' were followed by subsequent assessment of their achievement. Even though no legal sanction existed for the negligence of the promises, the Japanese government was sufficiently pressured to take some action. The SII was later replaced with the Framework Negotiations, which were

far more oriented to sector-specific trade negotiations. However, the existence of a permanent bilateral negotiation framework had the effect of keeping the Japanese government working (or at least pretending to work) for the development of competition policy.

Reinforcement of Japanese competition policy after the SII

While Japanese competition policy was largely stagnant in the 1980s, the SII changed the atmosphere and created a strong 'fair wind' for the revival of Japanese competition policy. There were various regulatory reforms, and five changes were particularly noteworthy. The first was the rise in the administrative surcharge for cartels. The surcharge was first introduced in the 1977 reforms, and its amount was initially fixed at 2 per cent of a company's annual turnover (in the case of manufacturers). In 1991, the maximum rate was raised three times, that is, to 6 per cent (see Table 5.3). Second, in 1993, the upper limit of the penalty for a corporate body (but not individual employees) was also raised from ¥5 million to ¥100 million in relation to the misconduct of private monopoly, unfair trade restraints and substantial restraints of competition. Third, attempts were made to clarify the regulatory criteria for policy implementation, particularly in the early 1990s. The FTC published various guidelines regarding vertical trade restraints, mergers, collusive tendering and activities of trade associations. Fourth, there was a large-scale revision of the exemption for resale price maintenance, and all exemptions concerned with cosmetics and medicines were abandoned. Finally, efforts to abolish exemption cartels were strengthened. The number of cartels authorised by other legislation had been on the decline even before the SII, but the pace of this decline was accelerated thereafter.

Table 5.3 The change in the administrative surcharge system in 1991

Old system	*Total size (%)*	
Manufacturing sector	2.0	
Wholesale sector	0.5	
Retail sector	1.0	
Other sectors	1.5	
New system	*Big company (%)*	*Small company (%)*
Manufacturing sector	6.0	3.0
Wholesale sector	1.0	1.0
Retail sector	2.0	1.0
Other sectors	6.0	3.0

Note: In the new system, the criterion for a 'small' company was to have less than 300 employees (100 for wholesalers and 50 for retailers) or to be capitalised with less than 100 million yen (30 million yen for wholesalers and 10 million yen for retailers)

All these reforms were positive for the international harmonisation of Japanese competition policy, at least apparently (the degree of actual development will be discussed in the next chapter). However, this was only the first wave in the history of the reform of Japanese competition law in the 1990s. There was another wave in the late 1990s, which was no less significant than the first one. Just as the first wave, the second wave caused Japanese competition legislation to be more aligned with the international standard. On the other hand, the second wave was different from the first wave in the sense that the direction of reform was to reduce the scope of regulation. Furthermore, the motive for reform in the second wave came from the inside. This means that the policy-making process was more complicated, not just a simple reaction to external pressure. Therefore it seems to implicate the functioning of the domestic policy network. The next subsection investigates the major event of the second wave, that is, the removal of the prohibition of holding companies.

The process of removal of the prohibition of holding companies

Just as Article 9 of the Constitution (the renunciation of war as a sovereign right of a nation and the threat or use of force as a means of settling international disputes) has always been controversial for many years, Article 9 of the Anti-monopoly Act, which provided for the *per se* prohibition of holding companies, attracted enormous discussion until it was abandoned in 1997. The purpose of the article was to prevent the emergence of large-scale conglomerates, which was considered as very harmful in post-war Japan, since the country had already experienced economic and political control of giant business groups (i.e. *zaibatsu*) in the pre-war era.

While many Japanese companies substantially formed business conglomerates through the *keiretsu* as discussed in Chapter 4, business leaders at the *Keizai Dantai Rengokai* (Federation of Economic Organisations, *Keidanren*) had long maintained a persistent interest in removing the prohibition of holding companies. They had openly complained about the prohibition already in 1948.[47] Similar complaints were repeated thereafter, most notably in the late 1960s[48] and the late 1980s,[49] both stimulated by the expectation of a rise in market competition against foreign companies. For Japanese companies, it was burdensome to have a restraint on their choice of organisational style, which was not the case for their foreign competitors.

Until the 1980s, however, there was a persistent feeling that removal of the prohibition of holding companies would lead to the emergence of undesirable business conglomerates like the *zaibatsu*. Moreover, while being annoyed at the existence of the prohibition, most Japanese companies had not been seriously interested in holding companies as far as their own organisational structure was concerned. On the whole, the holding company prohibition was regarded as 'inviolable holy ground'.[50]

Nevertheless, in the 1990s business leaders started a campaign for the removal of the holding company prohibition. They were partly motivated by the development of economic internationalisation (however slow), but the SII seemed to be a more direct cause of that campaign. Having witnessed the extension of competition regulation under the name of international harmonisation, business leaders felt that it was unfair for the government to maintain unaligned regulations.

In 1992, Keizaidoyukai published the report arguing for the removal of the holding company prohibition in the context of international harmonisation.[51] Likewise, the *Keidanren* published its report repeatedly in 1993[52] and 1994,[53] claiming that the prohibition should be revised for the sake of international harmonisation. In its 1994 report, the *Keidanren* emphasised the need for the reform, even referring to the benefits for the growth of direct investment towards Japan, which was potentially harmful to them. The argument was that foreign capital might well be embarrassed by the existence of such a special rule, although there appeared to exist no such request. Correspondingly, the Ministry of International Trade and Industry (MITI) raised the issue at the Industrial Structure Council.[54] However, they could not draw much political attention until the early 1990s.

The political atmosphere changed in the mid-1990s, when the banking sector and the Ministry of Finance (MoF) showed a serious interest in the holding company system as one area of financial deregulation. The government included the revision of the holding company prohibition in the menu of the Interim Government Plan for Comprehensive *Kisei-kanwa* Promotion in 1994.[55] After this, reform of the holding company prohibition was discussed in the context of deregulation.

MITI took a step forwards to accelerate the process. In February 1995, the 'Business Legislation Study Group', a private study group within the ministry, published a proposal for deregulation of the holding company prohibition. In consequence, the government's final proposal on the comprehensive *kisei-kanwa* in March 1995 recommended that 'the Fair Trade Commission should start to discuss the regulation on holding companies…and come to a conclusion within three years'.[56]

On the other hand, the FTC still appeared to support prohibition in the wake of the government's proposal. The majority of competition policy officials persistently considered the holding company prohibition as inviolable holy ground. In May 1995, for instance, Kazuyuki Funahashi, the Companies Section Chief, publicly argued against removal of the prohibition:

> As *kisei-kanwa* advances, the promotion of market competition will be much more important, and the necessity for the prevention of excessive concentration of business control, of which the prohibition of holding companies is typical, will never disappear.…Recently, the issue of holding companies has frequently been taken up, and in particular the media, such as newspapers, seem to believe that the future removal of the prohibition has already

> been decided.…However, the FTC at this moment is not very optimistic about it.[57]

Funahashi was sceptical about the benefits of international harmonisation in this respect. He argued that 'the idea that the prohibition of holding companies is not necessary because they are not prohibited in other countries is too simplistic'.[58] According to him, 'the removal of the prohibition may promote *keiretsu*, but not contribute to foreign direct investment nor exports to Japan'. He was also doubtful about the benefit of holding companies as a measure to increase the flexibility of organisational management. It should be noted that he was in a position to represent the view of the FTC at that stage.

Nonetheless, the FTC suddenly changed its attitude after a few months. In November 1995, the FTC organised the 'Chapter 4 Study Group' in order to discuss the necessity of revising the holding company prohibition. To organise a study group itself was not necessarily a sign of change, but according to some participants, scholars supporting the prohibition were obviously underrepresented and those supporting reform dominated the discussion table.[59] The discussion was not made open to the public, and the group quickly published a report after only a month, recommending that the prohibition should be lifted under certain conditions. At this stage, however, the FTC intended not to abolish prohibition itself, arguing that certain holding companies should be permitted only as exceptions.

Business leaders were happy with the change, but not totally satisfied with such a partial move. Indeed, immediately after publication of the FTC report, the *Keidanren* and other business groups, notably the National Bank Association, complained about the FTC's reluctance to remove the prohibition. The LDP, which was at that time part of the coalition government, also pressured the FTC to abandon the prohibition. In the end, the FTC published a modified plan in January 1996, accepting the abandonment of the prohibition. It was just two months after publication of the study group's original report, and naturally not accompanied by any significant external consultation.

This sudden change not only caused academic disappointment, but also infuriated members of the Social Democratic Party (SDP). Although the party had changed its name from the Socialist Party to the SDP, its members still had an interest in strong competition policy and were sceptical about the end of prohibition. The party was also a member of the coalition government, and should have been consulted beforehand. Nonetheless, the SDP did not have a chance to voice its opinion before the FTC published the second plan. The SDP politicians felt ignored, and became so angry that they did not give the FTC an opportunity to express its own position. FTC officials sat down at the discussion table, but they were not allowed to participate in the discussion substantially.[60]

Besides the FTC, some economists and lawyers' associations, notably the Japanese Lawyers' Association, tried to stimulate public discussion, criticising the quick turnaround of the FTC as yielding to political pressure.[61] Meanwhile, the Japanese Trade Union Confederation (JTUC) strongly opposed the reform.

Since Japanese trade unions were in general company-specific at that time, they were sceptical about a system that allows the transfer of the management authority to the holding company over which trade unions cannot exert their control. The controversy between the LDP, the SDP and the JTUC was not settled in the course of the 1996 session. As a result, the amendment Bill was discarded.

The opposition of the SDP and the JTUC was so strong that the reform was not expected to become law until after the 1996 parliamentary session.[62] However, a new issue came up which would help the LDP draw compromise from the SDP and the JTUC. It was concerned with the division of Nippon Telegraph and Telephone (NTT), Japan's largest telecommunications company. At that time, NTT's market domination was seen as so problematic that the government planned to divide it into several smaller companies. The trade union of NTT strongly opposed the plan, because it was concerned with the differentiation of working conditions among newly created companies. Since the NTT trade union was quite influential, both in the SDP and the JTUC, this issue caused further controversy between the SDP/JTUC and the LDP.

When the NTT controversy reached deadlock, it occurred to the political leaders that the introduction of a holding company scheme to NTT could ensure uniform control over working conditions among the newly created companies. Since the SDP/JTUC prioritised the NTT issue, they agreed on the abandonment of the holding company prohibition. In consequence, the reform was successfully achieved in the 1997 session. On the whole, the reform was carried out very quickly, despite the long history of the debate on holding companies. As Sheard stated, 'although the reform may have a large impact on the Japanese economy and society, there is a serious lack of the policy discussion about it'.[63]

The reform was initially carried out only for non-financial companies. This was because of the concern that a financial holding company would be so powerful as to achieve economic domination. Nevertheless, a further reform was in fact achieved very swiftly in the following extraordinary Diet session, as if its passage had already been decided on.

Conclusion

In many developed countries, including Britain and Japan, economic and political activities have become greatly internationalised from the 1970s to the present day. There is no doubt that this has been a major engine for the reform of British and Japanese competition law in the 1990s. Whether increasing or decreasing the scope of regulation, all the above reforms have been consistent with the trend of international harmonisation. This is a major change from the reform cases of the 1970s.

Yet there are two important changes from the 1970s to the 1990s other than the advent of international harmonisation. The first concerns consistency with the interests of business. In Britain, business leaders were at first cautious about

the introduction of the EU-based system (although that was what they had advocated in the early 1970s), but later they changed their position and basically supported the reform. In Japan, it is true that the SII-related reforms in the early 1990s were largely unpopular with Japanese business, but they were achieved under rather special conditions of strong external pressure. By contrast, the reforms of the late 1990s, including the removal of the holding company prohibition discussed above, were primarily motivated by business interests. This consistency with business interests was remarkable, particularly when compared with the 1970s reforms, where business leaders had exerted rather limited influence.

The second important change is found in the role of competition policy officials in the policy-making process, although in different ways in Britain and Japan. In Britain, competition policy officials became far more active and influential in the 1990s than they had been twenty years earlier. In Japan, by contrast, the role of competition policy officials in the 1990s was considerably reduced, whereas they had been so active as to take the initiative in the 1970s reforms.

Regarding the list of actors in the competition policy network, it is necessary to consider whether the impact of 'foreign actors' was so significant that they should be included in the category of 'core actors' of the competition policy network.

In Britain, there was no doubt that much attention was drawn to the development of the Common Competition Policy. In particular, competition policy officials had many chances to cooperate with officials at the European Commission and other EC member states. They appear to have been strongly encouraged to promote the reform of British competition law through those experiences. Nevertheless, European officials could not have any further impact on the domestic policy-making process. They had no formal authority or political power to directly intervene in the policy discussion.

Compared with this, the intervention of the United States seems to have been far more significant in the policy discussion in Japan. As shown in the case of the SII, political pressure from the United States often strongly influenced Japanese politics. Apart from the SII, however, it is questionable to include the United States as the member of the competition policy network. Basically, the United States had no formal authority to intervene in the domestic politics of Japan, and such an intervention was very special. Japanese competition policy was put on the agenda of international talks from time to time after the SII, but the impact did not look so large. This was one of the reasons why the reform initiated by the SII can be considered as 'window-dressing' in many aspects, as shown in the next chapter. It should also be noted that neither were the Japanese actors very sensitive to the arguments of the American actors unless they were closely concerned with international trade. For instance, the Federal Trade Commission of the United States was reportedly not sympathetic but rather sceptical about the reform of the holding company prohibition.[64] Nonetheless, such a view did not seem to have any impact on political discussions between domestic actors.

As a result, it may be said regarding both Britain and Japan, that the core actors of the competition policy network were still composed of the domestic actors. The next two chapters therefore focus again on such domestic actors as business, politicians, competition policy officials and other civil servants.

6 Interests of the core actors in the competition policy network of the 1990s

Generally speaking, actors could more easily agree on what was considered the international standard than in the 1970s, as a result of the progress of economic and political internationalisation. Foreign models had never been ignored, but the advocacy of international convergence seemed to have become more persuasive. At least until the 1990s, however, the world had yet to be borderless, and it is worth examining the core actors' interests and the strength of their cohesion.

Following the framework of Chapter 3, the first section of this chapter considers the interests of business. It examines the recent changes in economic conditions such as low growth and changing industrial structure, and then discusses how those changes affected the preferences of business regarding competition policy. The second section discusses the changes in political attitudes to market competition. This is followed by an investigation of changes in the role of industrial policy officials. The third section looks at the development of British and Japanese competition policy from the 1970s to the 1990s, and considers how the interests of competition policy officials have changed over the years.

Changes in the economic conditions and business preferences for inter-firm collusion and industrial concentration

Changes in business attitudes towards inter-firm relations

As shown in the previous chapter, both Britain and Japan increased their international economic interdependence since the 1980s. The entry of foreign companies naturally led to a rise in the level of competition in the domestic market. In order to discuss market competition in Britain and Japan, low economic growth in those countries must also be taken into consideration.

Table 6.1 shows that the post-1970s British economy grew mostly by under 3 per cent, with the exception of the late 1980s. Economic performance was particularly low in the early 1980s and the early 1990s, so that it was even observed that the country's 'relative economic decline has been so persistent that it must be attributed to very deep-seated features of the British political economy'.[1] The British economy began to recover in the late 1990s, but the

speed of development was rather moderate. As for Japan, the national economy had been relatively successful until the 1980s, but that was no longer the case in the 1990s. The overheated economy of the late 1980s, the so-called 'bubble economy', burst at the beginning of the 1990s. Subsequent makeshift arrangements, in both public and private sectors, exacerbated the difficulties. The result was remarkably low economic growth in the late 1990s.

It should also be noted that the gravity of the economic crisis was uneven across different sectors in both Britain and Japan. As shown in Table 6.2, growth rate is lower in such sectors as agriculture, manufacturing and construction.

Table 6.1 Real growth of gross domestic product, 1970–99 (per cent)

Year	*Britain*	*Japan*	*EU (15 countries)*	*USA*
1970–4	2.7	6.0	4.1	2.9
1975–9	2.1	4.5	2.6	3.8
1980–4	0.9	3.1	1.3	2.4
1985–9	3.9	4.5	3.2	3.7
1990–4	1.2	2.2	1.6	2.2
1995–9	2.6	1.2	2.3	3.8

Source: Eurostat

Table 6.2 Real growth of gross domestic product, selected sectors, 1970–99 (per cent)

	Britain		*Japan*	
	1970–89	*1990–99*	*1970–89*	*1990–99*
Agriculture, forestry and fishing	2.9	0.4	0.1	−1.7
Manufacturing	0.9	0.5	5.0	1.6
Construction	1.5	0.0	3.9	0.0
Electricity, gas and water supply	3.1	2.7	4.8	3.6
Transport, storage and communications	2.9	4.7	3.7	2.1

Source: OECD, *National Accounts*, Paris, OECD; Office for National Statistics, Britain; Cabinet Office, Japan

Low economic growth reduced demand, and thus increased the level of market competition, especially in those sectors where exports were problematic. Consumers became more and more sensitive to prices, and tried to save rather than spend. Companies could not expect much help from the government, because the government itself was on the verge of bankruptcy due to the reduction of income from taxes.

The growing pressure of economic internationalisation and market competition may discourage companies from anti-competitive practices. It is now difficult for companies to manage effective restrictive agreements because of the entry of many foreign competitors. For those domestic companies seeking new markets abroad, they are less likely to rely on anti-competitive practices, since they are now being encouraged to increase their international competitiveness by themselves. The inflow of foreign direct investment has had a significant impact on the traditional preferences of domestic businesses. In particular, cross-border mergers seem to be affecting the national pattern of businesses' preference for market competition, since these should promote some interaction between domestic workers and foreign managers.

On the other hand, it may also be said that the increase of market competition encourages anti-competitive practices. Companies are not always smart enough to increase their international competitiveness, and some of them might choose to reinforce anti-competitive ties to block foreign newcomers. Likewise, economic difficulties may well make some companies more protective, conservative and near-sighted. Therefore, economic internationalisation and a low-growth economy may have affected the attitude of companies towards market competition, either positively or negatively. Due to the variety of degrees of economic internationalisation and the varying seriousness of economic difficulties across industrial sectors and individual companies, it is difficult to make any general assessment at country level.

In Britain, however, the impact seems to have been positive on the whole. Inter-firm collusion had become less and less popular by the 1970s (see Chapter 3), but this trend was then further promoted. At the end of the 1980s, therefore, it was observed that 'the capitalism that has emerged in Britain is now a healthier, more self-confident, and more efficient capitalism than we have known for many decades'.[2]

Presumably, the initial lack of heavily collusive behaviour may have contributed to the opening of the domestic market to foreign competitors, and this may in turn have aided a further reduction in collusive behaviour. In other words, the growth in international economic interdependence seems to promote, and also to be promoted by, the positive view of businesses towards market competition. Given long-term economic decline under the open domestic market, furthermore, British companies appear to be more inclined to strengthen their competitiveness rather than to protect themselves with anti-competitive practices. The *laissez-faire* atmosphere created by the Conservative governments of the 1980s also had a significant influence on business attitudes.

It is true that strong inter-firm collusion was still found in some sub-sectors such as construction materials. In particular, concrete was widely recognised as playing a 'starring role' in restrictive trade practices, as suggested by a legal adviser of the Office of Fair Trading (OFT).[3] Yet this is not surprising, given the difficulties of international trade in that product and the serious stagnancy of the construction sector. Such a sector did exist, but most of the others seem to have got out of the lukewarm collusion habit.

In comparison with Britain, the pattern of change was not so straightforward in Japan, due to companies' traditionally strong preference for the collective approach. The popular fever over competition policy in the 1970s cooled down in the 1980s. The economic slowdown created a social atmosphere sympathetic to business interests, but the economic situation was not so serious – the average growth rate in the early 1980s was still above 3 per cent – as to promote the dissolution of traditional customs. The entry of foreign competitors was still largely blocked by the combination of strong inter-firm relations and overkill regulations, offering less possibility for changing the original mindset of Japanese businessmen. The new framework of authorised cartels was established with the initiative of the Ministry of International Trade and Industry (MITI), while the Fair Trade Commission (FTC) had been stagnant in the 1980s.

In the 1990s, however, several factors encouraged Japanese companies to change their attitude. The first was the political pressure from the United States under the framework of the Structural Impediment Initiative (SII), which was examined in the last chapter. Traditional inter-firm relations (*keiretsu*) were severely criticised in particular, and Japanese companies more often appreciated the benefits of market competition than those of traditional inter-firm cooperation. On top of that, the entry of foreign companies increased, and the economic slump following the collapse of the bubble economy became more and more serious. Under those circumstances, Japanese companies gradually lost their confidence in the traditional approach.

With regard to the six large business associations, their presence in the whole Japanese economy was on the decline through the 1990s, as indicated in Figure 6.1. This reflected the decline of traditional member companies, many of which belonged to the declining manufacturing industries. The worldwide success of independent companies, such as Sony and Honda, further reduced the significance of the business associations.

Ties between group members also seem to have been changing. According to an FTC survey,[4] the share of in-group stockholding in the total value fell from 25.5 per cent in 1981 to 20.1 per cent in 1999. The share of those companies recruiting executives from companies in the same group also fell from 69.8 per cent in 1981 to 37.2 per cent in 1999. Likewise, the share of in-group purchasing fell from 11.7 per cent in 1981 to 6.4 per cent in 1999.

Recent socioeconomic developments also caused changes in vertical *keiretsu* ties. For the production-type of vertical *keiretsu* (*seisan keiretsu*), one of the most remarkable developments was the trans-nationalisation of subcontracting relations. More and more leading manufacturers directed their production channel overseas, against the background of high appreciation of the yen, the development of the socioeconomic infrastructure of the Asian region, the progress of transport and communications technology, and growing price competition in the domestic and international markets. Consequently, the overseas production ratio of Japanese manufacturing exhibited remarkable growth from 3 per cent in 1985 to nearly 15 per cent in 2000 (Figure 6.2). Accordingly, the share of those domestic small- and medium-sized firms engaged in subcontracting fell from

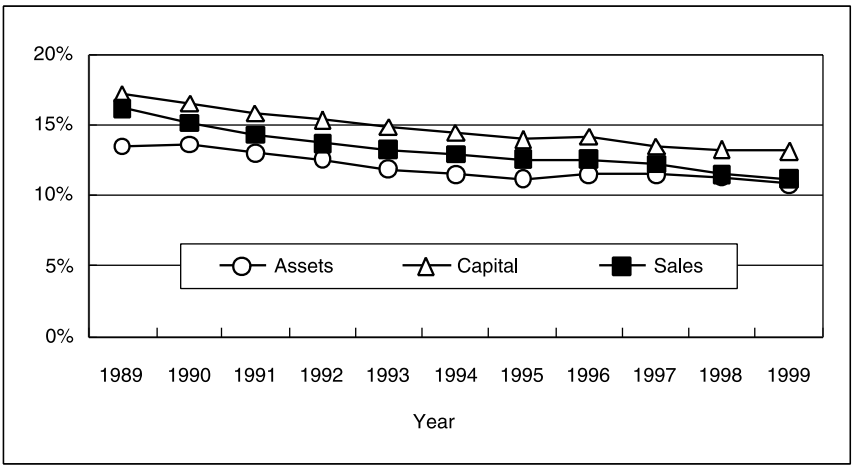

Figure 6.1 Shares of the six major *keiretsu* groups in all listed companies in terms of assets, capital and sales, 1989–99

Source: Toyokeizaishimposha; FTC 2001.

Note: Banks and financial companies are excluded

65.5 per cent in 1981 to 47.9 per cent in 1998.[5] Subcontracting relations are not always based on *seisan keiretsu*, but that is often the case. The retreat of subcontracting relations therefore caused the retreat of *seisan keiretsu* within the Japanese economy.

Another vertical *keiretsu*, the distribution-type (*ryutsu keiretsu*) has also been on the wane in recent years. This is mainly because of growing competitive pressure in the distribution sector, reflecting consumers' high concern about prices under a low-growth economy. Evidence of the decline of *ryutsu keiretsu* is seen in the relative contraction of the wholesale sector, which had played a major role in retaining the *keiretsu* order between manufacturers and retailers. From 1987 to 1998, in fact, the number of wholesalers fell by 8.6 per cent, while the corresponding figures for manufacturers and retailers were 2.5 per cent and 7.5 per cent respectively.[6] Further evidence is seen in the reduction in complaints by foreign-owned companies. In just five years from 1995 to 1999, the share of those foreign-owned companies complaining about restrictive trade practices in Japan fell from over 60 per cent to less than 30 per cent.[7]

For all those changes, however, a number of facts prevent us from assuming any full-scale change in the traditional order of the Japanese market, at least until the 1990s. According to a survey of over 1,200 major Japanese companies in 2000, for example, 88.4 per cent answered that they were engaged in cross-shareholding, and almost half of them intended to maintain the status quo in future.[8] Another survey in 1998 showed that 48.6 per cent of responding

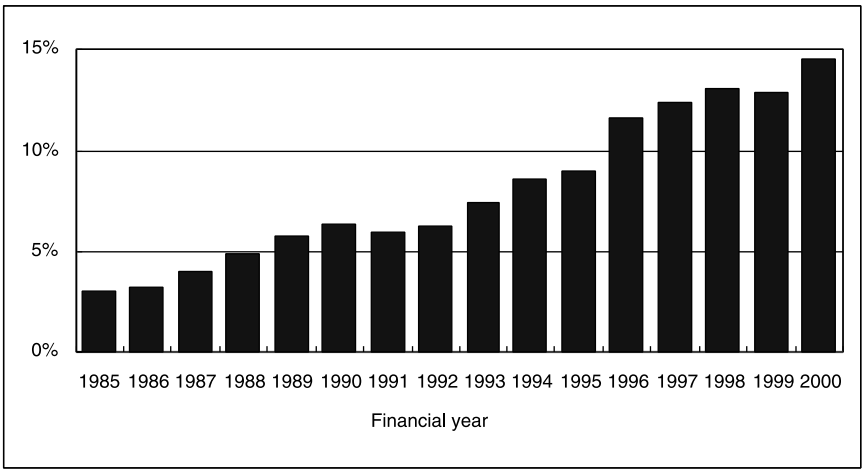

Figure 6.2 Overseas production ratio of all manufacturers, FY1985–FY2000
Source: Ministry of Economy, Trade and Industry
Note: Data for FY2000 are forecast

companies did not feel the necessity to change their own *keiretsu* relations, although 90.8 per cent answered that the *keiretsu* relations would change 'in general'.[9] With regard to subcontractors, a survey in 1997 indicated that the majority of responding subcontractors would in future either strengthen or preserve the relationship with their parent companies.[10]

Of course, *keiretsu* or other inter-firm arrangements are not necessarily evil, nor are they necessarily less effective than atomistic competition. Yet the existence of large-scale inter-firm connections seemed to slow down the sound restructuring of weak companies and sectors. At least until the 1990s, furthermore, some Japanese companies still appeared to be hanging on to the memory of great past successes, and were more inclined to return to the traditional approach. For instance, the following statement articulated the mentality of such companies:

> So far, Japan has been a 'collusive society' and a 'collusive economy'. Collusion is a fast-communicating, efficient system. It has provided us with today's international competitiveness and affluence. *That is a very good thing in itself*, but now that we are very affluent, we have to make our society fairer and more transparent, by giving up some part of such efficiency.[11]

To summarise, many Japanese companies changed their minds in the same direction as British companies. The *keiretsu* remained, but were less likely to contribute to anti-competitive practices. However, the scope of change was not

so comprehensive as in Britain. At least some companies still remained stuck in the traditional anti-competitive mindset.

Changes in the attitude of business to industrial concentration

Economic internationalisation, low economic growth and change of industrial structure all contribute to industrial concentration, perhaps more unambiguously than inter-firm collusion. Economic internationalisation may well expand the scope of accessible markets, while low economic growth might shrink market size. Change of industrial structure may accelerate those changes. Whether market size is increased or decreased, the change of market environment naturally encourages businesses to adapt their organisation to the new environment, hence promoting mergers.

This argument is endorsed by the actual trend in the number of mergers and acquisitions (M&As) in Britain and Japan (Figure 6.3). British companies already had a strong preference for industrial concentration in the 1960s, but the country experienced an unprecedented M&A boom at the end of the 1980s. One of the main reasons for this was the move towards European integration, specifically looking to the adoption of the Treaty on European Union (Maastricht Treaty) in 1992.

In Japan, the protracted economic slump pushed up the number of M&As. Despite Japanese companies' traditional lack of appetite for M&As (see Chapter 3), they rapidly became popular in the late 1990s. The reduction of binding power among business group members also helped the M&A boom. Inter-group mergers were no longer extraordinary.

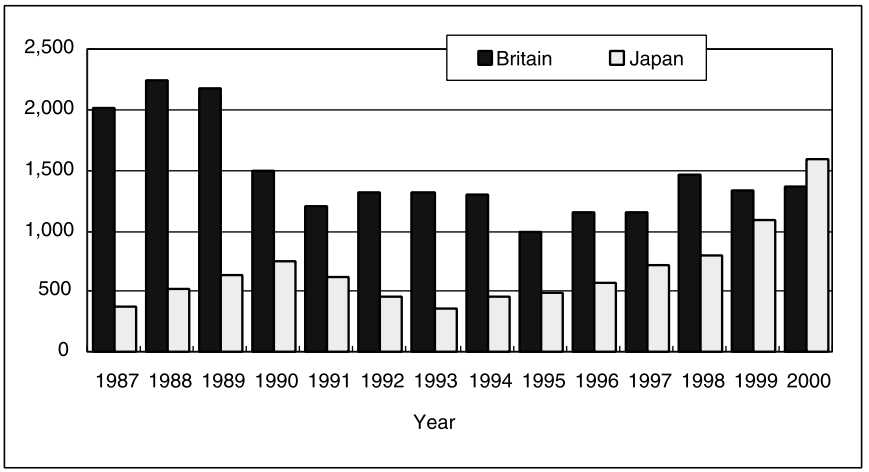

Figure 6.3 M&As, Britain and Japan, 1987–99

Source: Britain, Office for National Statistics; Japan, RECOF

Yet the effect of this merger boom should not be overemphasised. Just as the case of inter-firm relations, some companies persisted in their traditional mindset, even though the difference between Britain and Japan was now small.

The attitude of British and Japanese businesses to reform of competition law in the 1990s

Generally speaking, companies in both Britain and Japan should be less resistant to the reinforcement of competition regulation, as they become more oriented to market competition. While they always dislike being regulated, they do not devote so much energy to arguing against regulation that has no effect on them. On the contrary, companies may well appreciate reform if a new rule drives out the others' anti-competitive practices.

In Britain, companies have another motive for reform. Since European integration increased the opportunities of trade and mergers between Britain and other European countries, more and more companies have seemed to find it beneficial to introduce the European model. Nevertheless, there had been a division of interest between large companies and smaller ones, at least by the mid-1990s. On the one hand, large companies were initially very cautious with the introduction of the European model, which had stricter rules for industrial concentration. Accordingly, the Confederation of British Industry (CBI) kept a conservative position in the earlier years of discussions on reform. It is not surprising that the CBI's view was biased in favour of large firms, since most of its legal advisors were in-house lawyers of large companies.[12] By contrast, other companies were in favour of the European system. In fact, when the government took a measure of public opinion about the introduction of the EU model for industrial concentration, around 200 replies, 'almost universally in favour'[13] of the EU model, were returned from business interests. In relation to this, it is noteworthy that 93 per cent of the business respondents to the Coopers and Lybrand survey in the mid-1990s agreed with the view that 'it is right that some proposed mergers should be blocked in the public interest'.[14] Against this background, the CBI eventually changed its position, as shown in the previous chapter.

In Japan, the retreat of the traditional mindset was not so widespread that many companies came to support the reinforcement of competition policy. However, neither did many Japanese companies seem very eager to push the government to the reform of competition law. The overall disinterest was remarkable, particularly regarding deregulation of the holding company prohibition. According to the survey of 1994, removal of the holding company prohibition was supported only by less than 30 per cent of 1,700 large companies.[15] Even after the government had decided on reform, only one out of about a hundred leading companies was seriously prepared to establish a holding company. For the others, 21.6 per cent answered that they would consider doing so if other relevant reforms (especially tax-based) followed. The majority (51.4 per cent) said that it was too early to decide, while others (7.2 per cent) had no interest.[16]

Since a holding company is just one type of management style, it was not surprising that relatively few companies showed any interest. However, this low support for the holding company system could be related to the traditional anti-merger sentiment among Japanese companies. Although the traditional mindset was changing, many Japanese managers were still reluctant to carry out large-scale organisational restructuring. The pressure of stockholders for short-term profits remained weak. Japanese workers were also cautious about any organisational change that would affect the structure of their company-based trade union.

If the corporate tax system had been based on consolidated earnings, the establishment of a holding company might have been of great tax-saving benefit. In reality, there was no such benefit, at least when the reform was discussed. As a result, only few companies and sectors, notably the banking sector, showed serious interest. While the *Keizai Dantai Rengokai* (Federation of Economic Organisations, *Keidanren*) and other business groups repeatedly advocated the reform, 'only a few members were enthusiastic, while others kept quiet because there was no reason to oppose', according to a *Keidanren* official.[17]

In short, Britain and Japan were similar in the sense that policy output reflected the interests of business, but the scope of its support was quite different. In Britain, the reform was supported by a consensus of businesses, which eventually modified the position of the CBI. In Japan, the reform was supported by a few companies and sectors, while many others were largely indifferent to it.

Changes in political attitudes and industrial policy towards competition policy

The retreat of state interventionism

In order to discuss changes in the attitudes of politicians and industrial policy officials towards competition policy, the retreat of state interventionism is one of the important trends that must be considered. There are several reasons for this trend. The first is the growth of economic internationalisation. Market control by the state has been made less feasible and less effective by the growing inflow of goods and investment from overseas. Economic internationalisation also increases the likelihood of criticism against state interventionism from the outside. When companies find their foreign competitors getting unfair benefit from special subsidies or other state interventions, they may well ask their home governments to exert political pressure. For fear of such international conflict, many countries are now very cautious about intervention. The removal of intervention measures has in turn contributed to the opening of national markets, hence promoting further economic internationalisation.

Another reason for the retreat of state intervention is a shift in the mainstream ideology of political economy. As Müller and Wright have pointed out, there has been 'a major change in the dominant macro-economic paradigm from Keynesianism to monetarism and neo-liberalism, from dirigisme (explicit or

gently disguised) to market-driven solutions, from fiscal expansionism to restraint, from mercantilism to free trade'.[18]

Both Britain and Japan appear to be following this general trend of the retreat of state interventionism. Deregulation has been high on the political agenda in both countries since the 1980s. National enterprises have been privatised in such sectors as telecommunications, railways and utilities. Various arrangements of public management, such as private finance initiatives, were introduced into the public sector.

Yet the speed of the change was much faster in Britain than in Japan, at least in the 1980s and 1990s. The contribution of 'the Iron Lady', Margaret Thatcher, was no doubt significant, but the longstanding economic slump probably played a more substantial role. Under low economic growth, the public lost confidence in the ability of public officials as effective managers of the national economy. Moreover, the economic slump led to the reduction of state revenue, hence limiting the scope of public management, and giving a good excuse to neo-liberal reformers. The development of European integration was another crucial factor. The degree of economic internationalisation was far greater in Britain than in Japan. The development of European competition policy (see the previous chapter) also discouraged state intervention at national level, for the European Commission monitored and regulated the scope of state aid measures.

The Japanese case formed a sharp contrast to the British case in many ways. First and foremost, several decades of economic success had reinforced public confidence (which was always strong) in the ability of public officials. Civil servants themselves were equally self-confident and had a strong sense of responsibility. According to a survey of 1993, for example, 80 per cent of public officials believed that 'the post-war development could not have been achieved without the effort of public officials'.[19] The ability of civil servants had been questioned from time to time as the economic slump became protracted. In general, however, the slump seemed to have, on the contrary, strengthened public dependence on state support. The unprecedented economic difficulties led many companies to hang on to unprecedentedly large state-aid packages for economic recovery. This process was clearly reflected in the size of public expenditure. As Figure 6.4 shows, the downward trend of the ratio of public expenditure to GDP was reversed at the beginning of the 1990s. The trend curve bent tighter in the late 1990s. The contrast between Britain and Japan is remarkable, although a simple international comparison is not quite meaningful due to respective differences in the structure of government finance.

Further evidence of public reliance on state intervention in Japan was the large degree of regulation that remained. For instance, the number of public corporations increased by 15 per cent through the 1990s.[20] Similarly, the number of cases requiring state permissions and approvals increased from 10,581 in 1990 to 11,581 in 1999.[21] While the government became cautious in the establishment of new public corporations and regulations, those data clearly indicate a reluctance to reduce the scope of established state intervention. The reluctance to promote deregulation is also reflected in the use of the word

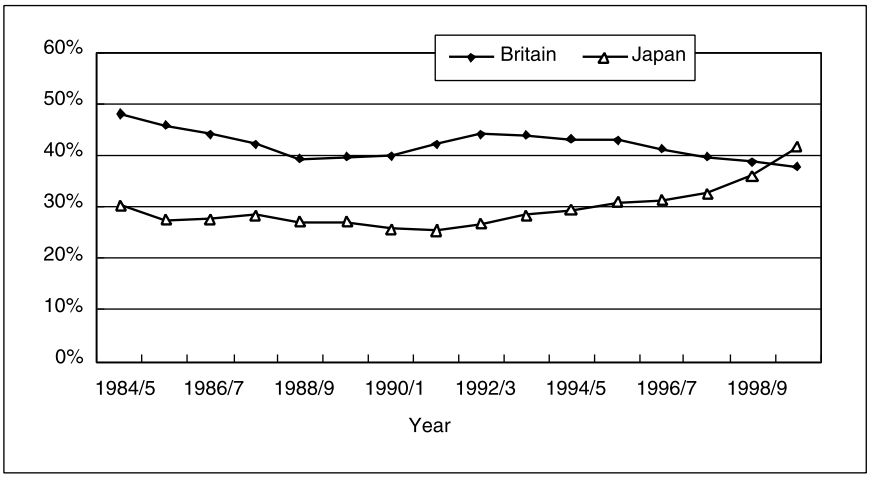

Figure 6.4 Ratio of public expenditure to GDP: Britain and Japan, 1984/5–1999/2000
Source: HM Treasury; DTI 2001

kisei-kanwa, meaning 'alleviation of regulation' but not 'deregulation'. An adequate Japanese word for deregulation is *kisei-teppai*, but the government, politicians and even mass media rarely use this word. This gave an impression that Japan as a whole did not really want to remove the control of public officials, but just to relax it.[22] It is not wrong to say that 'the Japanese themselves have been going British, emphasising privatisation and deregulation',[23] but the gap between the two countries remained considerable until the 1990s.

The rise in concern about international competitiveness

While many states have reduced the scope of direct intervention in economic matters, they have increased their concern about the international competitiveness of companies based on their territory. The importance of business performance for the overall prosperity of a national economy has never changed. However, the progress of economic internationalisation increased the chances of international competition, hence further encouraging governments to help companies increase their international competitiveness.

To compare Britain and Japan in the 1990s, the concern about international competitiveness looked greater in Britain, given a more internationalised market and less competitive companies. In fact, the word 'competitiveness' came to attract much political attention. The British government published numerous documents and speeches, such as the *Competitiveness* White Paper of 1998. There is no doubt that the Europe-wide movement influenced British policymakers. On that point, the White Paper on *Growth, Competitiveness, Employment* of 1993 was particularly relevant. In Japan, by contrast, politicians did not seem to pay much attention to

international competitiveness. In some sectors such as automobiles and electronics, Japanese companies were already fairly competitive. In other sectors, the domestic markets were far less internationalised and companies were thus little concerned about their international competitiveness. It is true that the expression *kokusai kyousouryoku* ('international competitiveness') became more popular in government circles as the economic slump grew more serious. Accordingly, the government set up the 'Industrial Competitiveness Council' in 1999.

Nevertheless, Britain and Japan appeared to differ in their central concern. In Britain, the government focused on measures to stimulate technological innovation, to catalyse inter-firm collaboration and to promote market competition, as declared in the 1998 White Paper. On the other hand, the Japanese government did not really focus on either market competitiveness or market competition. Despite its name, the 'Industrial Competitiveness Council' spent much time talking about the rescue of weak companies from bankruptcy, besides the debate on the promotion of competitiveness and competition. Symbolically, the word 'Competitiveness' was removed from the name of the Council in the following year, when it was renamed the 'Industrial Renewal Council'.

Another difference between Britain and Japan was the view on the role of foreign direct investment in the promotion of international competitiveness. In Britain, the government made much effort to attract foreign newcomers with good performance on the grounds that these would contribute to the increase of international competitiveness. The government seemed to be convinced that 'rather than increase the profitability of corporations flying the flag, or enlarge the worldwide holdings of its citizens, a nation's economic role is to improve its citizens' standard of living by enhancing the value of what they contribute to the world economy'.[24] By contrast, the Japanese government in the 1990s seemed reluctant to break with traditional attitudes, although it started to appreciate the growing inflow of foreign direct investment.

Changes in political attitudes to market competition and competition policy

Both the retreat of state interventionism and the rise in concern over international competitiveness have significantly affected politicians' attitudes to market competition. However, these effects are not straightforward. On the one hand, the decline of state interventionism may increase the scope of policies where market competition is preferred to state control. The rise in concern over international competitiveness may increase the interest in market competition as an important factor in enhancing international competitiveness.

On the other hand, the retreat of state interventionism is likely to discourage politicians and public officials from taking tough regulatory measures, even for the sake of market competition. Competition policy cannot be an exception to the pressures of deregulation. The emphasis on international competitiveness may also put competition policy in danger. Since competition policy is often viewed as a stumbling block to business activities, companies may call for the

relaxation of competition law under the pretext of international competitiveness.

In Britain, politicians until the 1970s took an awkward position on market competition and competition policy. The two major political parties jointly contributed to the development of competition policy, but their attitude towards market competition was not clear-cut (see Chapter 3). This began to change in the 1980s, since state intervention was detested by the Thatcher government of that decade. Market competition was highly appreciated. The debate on the reform of competition law was launched against this background. Under the Thatcher government and the subsequent Major administration, nonetheless, the retreat of state interventionism appeared to block any further development of competition policy. Conservative leaders had a strong antipathy to state intervention and were very cautious in extending the regulatory scope, even for competition policy. In the mid-1980s, for instance, the government tried to confine the criteria of competition policy judgement primarily to market competition, and in 1984 published a famous set of guidelines for merger references, the so-called 'Tebbit doctrine' named after the industry secretary Norman Tebbit.

Furthermore, the Conservatives tended to see competition policy as a stumbling block to international competitiveness. The pro-European direction of reform also antagonised many Euro-sceptics in the Conservative Party. The combination of those elements resulted in a lack of will to carry out the reforms in the early 1990s, as shown in the previous chapter. However, not all Conservative politicians shared the same view. That is why the Conservative members of the House of Commons Trade and Industry Committee agreed to publish a reform proposal even though it was against the formal position of the Conservative government.

For the Labour Party, it took longer to accept market competition as a basic policy principle. By the time the party took office in 1997, however, Labour leaders had become sufficiently convinced of the virtues of the market to say that 'Competition is the sharpest spur to improve productivity and the best guarantee of reward for talent and innovation'.[25]

Since the Labour Party took a moderate stance on state regulation, it was not problematic for them to support competition policy. Its pro-Europe position was also consistent with the direction of reform at that time. Yet their position tended to be too interventionistic, especially when they had been in opposition. Labour's leaders thus had to reshape their earlier policies and become pragmatic once they saw they had a good chance of taking office. For example, these leaders, including Tony Blair, were originally sceptical about large corporate M&As,[26] and had advocated the introduction of the 'public interest' test for them. Despite this, they became less eager to push through that reform. With hindsight, it seems that the leadership organised the consultative body (the 'Three-man panel') composed of the former Director General of Fair Trading (DGFT), a businessman and an academic[27] in order to authorise the removal of those controversial provisions. After all, it had widely been known beforehand that the chief of the panel, Sir Gordon Borrie, took a moderate view on the reform.

In Japan, political interest in competition policy was generally very minimal, reflecting the persistence of state interventionism and the lack of concern about market competition in the context of international competitiveness. Strong popular support for competition policy in the mid-1970s did not revive in the 1980s and 1990s.

It is true that competition policy drew much attention in the early 1990s, but that was no more than a reaction to political pressure from the United States. The international political frameworks such as the SII led many politicians to recognise that they should make, or at least pretend to make, some contribution to the development of competition policy. However, their main aim was to avoid trade friction, not to promote market competition. The leaders of the Liberal Democratic Party (LDP), which was still dominant in the 1980s and for most of the 1990s, did not deny the importance of competition policy, but they did not make much voluntary effort to develop it.

On the contrary, political leaders devoted more energy to reducing the scope of competition policy in the 1990s under the pretext of *kisei-kanwa* (alleviation of regulation). Since the LDP was originally less sympathetic to competition policy than to other regulatory policies, the LDP government appeared less cautious in removing regulations from this particular policy field. LDP leaders were eager to alleviate competition regulation, especially when they saw some benefit to specific sectors and companies. The holding company prohibition was a case in point. LDP politicians became anxious for its repeal when they recognised its usefulness as a measure to help restructure the banking sector.

Furthermore, competition policy failed to draw much attention from its former political supporters. In fact, the Social Democratic Party (the former Socialist Party), which was enthusiastic about the development of competition policy, allegedly prioritised the benefit to the employees of one company (Nippon Telegraph and Telephone) over careful discussion of competition policy. Once the controversy within the coalition government had settled, the reform proposal was passed without any significant resistance from opposition parties.

Again, such political indifference owed much to the absence of public concern about competition policy. It is true that some economists and lawyers, notably the Japanese Lawyers Association, tried to stimulate public discussion when the FTC made its sudden U-turn without any persuasive explanation. Nevertheless, their efforts did not seem to have any substantial effect.

The transformation of the Department of Trade and Industry and the relationship between industrial policy and competition policy in Britain

Reflecting the difference in political attitudes to market competition and competition policy as such, the pattern of British and Japanese industrial policies developed differently.

In Britain, such ideas as 'the mixed economy', 'strategic industries', 'scientific leadership' and 'full employment' became obsolete under the resolute anti-

interventionist initiative of Mrs Thatcher in the 1980s. Accordingly, the Department of Trade and Industry (DTI) became 'a Cinderella Department with decimated budgets, minimal prestige, demoralised staff and a series of disastrous ministerial appointments which included eleven Secretaries of State over 13 years'.[28] In particular, the former Department of Industry section had 'had one of the largest reductions in Whitehall – a 23 per cent cut in staff across the board in five years since 1979',[29] as witnessed by an inside official.

Although Conservative leaders maintained their neo-liberal position, they began to rethink the role of the DTI in the early 1990s. A crucial reason for this was the replacement of Mrs Thatcher with a more moderate successor, John Major. Yet it is also noteworthy that a serious economic depression hit Britain at the beginning of the 1990s, and it turned out that the country needed a more proactive micro-economic policy. Many Conservative politicians sensed the change of public sentiment while campaigning in the 1992 general election, which their party won, but only marginally.

The conferring of the industry portfolio upon Michael Heseltine after the 1992 election was a clear sign of change. Heseltine was a firm supporter of industrial policy. For instance, even when Thatcher was in office, he advocated that 'the prime immediate need is for the Conservatives to formulate a national strategy for industry which will enable the workers, the managers and the owners of wealth to travel the same road to national recovery'.[30] The rise in concern about international competitiveness created a fair wind for Heseltine. Under his direction, the DTI widened its authoritative scope by acquiring the Department of Energy and by taking over responsibility for small-firm policy from the Department of Employment. The Financial Services Division was instead moved to the Treasury, but the DTI now managed a totally coordinated strategy for industry. The DTI also carried out an extensive organisational reform in order to take the sector-based approach, which had been taboo in the Thatcher era. Now the DTI was composed of seven new sector-based divisions and four trans-sector divisions, such as the Industrial Competitiveness Division.

Yet those efforts neither led to the revival of the old state intervention model, nor transformed the DTI into the Japanese MITI. The overwhelming trend of deregulation was irreversible. Indeed, Heseltine 'did not want [DTI officials] to be the channel for special pleading, and ruled out the return of subsidies and bail-outs'.[31] Even after those reforms, it was observed that 'Britain is the [country] in which the transition from the old conception of a "national champion" to that of the international firm has gone furthest'.[32] It is true, however, that competition policy was somewhat marginalised under the leadership of Heseltine. The industry minister was on the whole reluctant to block mergers that were not totally free from suspicion of being anti-competitive. In other words, he was inclined to take account of factors other than market competition.

With hindsight, nonetheless, Heseltine was rather exceptional compared with other industry secretaries. His successor, Ian Lang, did not share so much of Heseltine's pro-industrial policy enthusiasm. Lang was allegedly 'keen to show he is different from Heseltine' and 'more likely than Hezza to follow the advice of

his officials' at the competition policy agencies.[33] In reality, however, the policy direction was changed only moderately, given that Heseltine still had much influence in cabinet as Deputy Prime Minister.

As a result, it was after the Labour Party took office in 1997 that competition policy was given high priority *vis-à-vis* industrial policy. Now the DTI came to stress the importance of competition policy more clearly. In the Bass/Carlsberg merger case in June 1997, for example, industry secretary Margaret Beckett decided to block the merger because it 'looks hard to defend' on market grounds.[34] Generally speaking, her decision was 'on balance, to be welcomed'.[35] Few appear to have considered that decision as a sign of Labour's old-fashioned interventionism. The Blair government came to take a more positive approach to competition policy than the previous Conservative government, but Labour Party policy was nevertheless now very different from what it had been in the 1960s and 1970s.

It is not surprising that DTI officials were cautious about radical reform of competition policy, even under the 'New Labour' government.[36] After all, giving too much authority and independence to the competition policy agencies would reduce the scope of the DTI's own authority. In Britain, however, the interests of industrial policy officials and competition policy officials became more consistent. The industrial policy officials thus seemed to appreciate the development of competition policy, even though this meant a delegation of its own authority.

The transformation of MITI and the relationship between industrial policy and competition policy in Japan

Unlike the DTI, MITI had not suffered much from political attack in the 1980s and 1990s. On the contrary, the economic slowdown of the late 1970s and early 1980s led to the establishment of some new statutes, *Tokuanho* (the Law on Provisional Measures for Specifically Depressed Sectors) and *Sankoho* (the Law on Provisional Measures for Structural Improvement in Specific Sectors) to authorise depressed cartels under the initiative of MITI.

While those legislative measures apparently helped MITI extend its regulatory scope to the field of competition policy, they were indeed signs of a slight retreat from the traditional approach of Japanese industrial policy. After all, the government now had to take the trouble to establish formal legislation in order to exert control, while non-legislative measures (i.e. administrative guidance) had been enough in the past.[37] Facing an upsurge of foreign criticism of their traditional approach in bilateral trade disputes and in multilateral trade talks, Japanese industrial policy officials recognised that they had to change their attitude, at least to the extent that they could avoid criticism. When *Sankoho* expired in 1987, in fact, MITI was not very active in promoting another extension by providing a new bill, thus quietly ending that special treatment.

A change in attitude could also be observed when business leaders campaigned for the reform of competition law in the late 1980s. At that time, MITI was not less eager to intervene in the dispute between businesses and the

FTC, compared with the 1970s. In contrast to the general upward trend of government intervention indicated above, the number of public corporations under MITI's supervision gradually reduced from 1,050 in 1981 to 903 in 1999.[38] Likewise, the number of instances requiring formal permissions and approvals by MITI increased up to 1993, but fell by 16 per cent from 1993 to 1998.[39] Although sounding a little too formal, the following comment by a former high-ranking MITI official seemed to reflect the change in mindset of Japanese industrial policy officials, at least to some extent:

> I believe that we Japanese have to change our fundamental frame of reference. MITI's role in nurturing industrial development is no longer required. From now on, we must first consider what Japan should be as a modern nation and then reassess the role MITI should play.[40]

However, the retreat of traditional industrial policy did not lead to the retreat of MITI's activism. All MITI did in the 1990s was, as stated above, to 'reassess' its role. The consequence was that MITI became more active in widening the scope of its policy field in order to preserve its *raison d'être* in the government. It was now necessary for it 'to work in conjunction with other parts of the administrative structure' as mentioned in the report entitled *MITI Policy Making in the 1990s: A long-term vision*, which the ministry published in 1990.[41] Against this background, MITI tried to extend its 'cooperation strategy' to the area of competition policy. MITI's interest in competition policy was understandable given that industrial/trade policy and competition policy were closely related in nature. On top of that, MITI's interest appeared to be nurtured by the fact that competition policy was often discussed in the framework of trade talks between the United States and Japan. For example, the SII was principally organised by MITI, the MoF and the Ministry of Foreign Affairs. While the FTC was allowed to join in the discussions from time to time, it was MITI that played a central role in these. Under those circumstances, MITI came to avoid conflict with the FTC, trying to establish a cooperative relationship instead. Symbolically, the industry minister Ryutaro Hashimoto openly supported the organisational reinforcement of the FTC in 1994.[42] This was surprising in light of the traditional rivalry between MITI and the FTC, even granted that Hashimoto was personally interested in competition policy.[43] According to a MITI official interviewed by the author in the late 1990s, 'the historic rivalry has now been more or less relaxed'.[44]

Yet it should be noted that no action had been taken to establish an interdepartmental institution bridging MITI and the FTC, at least until the 1990s. Furthermore, MITI had once opposed the plan for the FTC to establish a 'competition policy division', arguing that 'competition policy is the task of each of the relevant ministries, and thus such a new division is unnecessary for the FTC'.[45] On these grounds, it seems that MITI did not really want to establish a close relationship with the FTC, nor did it respect the FTC as the expert in competition policy. This is not surprising since the central concern of MITI was

not market competition but industrial development. Moreover, the industrial policy officials were more likely to prioritise the voice of business over economic theories than were the competition policy officials.[46] Consequently, MITI did not hesitate to argue against the FTC, even though MITI had now come to appreciate market competition and competition policy.

Development of competition policy and the position of competition policy officials

Theoretical development of competition policy

Corresponding to the ideological shift from state interventionism to neo-liberalism, in the mid-1970s the mainstream of competition policy theory moved away from the traditional Harvard School (see Chapter 3) to the Chicago School. The Chicago School is in general more generous to dominant market structure than the Harvard School, and therefore more cautious about interventionistic measures. By the same token, monopoly is considered 'usually transitory, with freedom of entry working to eliminate their influence on prices and quantities within a fairly short period'.[47] Asset divestiture of monopolistic companies is thus opposed because of 'the danger of reducing efficiency either by the penalties that it places on innovative success or by the shift in output to smaller, higher cost firms that it brings about'.[48] According to Harold Demsetz, one of the most influential figures of the Chicago School, high concentration is a natural sign of the development of 'a differential advantage in expanding output'.[49] In other words, high concentration leads to high profits because high efficiency causes both.

The Harvard School did not stick to its traditional position against this background. Many Harvard scholars found their traditional approach unsustainable and tried to refine their theory. By using the concept of 'barriers to mobility', for example, Caves and Porter point out that the entry barrier may not be so high as has traditionally been presumed. The traditional approach did not take account of those newcomers who have already been successful in other markets and encounter less difficulties in overcoming entry barriers than was traditionally expected.[50] Subsequently, Baumol *et al.* provided a theory called 'contestable markets'. According to this theory, market concentration is not problematic if 'the potential entrants can, without restriction, serve the same market demands and use the same productive techniques as those available to the incumbent firms', and if 'the potential entrants [can] evaluate the profitability of entry at the incumbent firms' pre-entry prices'.[51] For those new Harvard scholars, formal market dominance should not automatically call for regulatory intervention, even though they would preserve the concern about market structure. As a result, 'the distinctions between [the Harvard and the Chicago] schools have greatly diminished'.[52]

Whether Harvard or Chicago, however, the above theories mostly originated in the United States, and it is difficult to assess the extent to which they were

exported to other countries.[53] Yet it is unlikely that the British or the Japanese are free from the influence of the academic discussions in the United States, given the frequent international exchange of views among economists, lawyers and competition policy officials. With specific regard to Britain, furthermore, the common language helps the country easily follow theoretical trends in the United States. In Japan, their close economic and political relationship with the US makes the American arguments quite influential, despite the language difference.[54]

Of course, theoretical change is not the only feature of change in competition policy. Moreover, British and Japanese competition policy did not reflect this theoretical trend so immediately. For instance, it is not 'clear that Chicago School thinking would have had such a dramatic effect in Britain', according to Wilks.[55] Martin observed that '[t]he Japanese approach to market performance has been rather more managerial than laissez-faire'.[56] It is thus necessary to look carefully at the development of competition policy in order to consider the attitude of competition policy officials.

The 'silent revolution' of British competition policy

Until the reforms of 1998, there had been no major legislative changes in control over restrictive trade practices in Britain. The Restrictive Trade Practices Acts of 1956 and 1968 were repealed and replaced with new legislation in 1976, but the 1976 reform was just to consolidate the two separate legislations. Most of the relevant provisions therefore remained unchanged in substance. However, several problems of the existing system had been recognised already in the 1970s. One of the major drawbacks until 1998 was that the treatment of agreements was too formalistic, and the competition policy officials had to look after all agreements, no matter how trivial they were in effect. Another problem was the absence of an effective penalty system. The parties of restrictive trading agreements could be penalised if they neglected a court order, but there was no way to take action against them merely because they were engaged in such agreements. Businesses also complained that the judicial, form-based system was too inflexible and too costly. The debate culminated in 1977, when the inter-departmental group to review competition law (the Liesner Committee) was established. At that moment, nonetheless, the government concluded that the traditional approach was still effective and should be retained.[57] It then took another ten years for the government to publish a new Green Paper for the reform of competition law in 1988.

Despite that legislative inertia, however, restrictive trade practices control in Britain had gradually undergone a 'silent revolution'[58] since the mid-1970s. According to O'Brien, 'silent revolution' means that the 'predominantly legalistic approach has been supplanted by the development of an administrative and discretionary procedure'.[59] One of the most prominent changes regarding this was the increase in cases where the Secretary of State discharged the DGFT from his duty to make reference to the Restrictive Practices Court under Section 21(2) of the 1976 Act (formerly Section 9(2) of the 1968 Act). When agreements

were of no great significance, the DGFT could make representations to the Secretary of State, who would then give directions for non-reference. Since the Secretary of State rarely opposed the DGFT's position on that treatment, this meant that the DGFT held substantial power to make a judgement in lieu of the Court.

The trend of the ratio of Section 21(2) agreements to registered agreements is indicated in Table 6.3. According to this, O'Brien seems to have been a little premature in speaking of a 'silent revolution' at the beginning of the 1980s. Yet later it turned out that his prediction was correct. The ratio of Section 21(2) agreements to registered agreements rose sharply in the late 1980s. Section 21(2) agreements even outnumbered registered agreements in the 1990s.

With regard to controls on industrial concentration, the basic framework did not change after the establishment of the Fair Trading Act in 1973. Yet there

Table 6.3 Trends in registered and Section 21(2) agreements (annual average in each period, July 1969–December 1998)

Period	*Registered agreements (a)*	*Section 21(2) agreements (b)*	*(b)/(a)*
7/69–6/72	71.7	22.3	0.312
7/72–12/76	61.1	16.2	0.265
1/77–12/81	295.2	40.6	0.138
1/82–12/86	265.4	26.2	0.099
1/87–12/91	793.2	567.8	0.716
1/92–12/96	631.4	1,105.8	1.751
1/97–12/98	703.0	1,145.5	1.629

Source: OFT, *Annual Report of the Director General of Fair Trading*, London, HMSO

Table 6.4 Qualifying cases and referrals of mergers, 1965–98

	Qualifying cases		*Reference cases*	
	Number	*Yearly average*	*Number*	*Yearly average*
1965–9	466	93.2	12	2.4
1970–4	579	115.8	14	2.8
1975–9	1,073	214.6	21	4.2
1980–4	987	197.4	36	7.2
1985–9	1,413	282.6	50	10.0
1990–4	997	199.4	53	10.6
1995–8	1,047	261.8	37	9.3

Source: OFT, *Annual Report of the Director of Fair Trading*, London, HMSO

were two important amendments that decreased the scope of the formal legal investigation by the Monopolies and Mergers Commission (MMC). First, the Companies Act 1989 established the pre-notification procedure for mergers, whereby parties could in advance notify the OFT to obtain undertakings in lieu of the reference to the MMC. Second, the Deregulation and Contracting Out Act 1994 extended the scope for enforceable undertakings by the industrial secretary. This scope had previously been limited to the matter of asset divestiture, but now the industrial secretary could take similar action on any other matter, avoiding reference to the MMC. Just as the Section 21(2) procedure for restrictive trade agreements had done, these reforms contributed to the increase in administrative discretion without much conspicuous change. In other words, a 'silent revolution' took place in the area of merger control as well.

However, it should be noted that the MMC did not become obsolete in consequence of this change. On the contrary, the 'silent revolution' might well have pleased the MMC because it discharged the MMC from the duty of numerous cumbersome investigations. In fact, as Table 6.4 shows, the number of the references to the MMC steadily increased over time. Without any measure to reduce the number of formal references, the MMC would have encountered severer criticism about its slow workings.

Furthermore, the Competition Act 1980 enhanced the authority of British competition policy officials, both at the OFT and the MMC. For the OFT, the Act enabled the DGFT to investigate individual companies suspected of anti-competitive practices. Hence the DGFT was now given authority to judge the illegality of anti-competitive practices, as well as the illegality of anti-competitive agreements (under Section 21(2) of the 1976 Act) and of monopolistic situation (under Section 2 of the 1973 Act). According to Whish and Sufrin, the reform brought 'the DGFT into a more central position in the investigative system'.[60] The Deregulation and Contracting Out Act 1994 enabled the DGFT to act more flexibly. It discharged the DGFT from the duty to publish a report in advance of negotiations with parties concerned and/or reference to the MMC.

The 1980 Act also empowered the MMC to work for 'efficiency audits' for public sector organisations. This function had not been regarded as so important when it was established, but the subsequent massive waves of deregulation and privatisation enhanced the significance of the MMC's role in this aspect. Moreover, the Act enabled the MMC to make a judgement only on the assessment of practices themselves, and not necessarily on the assessment of their final effect. Whereas this treatment did not really contribute to the initial purpose of speeding up the MMC's performance, it instead contributed to the enhancement of the MMC's potential for acting against anti-competitive practices.

It is true that the OFT had 'limited investigatory powers, virtually no sanctions, and an administrative approach to monopolies and mergers that depend[ed] ultimately on ministerial interpretation of the "public interest" '[61] before the 1998 reform. The MMC was even weaker when it came to its regulatory scope. Nevertheless, the above changes can be seen as harbingers of the subsequent transformation of British competition law. To put it another way,

competition policy officials had already undergone some partial but substantial changes that deserved the label of 'silent revolution'. They were well prepared for further legislative changes when the reform was put on the agenda.

The 'window-dressing revolution' of Japanese competition policy

The development of Japanese competition policy in the 1980s and 1990s presented a striking contrast to the British case, one which may merit the label of 'window-dressing revolution'. Whereas Japanese competition policy had gained much impetus in the mid-1970s, it quietly reverted to its marginal position in the 1980s. For instance, the FTC made only 114 judgements in the 1980s, less than one third of those in the 1970s (344 judgements). This was partly because Japanese companies had become reluctant to conduct anti-competitive practices after the establishment of the administrative surcharge system in 1977. Nonetheless, it was clear that the FTC had been lenient with anti-competitive practices throughout the 1980s. Business associations, especially the *Keidanren*, repeatedly called for the relaxation of competition law, in the general atmosphere of neo-liberalism. The FTC mostly stood on the defensive, making its policy enforcement more and more flexible and generous. The policy guidelines published at that time were neither stringent nor clear. Japanese competition policy was conspicuously on the wane in the 1980s.

This downward trend appeared to turn around when the United States encouraged the development of Japanese competition policy at the beginning of the 1990s. Several regulations were reinforced, as shown in the previous chapter. Besides regulatory reform, the FTC was encouraged to be far more active in its policy enforcement. As a result, the number of cases of administrative surcharge rose sharply in the early 1990s (Figure 6.5). Furthermore, the FTC became less hesitant to take cases to court in a formal criminal prosecution. In fact, the FTC prosecuted five cases in the 1990s, while only three cases had been taken to court during the previous forty years. All those improvements gave an impression that Japanese competition policy was growing as powerful and active as its foreign counterparts. Stephen Wilks observed that 'it is plausible to suggest that a historic shift has taken place in favour of consumer-oriented policies and effective implementation of the Antimonopoly Act'.[62]

In reality, nevertheless, there was various evidence to undermine belief in the above improvements. To begin with, a number of shortcomings should be articulated in relation to the regulatory changes. First, it is true that the 1991 reform raised the level of the administrative surcharge from 2.0 per cent to 6.0 per cent (in the case of large-scale manufacturers; see Table 5.3 in the previous chapter for other cases). Yet that was not the whole story. The 1991 reform also changed the calculation method, so that only a maximum of three years' turnover was taken into account. Previously, companies had to pay 2.0 per cent of their turnover throughout the period when the cartels were effective. Therefore, the new legislation rather reduced the risk of penalties for those who had long been engaged in cartels.

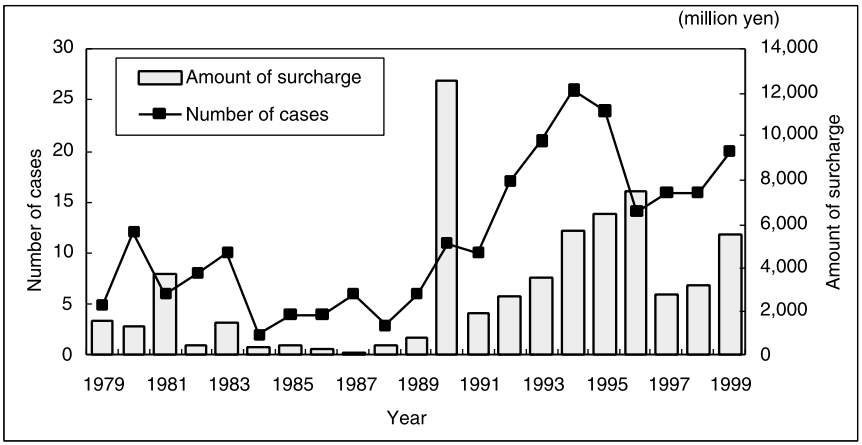

Figure 6.5 Administrative surcharge cases and the total amount of surcharge, 1979–99
Source: FTC, *Annual Report*

Second, it is true that the upper limit of the penalty charge increased in 1993, but the reform process rather revealed the weakness of competition policy, even when it gained strong support from the United States. The report of the legal study group recommended the upper limit to be 'several hundred million yen', but there was a strong protest against this, and finally the limit was fixed at ¥100 million.[63] Also, it should be remembered that the reform dealt with only one provision, leaving other penalty provisions untouched. Not surprisingly, the reform satisfied the expectation of neither the Antitrust Division of the United States Department of Justice[64] nor the United States Trade Representative.[65]

Furthermore, it is worth appreciating the reduction in the scope of exemption from resale price maintenance, but the dispute over resale price maintenance for copyright products again revealed the weakness of competition policy *vis-à-vis* other Japanese interests. While the FTC persistently argued against the exemption, the opposition was very tough. Finally, there was no doubt that the number of exempted cartels had been reduced significantly. However, this was not because competition policy had gained strength, but rather because other ministries voluntarily withdrew from intervention in that way.

The enforcement record of the FTC left some questions as well. For instance, the FTC did not appear to be so determined to beat cartels. For the cartel regulation, there were mainly four levels of judgement available to the FTC: 'prosecution', 'recommendation', 'warning' and 'attention'. Besides prosecution, recommendation was the most severe treatment, and attention was the mildest. The trends in share of the last three judgement types are shown in Figure 6.6. With regard to recommendation cases, they show a significant increase from 1989 to 1990, but that upward trend lasted only three years. The number of

warning cases also fell, and attention cases accounted for over a half of the judgement cases during most of the 1990s. It might be the case that the FTC had less chances to find serious cartels because many companies had now washed their hands of them. Yet the trends could be interpreted in another way: the FTC was encouraged to take more cases by the United States, but it tended to be generous when making judgement. It should also be noted that the number of attention cases (hence the number of total judgement cases) was generally on the wane after the surge from 1988 to 1990 (excepting 1997, when the FTC dealt with many cartels in relation to the reform of the consumption tax rate).

As for prosecution cases, furthermore, it is necessary to note that those cases were often viewed either as 'gestures' to satisfy Americans or as 'scapegoats' for more serious problems. Indeed, the 1991 case occurred just before the follow-up meeting of the SII, and the 1993 and 1995 cases coincided with the framework negotiations and the bilateral meeting of the competition authorities of the United States and Japan. It is also suspected that the FTC brought the 1997 case merely in order to demonstrate the effect of the organisational reform. The 1999 case was prosecuted in the midst of the Japan/United States Framework for New Economic Partnership and just before the summit meeting. The target products – wrap, seal, electrical sewerage equipment, water supply meters and ductile cast-iron pipe – did not look as important, either politically or economically, as oil products had in the 1970s. According to Ikuta, there was a feeling in the government that 'the FTC habitually avoids confronting difficult issues and only works on easy ones to justify its own existence'.[66]

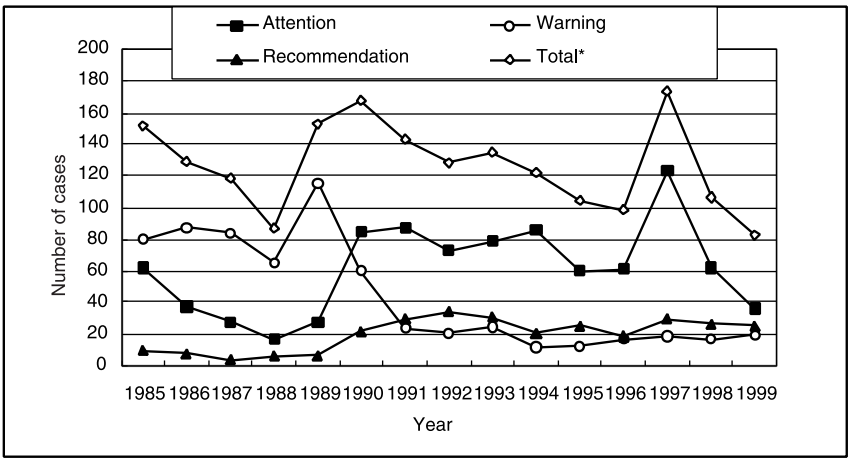

Figure 6.6 Trends in cases of recommendation, warning and attention for cartels, 1985–99

Source: FTC, *Annual Report*

Note: *Total number of cases excludes cases of prosecution and cases judged to be insignificant.

In light of the above evidence, it is difficult to conclude that Japanese competition policy was upgraded into a more sophisticated form. In contrast to the case of Britain, Japanese competition policy officials remained defensive on balance, while formal regulatory changes were carried out relatively smoothly.

The policy position of competition policy officials

In light of the above-mentioned development of competition policy, let us discuss the position of British and Japanese competition policy officials *vis-à-vis* the reforms of the 1990s.

In the case of Britain, it was obvious that many competition policy officials favoured introduction of the European model. It is not difficult to account for this. First of all, regulatory consistency between Britain and Europe was beneficial to them. The more the European market was integrated, the more frequently they dealt with international cases. It was helpful to share a common regulatory basis for better cooperation with foreign partners. Second, the European model provided more investigatory powers than the British model, which was naturally welcomed by competition policy officials. British competition policy officials seemed frustrated about their lack of power, as chances to work with Brussels increased. For example, a DGFT (Sir Gordon Borrie) once stated that '[m]y officials accompany their counterparts from the EC when they mount raids in Britain and come back telling me how useful wider investigative powers would be'.[67] Finally, it should be remembered that British competition policy officials had already shifted from the traditional/form-based approach to the European/effect-based approach through the 'silent revolution'. In other words, they were already prepared for the coming reform in substance. It was not surprising that they preferred a more systematic reform over patchwork amendments. Thus it is fair to say that the reform towards the European model largely met the interests of British competition policy officials.

In Japan, there was no doubt that many competition policy officials appreciated the first wave, that is, the reinforcing reform encouraged by the United States. Without that reform, Japanese competition policy might have been put in an even worse position. Given the shortcomings stated above, however, the result did not entirely satisfy the interests of Japanese competition policy officials.

The deregulating reforms of the late 1990s ('the second wave') were seemingly even more remote from the position of many competition policy officials. Of course, it is not surprising that they agreed to remove the holding company prohibition. In fact, even an ex-FTC commissioner openly supported this reform, although not arguing for total deregulation.[68] The reform was also consistent with the general trend of international harmonisation and the retreat of the traditional structuralist approach. Some interviewees suggested that the FTC should be happy because the removal of *per se* prohibition would give the FTC a new power – to judge whether planned holding companies should be allowed or blocked.

Yet it should be remembered that the FTC clearly opposed the reform at the beginning, and then suddenly turned its position around due to much political

pressure, as illustrated in the previous chapter. The FTC's marginalisation in the reform process was symbolic of its stagnant state. While the reform's output was not necessarily against the interests of Japanese competition policy officials, the reform process was clearly unfavourable to them.

Conclusion

Comparing the distribution of actor interests in the 1970s with that of the 1990s, the most significant difference is found in the gulf between business and government politicians. While there had been a large interest gap between those two groups in the 1970s (see Chapter 3), their interests became more consistent with each other in the 1990s, in both Britain and Japan.

In Britain, the majority of businesses seemingly believe that market competition will enhance their international competitiveness. The benefit of consistency between British and European competition policy was strongly recognised also. The business leaders at the CBI were initially reluctant to encourage reform, but the CBI eventually turned around its position in the general atmosphere in favour of reform. The political direction largely followed this movement. When the CBI took a negative attitude to reform, the Conservative government prioritised industrial policy over competition policy. When the CBI became sympathetic to reform, the Conservative government was not flexible enough to align itself with the position of business. The government prolonged the reform and became less consistent with business. However, the interest gap reduced after the Labour Party took office. The Labour Party's original reform plan had been too interventionistic, but the party spontaneously modified its position and made the plan more acceptable to business interests. Of course, there was some debate between business interests and the government about the reform, but this was mostly concerned with minor issues.

In Japan, many companies significantly reduced their traditional anti-competitive mindset, but some companies and sectors still favoured weak competition policy. The government carried out reinforcing reforms following the pressure from the United States, but the reform left some negative aspects, as stated above, reflecting the reluctance of those businesses and politicians to strengthen competition policy. The removal of the holding company prohibition also reflected the sympathy of the government with particular business interests, especially the banking sector. The rise in politicians' concern about economic slowdown and international competitiveness led them to follow the voice of business more readily, with little concern for other interests.

While cohesion between business and political interests was developed similarly in Britain and Japan, the relationship between politicians and competition policy experts shows different patterns of development. In Britain, the OFT increased its readiness for the European/effect-based approach through the 'silent revolution', creating a growing interest in reform. Political interests fluctuated, but eventually the government seemed to greatly respect the opinions of competition policy officials. In Japan, on the other hand, the FTC did not look

as powerful as in the 1970s, despite some positive developments after the SII. The interest gap between politicians and competition policy officials was most clearly demonstrated in the case of the holding company prohibition. In contrast to the 1970s, the FTC's policy output was far more consistent with the interests of its rival, MITI.

If the pattern of interest cohesion in the competition policy network changed as such, then to what extent do these changes correspond to changes in the relational structure of the policy network? The next chapter tries to answer this question.

7 Changes in the distribution of power resources from the 1970s to the 1990s

The pattern of the distribution of power resources in the competition policy network changed in both Britain and Japan from the 1970s to the 1990s, as a result of various changes of domestic and external conditions. The aim of this chapter is to examine the organisational and relational power of the core domestic actors as an explanatory factor for the reforms of the 1990s.

Corresponding to Chapter 4, the first section considers the changes in the organisational strength of business leaders – the Confederation of British Industry (CBI) and the *Keizai Dantai Rengokai* (Federation of Economic Organisations, *Keidanren*) – from the 1970s to the 1990s. The second section examines the organisational structure of political parties and considers inter-party relations. The third section discusses how the triangular relationship between politicians, public officials and businesses was transformed over time. Finally, attention is drawn to the changes in relational power and the personnel strength of the competition policy agencies over the last twenty years. In light of the consistency of the recent reform output with business interests, the concluding discussion focuses on changes in the relational power of business representatives *vis-à-vis* other actors in the competition policy network.

Changes in the leading business organisations and their strategy in the policy-making process

The CBI in the 1990s: organisational growth and remaining weaknesses

Since the 1970s, the CBI has increased its membership such that it now considers itself 'acknowledged to be Britain's business voice, and, as such, is widely consulted by government, the civil service and the media'.[1] Indeed, its membership now encompasses over 250,000 public and private companies, which is more than double the figure of twenty-five years ago. The CBI also includes over 200 trade associations, employer organisations and commercial associations.

The CBI has extended the scope of its membership not only quantitatively but also qualitatively. In particular, since the late 1980s the service sector has

been encouraged to participate. Specifically, the year 1988 witnessed a large-scale entry of service-sector companies, which resulted in a 14 per cent growth of annual subscription income, according to the Annual Report of the CBI.[2] This extension to the service sector corresponded to the growing presence of that sector in the British economy.

While those developments are significant, however, the CBI still suffered from organisational weakness at least until the 1990s. As for its representative power, the CBI was not quite satisfactory in representing the business society in Britain. Its membership was still largely oriented to the manufacturing sector, and the continuous shrinkage of that sector in the whole economy was problematic. Although many financial institutions now joined the CBI, they did not see the CBI as their representative. Hence the City was still acting separately from the CBI. Similarly, there were several trade associations keeping their distance from the CBI. In 1994, for example, the Engineering Employers Federation failed to achieve an agreement to share its central activities with the CBI. After all, its members 'were worried that policy might no longer be "tailor-made" '.[3] In other words, 'the fragmented and non-encompassing character of Britain's producer groups'[4] had yet to disappear.

Furthermore, the CBI was still often seen as lacking internal unity. It may be natural that an extension of membership should increase the diversity of the interests of members and thus impair internal unity. The progress of privatisation and deregulation in the 1980s discussed in the previous chapter was also a source of internal dissent. Generally speaking, newly privatised and deregulated companies were more cautious about the regulation of market dominance because they had often monopolised or oligopolised their market previously, and still held strong market power even after privatisation/deregulation. In fact, utility companies strongly opposed introduction of the European model for controls on industrial concentration, while the CBI as a whole gave its support to that change.[5] Those companies were not so large in number, but they were often very large in size and made large financial contributions. As a result, their voices were far from negligible.

The effect of the growth in international economic interdependence, especially the development of European integration, on the strength of the CBI looks ambiguous. On the one hand, the CBI seems to have increased its significance as a representative of British businesses in discussions with representatives of other countries. On the other hand, the prosperity of cross-border direct investment and M&As, shown in Chapter 5, seems to have diluted the national identity and the membership of the CBI. The gap between multinational, competitive companies and domestic, less competitive ones was naturally developed.

In brief, the CBI has extended the scope of its membership both quantitatively and qualitatively, and increased its role in the international arena, but it has neither strong representative authority nor stable internal unity.

The Keidanren *in the 1990s: somewhat in decline but still a significant force*

In contrast to the CBI, the *Keidanren* did not spend much energy on extending the scope of its membership. Its membership has remained at around 1,000 for the last thirty years. At least until the 1990s, moreover, its leadership structure was largely stagnant. As shown in Table 7.1, the conservative characteristics of the *Keidanren* are symbolised by the fact that three of five presidents in the 1980s and 1990s came from the same steel company (the New Japan Steel Corporation), despite the significant changes in the industrial structure discussed in the previous chapter. Likewise, the affiliations of the vice-presidents were often viewed as a 'parade of heavy, thick, long, big, traditional and orthodox companies'.[6]

While the *Keidanren* was persistently dependent on the traditional power order as such, its power base was gradually dissolving. The horizontal and vertical *keiretsu* ties, which supported the *Keidanren*'s representative authority in the business world, have become weaker in recent years (see the previous chapter). Likewise, economic internationalisation and deregulation, although not thoroughgoing until the 1990s, diversified members' interests and reduced the stability of internal unity. In other words, the *Keidanren* suffered from the same problems as the CBI, although apparently to less extent.

In this context, it is worth noting that the *Keidanren* withdrew from the role of collecting political donations for the Liberal Democratic Party (LDP) in 1993. The pronounced reason for this was fierce public criticism over a bribery scandal ('the recruit scandal') at the end of the 1980s, but the more important,

Table 7.1 Presidents of the *Keidanren* and their main career

	Company	*Industry*
Ichiro Ishikawa (1948–56)	Nissan Chemical Industries	Petrochemicals
Taizo Ishizaka (1956–68)	Tokyo Shibaura Electric	Electricity
Kogoro Uemura (1968–74)	(Public official)	-
Toshio Doko (1974–80)	Ishikawajima Harima Heavy Industries	Shipbuilding
Yoshihiro Inayama (1980–6)	New Japan Steel Corporation	Steel
Eishiro Saito (1986–90)	New Japan Steel Corporation	Steel
Gaishi Hiraiwa (1990–4)	Tokyo Denryoku	Electricity
Shoichi Toyota (1994–8)	Toyota Motor Industries	Automobiles
Takashi Imai (1998–)	New Japan Steel Corporation	Steel

concealed reason was that the *Keidanren* was no longer expected to take care of all business donations as previously. It is true that the *Keidanren* offered some financial help even afterwards, but not in the same systematic way as before. Now the companies in the internationalised and deregulated markets seem to have become less interested in providing political donations, especially during the economic slump.

On the other hand, less internationalised/deregulated sectors and companies were still engaged in the traditional relations. They recognised that individual political donations were often more effective than the previous collective donations.[7] After all, politicians had to focus more on the interests of particular donors in order to secure their income, since they no longer had collective, unspecified donations.

The organisational/relational structure of political parties in the 1990s

Changes in the intra-party structure in Britain

Traditionally, the Conservative Party was regarded as 'a party of tendencies' as discussed in Chapter 4. Throughout the 1980s and the 1990s, however, there emerged two divisions among the party members: that between 'dry' (decisively *laissez-faire*) and 'wet' (relatively more interventionist), and that between 'pro-European' and 'Eurosceptic'. The main reason for this was that the party was led and influenced for much of this time by Margaret Thatcher, who took strong initiatives in favour of 'dry' and 'Eurosceptic' policies. It is also significant that the party had enjoyed long-term office by the mid-1990s. The Labour Party had long been too weak to replace the Conservative Party, and the absence of a competent rival meant no effective opposition. As Heywood pointed out, this long-term political predominance caused 'an uncritical and unlistening arrogance' in the party, resulting in 'complacency and intellectual flabbiness'.[8]

The replacement of Thatcher with John Major aggravated dissidence within the party. Major did not articulate his own position as clearly as Thatcher in the debate about state intervention and Europe, reluctant to appear one-sided.[9] He seemed to want to overcome the internal dissent by that means, but the result was the opposite. By the time he resigned the premiership, his party had become even more divided and unstable.

By contrast, the Labour Party became more united, despite the party's traditional label of 'a party of factions'. The string of successive electoral defeats from 1979 to 1992 eventually strengthened the internal unity of the party. In order to attract sufficient non-partisan voters to win office, the party on the whole moved its political position rightward, leaving uncooperative leftists behind. The party's leaders gradually reformed its decision-making system so as to curtail the influence of those militant leftists from the trade unions, who had traditionally been one of the causes of the party's serious disarray. This internal

reform led eventually to the electoral victory of 1997 under the leadership of Tony Blair.

It is also noteworthy that the Labour Party did not suffer from any serious internal dispute over European integration as did the Conservative Party. It is true that Labour had seriously suffered from the European question up until the 1980s,[10] but Labour politicians gradually became more united under the pro-European (or non anti-European, at least) banner in the 1990s. There were several reasons for this change. First, the European question became parallel with the adoption of the European Social Charter, which would provide better statutory conditions for British workers. Second, Labour's victory in the 1989 elections for the European Parliament – the first Labour victory in fifteen years – gave pro-European impetus to the party. Finally, the party seems to have thought that it would be better as an electoral strategy to show a decisive stance on this issue, in light of serious disagreements within the Conservative Party. In consequence, 'Labour was able to present itself as the more European of the two major parties' in the mid-1990s, as George observed.[11]

Both of those changes – the reform of the decision-making structure and their new unity over Europe – made it easier for Labour's leaders to follow the interests of business when they thought it necessary. Consequently, the new Labour government became more responsive to the requests of business, compared with former Labour governments.

Changes in the intra-party structure in Japan

With regard to the intra-party structure within the LDP in Japan, a significant change occurred in the 1980s – the advent of so-called *zoku* politicians.[12] The word *zoku* originally means 'family' or 'tribe'. The *zoku* politicians are comprised of those who have established themselves as experts in particular policy fields. They accumulated their knowledge and experience either in the internal policy-oriented groups within the party or in the Diet committees on particular policy sectors. There are such *zoku*s as *shoko-zoku* (for commercial and industrial policy), *yusei-zoku* (for post and telecommunication policy), *kensetsu-zoku* (for construction and development policy) and *norin-zoku* (for agricultural policy).

There are several explanations for the development of these *zoku* groups. The first is the entrenchment of committee-based discussion in the Diet. Having long taken part in committee discussions, politicians were able to develop their own speciality in particular policy areas, not only in terms of knowledge accumulation but also in terms of connections with relevant private interests and public officials. The development of *zoku* also reflected changes in the role of another intra-party grouping, i.e. the factions. Throughout the 1980s, all factions became cooperative with one another and tended to be in the mainstream, as Ishikawa and Hirose point out.[13] This lessened factional antagonism may naturally have made it easier for those with similar specialities across different factions.

The development of *zoku* groups caused a significant change in the decision-making process of the LDP. While the faction leaders still wielded significant

influence over the appointment of ministers, the discussions and negotiations between *zoku* groups were getting more and more influential in the daily decision-making of the party. In other words, the management form of the LDP became less top-down and more bottom-up than in the 1970s.

Changes in inter-party relationships in Britain and Japan

Among the factors affecting the relationship between political parties in Britain after the 1970s, the most crucial was the Conservative Party's period of eighteen unbroken years in office (from 1979 to 1997). During that time, many political scientists argued the advent of what Sartori called a 'predominant party system'.[14] This was particularly so after the Conservatives won their fourth consecutive general election in 1992. It is clear, however, that the British version of that 'predominant party system' never resembled the Japanese version in terms of the decision-making style. That is, the Conservative government was not so conciliatory to the opposition as the LDP government in Japan[15] (see Chapter 4). But eighteen years were not enough to dissolve a relational structure consolidated as the two-major-party system over a much longer period.

In Japan, on the other hand, the split in the LDP and the emergence of several new parties caused a drastic change in the composition of the House of Representatives after the 1993 election. The '1955 system', in which the main political divide was between the LDP and the non-LDP parties, had now dissolved. The non-LDP coalition government, headed by the leader of the Japan New Party, Morihiro Hosokawa, terminated the predominant party system after forty years of its existence. The LDP returned to government after just two years, but thereafter most governments were coalitions.

Besides the end of the predominant party system, the decline of the Socialist Party, which had long been the leader of the non-LDP alliance and the most enthusiastic defender of competition policy, was most noteworthy. This was fundamentally due to the decline of the traditional labour movement that had supported the party, but also because instead of the Socialist Party, it was the new parties who absorbed the votes cast in protest against the LDP. The party then tried to gain political strength by participation in the coalition government with the LDP. The party even renamed itself the Social Democratic Party (SDP) to project a softer ideological image. Yet those arrangements obscured the party's political position and further reduced its popularity, especially among its traditional, solid supporters. Under those circumstances, many members left for new parties, especially the Democratic Party. As a result, the Socialist Party/SDP saw a reduction in the number of its seats from 136 in 1990 to only fifteen in 1996, and it was even thought that the party had 'ended its historical role'.[16]

The reshaping of the opposition parties was directly connected with the waning of political support for competition policy in two ways. First, the Democratic Party, which now included many former Socialists, was not likely to act like the Socialist Party in the past. The party also included many former LDP

members, and some of them still had close connections with the traditional business sectors. The party was apparently less biased towards business interests than the LDP, but its position on competition policy was not quite clear, at least from the debates of the 1990s.

For the SDP, direct participation in the coalition government was understandably a good way of promoting its interest in policy management. As shown in the case study in Chapter 5, the party effectively prevented the complete lifting of the holding company prohibition all at once. On the other hand, that case also indicated the weakness of the coalition's negotiations. That is, the discussion process was naturally less open to the public, and the decision-making process was quite vulnerable to informal political considerations. The SDP suddenly withdrew its opposition, allegedly for the purpose of solving another political problem (i.e. the restructuring of Nippon Telegraph and Telephone, NTT). All were settled under the 'coalition table' for the sake of particular interests.

With regard to inter-party relations in Japan, it should additionally be noted that Japan has been suffering from a serious decline in voter turnout. Whereas the average turnout from the 1960s to the 1970s was around 70 per cent (which was already lower than in Britain), this figure rapidly declined in the 1990s. The 1996 election brought the lowest figure ever, below 60 per cent. The most popular interpretation of this trend is that Japanese people were tired of the 'political game' among politicians and felt powerless to break the traditional order. Whatever the reasons were, this low turnout benefited traditional organised voting mostly based on particular business sectors. The British electoral system of 'first-past-the-post', which was introduced to the Japanese electorate in 1996, also seemed to favour organised voters and the LDP rather than disorganised non-partisan voters and newly established parties. Furthermore, the public persistently seemed to believe that the LDP was the only party competent to govern, or at least that it was more competent than the others. It may be said, therefore, that the 'predominant party system' persisted in Japan at least into the 1990s, even though the LDP was no longer winning a majority of seats as in the past.

Changes in the triangular relationship between business, politicians and public officials

The first side of the triangle: business and politicians

The changes in business and political groups discussed above, as well as changes in external economic and political conditions, naturally transformed the relationship between business interests and politicians in both Britain and Japan.

Generally speaking, politicians in developed countries have recently become more responsive to the needs of business for several reasons. Economic internationalisation increased the mobility of businesses across national borders, and businesses can now withdraw more easily if they are dissatisfied with the

government. As this means increasing unemployment and decreasing income from taxes, politicians are often inclined to make efforts to maintain attractive conditions for businesses. Partly because of this economic internationalisation, moreover, neo-liberalism has become ascendant over state interventionism. It is now widely thought that the voluntary efforts of businesses are the primary source of international competitiveness, not the public management of businesses. Politicians are therefore more willing to consider the voice of businesses so as to maximise their voluntary efforts. On top of that, the change in industrial structure reduced the number of traditional manual workers, and the spread of privatisation shrank the size of public-sector employment. Accordingly, the traditional organised labour movement, where those groups played a key role, has declined significantly. The decline of the organised labour movement, which was a strong social counterforce in the past, also made politicians turn more often to the interests of business.

However, this does not mean that the major business associations such as the CBI and the *Keidanren* increased their position *vis-à-vis* the government. As discussed in the first section of this chapter, the CBI persistently suffered from a lack of internal unity and representative authority, and the *Keidanren* was no longer strong as in the past. Now the sector-based or individual-based approach replaced the collective approach through those comprehensive representatives.

In Britain, the ascendance of the sector/individual-based approach became remarkable under the political leadership of Thatcher, who disliked 'anything that smelled of the corporate state',[17] including the CBI. This extreme shift away from the collective approach was somewhat modified under the Major government, and '[t]he CBI feels that it is getting on better with Mr John Major than it did with Mrs Thatcher'.[18] As the Conservative government's overall popularity waned through the early and mid-1990s, it became more and more respectful to the CBI as one of the few consistent supporters of the Conservative Party. Business leaders offered unconditional support for the Conservative Party in the mid-1990s, since they did not put much credit on the Labour Party. For them, as was remarked, 'there is no political alternative'.[19]

Yet growing disunity within the Conservative Party under Major's weak leadership made it more and more difficult for businesses to predict policy output. As typically shown in the case of competition law reform, the Conservative government changed its position from time to time, with internal disputes becoming the normal state of affairs. Such unpredictability was quite similar to the faction-based politics of the LDP in the 1970s (see Chapter 4). This caused irritation and disaffection among traditional party supporters. In 1996, for instance, it was stated that '[s]ome traditional benefactors…have said they will no longer give the Tories funds. Others have radically reduced their donations. A few…have taken the view that they should give money to the main parties to help foster a healthier political debate'.[20]

As the decline of the Conservative government became more marked, business leaders became more respectful towards the Labour Party. The party had now carried out a number of changes, making it less antagonistic to business,

notably the acceptance of the significance of the market system and the revision of that part of the party's constitution concerning state ownership. Under the strong leadership of Tony Blair,[21] the party determined to cast off old ideological legacies in order to return to government. This change was also promoted by the growing political importance of business interests under the recent socio-economic changes discussed above. Labour made various arrangements to establish friendly relationships with business. Particularly noteworthy was the appointment of a former chairman of British Petroleum (Lord Simon) as a junior minister at the Department of Trade and Industry (DTI).[22] Consequently, some business leaders even labelled the Blair government 'a centre-right government'.[23]

On the other hand, it should be remembered that the Labour Party still owes much of its electoral and financial support to the trade unions. Many party members remain sympathetic to the unions, even though their leader seems to support businesses' view. The party is not free from such an accusation '[t]he overwhelming majority of Labour MPs appear to back the Trade Union Congress view', even though the Prime Minister 'is believed to remain firmly behind the Confederation of British Industry'.[24] The same applies to the business side, that is, 'most businessmen remain instinctive Conservatives and, in spite of the transformation of the Labour party, prefer Tory policies'.[25] This mutual scepticism remained even after the Labour Party had come to power. Furthermore, Labour is likely to have less sectoral/individual contacts than other parties. Just as with the collective approach through the CBI, the relationship between business and politicians cannot be too close. This 'moderate relationship' was clearly shown in the policy output of the reform of competition law. The Labour government significantly considered the interests of business, but did not accept all of its demands.

In Japan, such factors as economic internationalisation and the spread of neo-liberalism made politicians more inclined to listen to the voice of business. Besides those factors, two particular changes have increased the responsiveness of LDP politicians. The first is the rise in demand for political donations. As discussed in Chapter 4, Japanese politicians traditionally needed a large amount of money for electoral campaigning. While this situation has not so far changed significantly, LDP politicians have been encouraged to spend more money due to the decline in support for their party. In the 1990s, furthermore, the demand for political finance increased tremendously due to the reform of the electoral system. The new system (the 'small constituency system') was introduced in order to avoid finance-based electoral competition under the old system,[26] but the reform seemed to make matters worse. The experience from the elections under the new system indicated that a candidate needed more money, since many voters did not change their custom of person-based voting even under the new system. Many people still cast their vote based on their personal relationship with candidates, and candidates have to spend money to establish such relationships. As the new system generally requires more votes for a candidate to be elected, it turned out to be rather more costly than the old system.[27]

The second change is the development of the sectoral/individual approach. As discussed earlier, without collective, unspecified donations, LDP politicians became more dependent on particular sectors and individual companies, and thus gave them more respect.

We should also note that the emergence of *zoku* politicians in the 1980s, which we have already discussed in the last section, corresponds with such development of a sector-based approach. As *zoku* comes to play a significant role in the decision-making process of the LDP, it becomes easier for particular sectors/individual companies to find their political patrons. It may also be said that the growth of contact between politicians and sectoral/individual business interests has contributed to the development of *zoku* groups in turn.

The effect of the rise in the need for political donations and the development of a sector-based approach may also be applied to non-LDP politicians. In the course of the shake-up of political parties after 1993, many parties lost their patrons or found their traditional relationship diluted. They now became more dependent on narrower interests. This may partly explain why the SDP suddenly changed its position on holding company prohibition for the sake of the workers of just one company.

The second side of the triangle: politicians and public officials

Generally speaking, the recent ideological shift from state interventionism to neo-liberalism has helped reduce the scope of initiative for public officials in both Britain and Japan. Of course, public officials are often far more knowledgeable about policy management, and have never lost command in the policy-making process. According to Michael Heseltine, who has had an abundance of ministerial experience in Britain, ministers 'find themselves working through senior officials who are themselves remote from the day to day workings of the department and who can easily regard management as a secondary activity', and hence 'control of government departments is only nominally with ministers'.[28] There is also a concern that the recent political internationalisation has helped civil servants increase their control over the policy-making process. After all, they are often crucial negotiators in the international arena.[29] That is, civil servants often construct much of the scenario with their foreign counterparts, except for highly political matters – and sometimes even for these.

In Britain, nevertheless, it is widely recognised that public officials were no longer as active as they had been before the 1970s. In the 1980s, the civil service system was radically restructured under a strong initiative of the Thatcher government. As a result, the traditional role of public officials in policy-making and advising 'has been reduced in order to make room for politically sponsored policy entrepreneurs and analysts in think tanks, the Policy Unit and, through late career appointments…in the civil service itself'.[30] Because of these changes, British public officials seem to have changed their mindset significantly. The following statement is suggestive, even though it is merely a personal impression of one public official:

> The ethos is changing. When I entered, policy formation was the interesting function in the Civil Service, the area of work which attracted the 'alpha' minds. Today [in 1985], there is much more emphasis on effective resource management and various initiatives have been taken by the present Government, including the greater delegation of responsibilities.[31]

A similar movement occurred in Japan. Under the Nakasone government in the early and mid-1980s, efforts were made to rectify the ascendancy of public officials over politicians. The privatisation of several large national enterprises, including Japanese Railways and NTT, was carried out in that context. More significantly, the austere fiscal policy, which had been in place since the economic slowdown began in the 1970s, was further tightened in the 1980s.

This austere fiscal policy increased the dependence of public officials on politicians. While public officials could control the distribution of financial resources within their own ministries, they were not able to control the financial distribution across different ministries. As overall financial management was the task of politicians, public officials needed the help of politicians. In that case, they naturally went to *zoku* politicians working in their policy field, as they had the closest contact with those political specialists.

Their close connection with public officials naturally allowed *zoku* politicians to exert more control over the policy-making process than before. Japanese public officials were no longer able to monopolise policy information. The change of the relational balance between public officials and politicians in favour of the latter was labelled *seiko-kantei* (politicians' high status and bureaucrats' low status) at that time.

Nonetheless, it should be noted that the development of the connection between public officials and *zoku* politicians did not simply reduce the power of public officials. On the contrary, *zoku* politicians often acted like pressure groups for the sake of the corresponding public officials. While those civil servants could not previously do anything against the decisions of factional leaders, they now obtained strong support from their political patrons, who could often persuade their party leaders successfully.

By the same token, public officials had become very confident in their policy-making abilities, at least by the mid-1990s. According to a survey in 1993,[32] for example, 66 per cent of senior civil servants responded that it would be more effective for them to take the initiative in policy management, suggesting that politicians were not so competent as they were.

The continuing power of Japanese public officials was clearly indicated when the non-LDP coalition entered the cabinet in 1993. Unlike the former LDP leaders, most cabinet ministers were not experienced enough to take command of public officials, as Ohmae has pointed out.[33] Accordingly, the administrative reform planned by that government came to a deadlock in the end. A contemporary survey of the members of the House of Representatives, including both LDP and non-LDP members, showed that 51 per cent felt that the power of public officials had increased.[34]

Further changes occurred in the mid-1990s, when the LDP came back into government. After the exposure of several bribery scandals by high-ranking public officials, the movement for reform gathered strength. The reform of administrative structure, which was the largest since the Second World War, was passed in 1997 and carried out in 2001. Speeches to the Diet by civil servants in place of their political masters, which had helped public officials retain significant influence over policy-making processes (see Chapter 4), were abandoned in 2000. In order to increase ministerial influence over administrative officers, furthermore, the appointment of vice-ministers began in the same year. Whereas the spoils system was not really the case in Japan, politicians generally became more interventionistic in the appointment of high-ranking public officials.

Given the tradition of strong leadership and self-confidence among Japanese public officials, however, the pace of substantial change was very slow. Indeed, the reform of the administrative structure in 1997 was widely recognised to be insufficient.

In addition, alternative means of advising politicians other than via their civil servants were generally underdeveloped. Numerous think tanks were established, particularly in the early 1990s, but few were as competent as such British counterparts as the Centre for Policy Studies and Institute for Public Policy Research. It is important not to overestimate the competence of think tanks, even in Britain,[35] but Japan was obviously far behind. Most Japanese think tanks were subcontractors for government agencies, and often manipulated their reports in favour of their clients. Even though some ambitious researchers tried to publish their independent opinions against public officials, they might encounter opposition through those company executives who had originally worked for government agencies. In fact, think tanks have been one of the main destinations for retired public officials in recent years.[36] Some political parties already operate their own think tanks, but they have not been very successful in general. At least until the 1990s, there remained a firm belief that 'public officials are the best think tank in Japan', as commented by a former prime minister, Kiichi Miyazawa.[37]

The third side of the triangle: business and public officials

Chapter 4 discussed the relative weakness of the relationship between businesses and public officials in Britain. There is little doubt that the reduction in bureaucratic power under the Thatcher government further loosened this relationship. Business/bureaucrat ties had become so weak by the early 1990s that it even invited such a concern that '[h]igher civil servants have little training in, familiarity with, or, one suspects, sympathy for manufacturing industry'.[38] Accordingly, the Conservative government in the early 1990s tried to encourage public officials to establish closer contact (so-called 'before breakfast, before lunch, before tea and before dinner' contact) with businesses, in the Japanese style. The DTI underwent a large organisational reform in order to make it easier for individual sectors to contact public officials in charge of the policy to create strong

business/government connections. Given the overall retreat of the state interventionist approach, nonetheless, those efforts did not seem to be very effective.

The shift from state interventionism to neo-liberalism also affected relations between business and public officials in Japan, although not resulting in a simple tenuity of those relations.

The reduction of the scope of state intervention naturally reduced the motivation of businesses to keep in close contact with public officials at the cost of employing retired public officials through the *amakudari* system (see Chapter 4). Whereas not all 'descended' executives were useless, businesses came to feel that they could not afford to employ old, layman executives on a high salary, especially after the collapse of the bubble economy in the early 1990s.

According to a survey in 1994, over 80 per cent of 300 middle-ranking businessmen in the largest Japanese companies answered that businesses should be more distant from the government, and only 7 per cent considered the *amakudari* practice as 'necessary' or 'rather necessary'.[39] This contrasts with the result of a survey on high-level public officials conducted around the same time. That is, 76 per cent still believed that the *amakudari* system was necessary,[40] either because it was useful in satisfying the policy needs of the private sector (43 per cent), because 'their salary was low' (implying that their salary should be compensated with a good salary from private companies[41]) (22 per cent), or because they simply believed that 'businesses demanded us' (11 per cent).

The support of public officials for the *amakudari* system was apparently reduced in the 1990s as a result of severe criticism of the system. Nevertheless, it was not very easy for public officials to leave the system because of the enduring seniority promotion system. Whereas the number of posts was smaller at high rank, the number of officials was not so small because few voluntarily resigned from their job in earlier years. The result was that the number of senior officials exceeded the number of posts appropriate for them. For those who could not get the posts, therefore, ministries had to ensure other employment – and they took advantage of *amakudari* offers for that purpose. In the past, ministries had also often used public corporations under their supervision to secure such employment positions, but the number of those corporations was getting smaller due to the retreat of state interventionism. Consequently, public officials still owed much to *amakudari* positions in private companies, as long as the traditional promotion system persisted. The government began considering reform in 2000, but the pace of change has been very slow.

The gap between reducing the supply of *amakudari* positions and the remaining demand for them seemingly caused a rise in the relational power of businesses *vis-à-vis* public officials. While previously companies needed to employ retired officials from the ministries, ministries now asked companies to give positions to those officials. Under those circumstances, it is not surprising that public officials became more respectful toward businesses in order to keep the *amakudari* system. As a result, business/bureaucrat ties seemed to have become rather stronger in some instances, even though the overall strength of the business/bureaucrat relationship was now on the decline just as in Britain.

In Japan, the partial development of business/bureaucrat ties was synchronised with the development of the sectoral/individual approach in business/politician ties and politician/bureaucrat ties evolving around *zoku* groups. While the expression 'iron triangle' had been used to describe the overall feature of Japanese political economy, it was now applied only to a limited number of industrial sectors and companies that were often not strong enough to be independent of the protection of state regulation.

Competition policy officials: relational power and human resources in the 1990s

Relational power and personnel strength of the competition policy agencies in Britain

As shown in Chapter 2, the reforms of the 1970s led to the establishment of the Office of Fair Trading (OFT) and the Monopolies and Mergers Commission (MMC) with a wider scope of regulatory authority. As time went by, British competition law agencies seemed to accumulate experience, self-confidence and pubic confidence in the management of competition policy. For instance, there was a significant change in the structure of the budget of the OFT. As Figure 7.1 shows, the OFT budget grew significantly in the late 1980s. While overall budget growth became somewhat stagnant (just as discussions on reform became) in the early and mid-1990s, the budget share for competition policy increased and eventually surpassed that of consumer affairs.

Despite such progress, however, there persistently existed a concern about the intervention of industrial policy officials into competition policy. After all, the competition policy officials greatly depended on the DTI for human and financial resources. In fact, many competition policy officials were seconded from the DTI, and it was observed that 'the OFT can therefore be expected to share many of the attributes of the home Civil Service and of the DTI'.[42] As for the MMC, it relied on the DTI not only for its staff but also for its finance – the grant-in-aid from the DTI. Such a resource connection might contribute to the establishment of close partnership between industrial and competition law agencies, but it inevitably gave the impression that it was difficult for the competition law agencies to maintain their independence from the DTI.

The DTI-based staffing was seen as disadvantageous also from the viewpoint of the qualification of competition policy officials. According to Ramsay, this way of staffing led to 'the lack of information and expertise which necessitates extensive consultation with outside sources'.[43] This problem was already recognised at the time the OFT was first established.[44] Nevertheless, it was observed in the mid-1990s that 'even in today's climate of open competition this mode of appointment is barely used, with few posts advertised outside the Service since 1976'.[45] Correspondingly, a report by the Trade and Industry Committee of the House of Commons in 1992 argued that competition policy staff in the United States and Canada 'were likely to have greater abilities and a wider experience

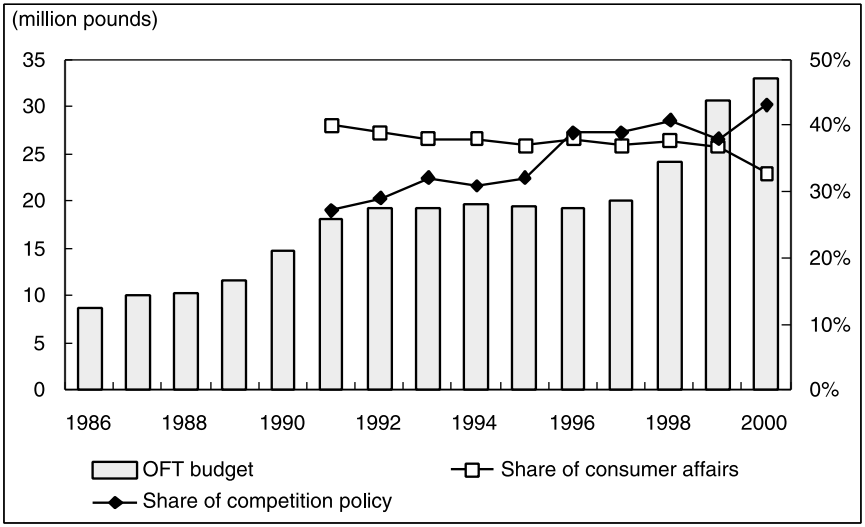

Figure 7.1 OFT budget and consumer affairs/competition policy shares

Source: OFT

Note: Respective shares are shown only after 1991, since the budget classification was changed in that year.

than would generally be found in the OFT and MMC in the UK'. According to the report, Britain lacked a 'cross-fertilisation' scheme between the public and private sectors, whereby 'most [public officials] had recent experience as practitioners in the private sector'.[46]

However, this lack of expertise in the general staff was not necessarily a bad thing. On the contrary, it allowed extensive knowledge inflow from outside experts, hence preventing the 'assimilation' of competition law agencies into the DTI despite their close connection. The OFT had relatively high turnover of staff at senior level (which Ramsay mentioned as a problem[47]), but this might also be helpful for organisational vitalisation, as long as the organisation was supported by the external expertise.

As for the MMC, its commissioners were recruited on a part-time basis, and the division of labour between those part-time decision-makers and the full-time investigators had been criticised as 'the fundamental defect' that 'reduces the effectiveness of the investigation'.[48] Yet this arrangement helped commissioners keep in touch with outside expertise. In the period 1995–8, for example, there were only five commissioners appointed from the civil service out of twenty-nine appointments. The others included two from the trade unions, four from the legal profession, three economists, five accountants, five from industry, one from the financial sector and three from consumer representative groups.[49]

With regard to the staffing policy, however, there was a concern that the industry secretary could manipulate the appointment of top staff, i.e. the Director General of Fair Trading (DGFT) and the Chairman of the MMC. Nevertheless, the vulnerability of the competition law agencies in this respect had not been recognised as problematic by the early 1990s. Presumably, industry secretaries were simply trying to avoided needless trouble, since competition policy did not draw much political attention. In fact, neither the DGFT nor the MMC Chairman was replaced in the period from the mid-1970s to the late 1980s, even though there was a change of government party from Labour to Conservative during this period. As a result, the DGFT and the MMC Chairman, Sir Gordon Borrie and Sir Godfray Le Quesne, remained in office for sixteen years (1976–92) and thirteen years (1975–88) respectively. For the DGFT, the accumulation of experience and confidence throughout his long term of office seemed to make him less and less hesitant to publicise his own opinions on the direction of competition policy, especially in the last few years of his incumbency. Whether or not industrial policy officials had expected it before his appointment, the next DGFT, Sir Brian Carsberg (1992–5), was even more active in arguing for the reinforcement of competition policy.

Yet the growing pro-activism of the DGFT seemingly encouraged the then industrial minister, Michael Heseltine, to take advantage of his power to appoint competition policy staff. He was apparently reluctant for the active use of competition policy due to strong concerns about international competitiveness, as discussed in the last chapter. His first appointment was Graeme Odgers to the MMC chair in 1993. Unlike his predecessors the new Chairman was not a lawyer but an industrialist who believed that 'competitiveness…is hugely important'.[50] He even 'declared with some pride that he was "four square" with [Heseltine]'s views on competitiveness, privatisation and deregulation, praising him as "a great champion and advocate of British industry" '.[51]

However, that was the only case of successful manipulation. The next DGFT, John Bridgeman (1995–2000), was also appointed by Heseltine, but his term began after Heseltine had left office. At the time of his installation, he openly announced that he would not follow the policy direction of Heseltine.[52] Under his leadership, in fact, the OFT published a report dismissing two decisions made by the MMC which were generous to business interests, reflecting the Chairman's position.[53] In other words, the dual institution framework unique to Britain helped competition policy officials preserve their independence from the industrial secretary's control of recruitment. Whereas political control over the competition law agencies as government agencies was no doubt important, this case showed that the existence of two different bodies with their leaders appointed at different times could reduce political caprice. On this point, it should be noted that nobody could dismiss the incumbent DGFT until the expiration of his term of office.

Of course, it would be unwise to overestimate the independence of competition policy officials. For all the positive aspects, it is necessary to admit to the overall superiority of industrial policy officials. It is a pity that Carsberg was not

able to achieve anything and resigned in protest at Heseltine's policy direction – 'I suppose the lack of enthusiasm for reform in competition policy must have been attributable to him [Heseltine] to some extent'.[54] The Japanese system provided a comparatively better framework for ensuring the independence of competition policy, as long as it was allowed to function fairly, as in the case of the 1970s reforms.

Nevertheless, it would be equally unwise to ignore the substantial growth of independence. Although Carsberg was not able to override Heseltine's decisions, such an open controversy was unprecedented. The DGFT was even directly invited to address the House of Commons Trade and Industry Committee, where he pressed the necessity for reform against the wishes of the industry secretary. Eventually, the DTI too became less hostile to the OFT in the discussion of the competition law reform. In fact, on its website the DTI introduced the OFT as those 'who have worked closely with DTI during the course of reforming Competition Legislation'.[55] Even though industrial policy officials might have consulted competition policy officials, such a partnership-like relationship had not been observed in the past.

Relational power and personnel strength of the Japanese competition policy agencies

In the 1990s, the Fair Trade Commission (FTC) began to make significant organisational progress. As Table 7.2 shows, the number of staff was increased from 461 in 1989 to 558 in 1999; and the number of staff in its Investigation Division doubled, from 129 in 1989 to 260 in 1999.

Table 7.2 Total number of FTC staff and of staff in the Investigation Division, 1989–99

	Total staff	*Annual growth*	*Investigation Division staff*	*Annual growth*
1989	461	–	129	–
1990	474	+13	154	+25
1991	478	+4	165	+11
1992	484	+6	178	+13
1993	493	+9	186	+8
1994	506	+13	203	+17
1995	520	+14	220	+17
1996	534	+14	236	+16
1997	545	+11	248	+12
1998	552	+7	254	+6
1999	558	+6	260	+6
1989–99		+97		+131

Source: OECD, *Competition Policy in OECD Countries*, Paris, OECD

The changes were not restricted to staff numbers. In 1994 the FTC obtained a new integrated office, mirroring such justice-oriented agencies as the Ministry of Justice and the Public Prosecutor's Office. This arrangement was more than a physical move. Previously, the staff had been lodged separately at the premises of the Ministry of Foreign Affairs and of the Economic Planning Agency. Now the FTC appeared stronger, with a new profile as a part of the family of justice-oriented agencies. In 1996, furthermore, a significant reform of the status of FTC Secretariat staff was carried out. In the past, the FTC Secretariat had been composed of just one bureau, but the 1996 reform redefined the FTC as the General Bureau, so that its two divisions (Economic Trade and Investigation) were upgraded to Bureaux. Given the tendency of Japanese bureaucracy for attaching great importance to one's title, the change from 'Division' to 'Bureau' might well have enhanced the staff's confidence in negotiations with other public officials. Indeed, some senior FTC officials were reportedly quite happy with the arrangement of equal footing with other public officials.[56]

Despite such progress, there were still a number of aspects posing questions about the strength of the FTC. First, recruitment of the chairmen and commissioners was heavily biased to public officials with experience of other ministries. The four chairmen from 1977 to 1996 came exclusively from the Ministry of Finance (MoF), although this ministry failed to install its candidate in 1996 due to the criticism concerning the ministry's overrepresentation. For the commissioners, one out of four posts was always occupied by individuals promoted from the FTC Secretariat. The other three posts (thirty cumulative posts – three posts a year multiplied by ten years) were shared by the Ministry of International Trade and Industry (MITI) (nine posts), the Ministry of Justice/Public Prosecutor's Office (eight posts), the MoF (seven posts) and the Ministry of Foreign Affairs (five posts). There appeared a sign of change, though. In October 1998, Tadayoshi Honma, a professor of law with expertise in international trade and intellectual property, was appointed as a commissioner. At the time of writing, however, it is not clear whether such non-public official appointments will prevail in the future. As other ministries became more interested in competition policy, they were more inclined to stick to their reserved seats inside the FTC. Also, they became more cautious in the selection of their staff for secondment to the FTC, so that they would never send 'uncontrollable people' like Chairman Takahashi, who courageously worked for reform in the 1970s. The recruitment of other ministry staff was not necessarily undesirable, but it reduced the possibility of recruitment from other sources. There was also a concern that some commissioners would use their position to help their home ministries and relevant industrial sectors. For example, a member of the FTC Secretariat complained that 'there were some cases where information concerning an investigation was leaked just half a day after it went to the commissioners'.[57]

With regard to the influence of other ministries, the connection with the MoF had been particularly problematic in the 1990s, at least before the ministry relinquished its authority to supervise the financial sector.[58] The close connection

between the MoF and the FTC was not a new phenomenon – indeed, Chairman Takahashi in the 1970s came from the MoF. While the MoF's backup had been helpful in preventing MITI's interference in the FTC in the 1970s, it became increasingly problematic in the 1990s. After all, financial companies could no longer rely on special government protection in consequence of deregulation (the so-called 'Big Bang') and the growing inflow of foreign capital. They were now far more exposed to market competition, hence competition policy.

It is true, as noted above, that the MoF was criticised about its overrepresentation in the FTC as well as in other places. The ministry fell into discredit due to numerous scandals among its staff and to the detrimental economic situation, although the extent to which the ministry itself was responsible for that is debatable. Against this background, the MoF failed to install its member as FTC Chairman in 1996, despite its intention.[59] A new Chairman, Yasuchika Negoro, came from the Public Prosecutor's Office. This was apparently quite promising, but he was not entirely free from any connection with the MoF. Negoro had worked for some companies as a legal advisor before he took the post of FTC Chairman. This was not bad at all, but it should be noted that some companies had reportedly been asked by the National Tax Administration Agency to offer a post to him. While Negoro himself denied suggestions that he had taken the job offered by that agency,[60] it should be noted that the National Tax Administration Agency was an external organ of the MoF. Therefore it is not surprising that he had a 'good' relationship with the MoF.

At least until the 1990s, furthermore, the MoF held a relatively large share of the posts for the secondment of its staff. In 1995, Ikuta criticised the overrepresentation of MoF staff in the FTC as follows:

> how can the FTC act independently, when it is said to be under the control of the Ministry of Finance? The Ministry of Finance has sent more than ten officials to work in the FTC, including…four incumbent career finance officials who occupied the deputy minister and planning section chief positions. Although the FTC has hired approximately forty officials from other agencies, Ministry of Finance officials have the largest representation by far.[61]

Although the degree of that influence was not measurable, the FTC was apparently reluctant to intervene in matters related to the financial sector. The FTC made an investigation into security companies in 1991, but that was for the first time in thirty years. Even in that case, it is widely recognised that the investigation was carried out with the consent of the MoF, for the ministry thought that it was better to let the FTC take action before it was criticised by foreign countries. Likewise, the FTC seemed to be quite generous in its merger investigations when it came to the financial sector. The following statement regarding the merger between Toho Sogo Bank and Iyo Bank clearly indicates that the FTC took account of the factors other than market competition, as if it had been a branch of the MoF, which gave chief priority to the preservation of all existing banks at that time:

> In this case, the FTC judged that the merger would not substantially limit competition immediately in particular trade areas, given that the increase in the market share is generally small, *that it is difficult to find an adequate bank other than Iyo Bank to acquire Toho Sogo Bank in order to avoid its bankruptcy*, and that some branches are planned to be transferred to other banks where the market share is increased to a large extent, even if the market share in terms of deposit and loan is 29.6 per cent and 41.3 per cent respectively in Ehime prefecture.[62]

The influence of the MoF was also observed in the process of reform of the holding company prohibition. This was evidenced by the appointment of Professor Ryuichiro Tachi to the chair of the 'Chapter 4 Study Group', which the FTC organised to discuss the issue. He was not an expert on competition policy, but on the financial system. When he was appointed, he was well known as the chairman of the commission for the reform of the financial system organised by the MoF. When the MoF discussed the treatment of financial holding companies, moreover, the FTC was apparently very reluctant to touch the issue. According to an FTC official interviewed by the author, 'that is a matter for the MoF, and not us'.[63]

Its close connection with the MoF and other ministries would have been far less problematic if the FTC had been regarded as competent enough to block those external pressures. On the contrary, however, there was a remaining question about the ability of the FTC Secretariat staff. According to Ikuta, whereas 'many believe that FTC career officials hired during and after the early 1970s are of a higher calibre than their predecessors', 'it is a common belief among bureaucrats that a huge "ability gap" exists between FTC officials and their counterparts at other agencies'. This was partly because 'the majority were considered mediocre' by the standards of Japanese bureaucracy in terms of the Level I Examination for the National Civil Service, and partly because 'many could reach, without contest, a rank equivalent to director-general'[64] given the small scale of recruitment at the FTC. It must be added here that the FTC Secretariat had a particular academic clique from Hokkaido University in its mainstream,[65] in contrast to other ministries whose central cliques came from Tokyo University. While the academic hierarchy was becoming less meaningful in general, it was nevertheless not surprising that this situation caused the FTC to be considered as less competent, regardless of its real abilities, given the academic snobbery of Japanese bureaucrats.

The low evaluation of the FTC was also indicated in the attitude of Japan's foreign partners. For instance, the United States would primarily talk to MITI but not the FTC about competition policy matters. American officials knew that it was more effective to persuade MITI to give permission, rather than simply to urge the FTC to make efforts, even though they recognised the longstanding rivalry between MITI and the FTC. This attitude was not limited to government officials. When Kodak brought its complaint about Japanese competition policy

as a matter of trade dispute, the company plainly argued that 'our Japan specialists told us that the FTC was useless'.[66] Against this background, it seems that MITI increasingly saw itself as a ministry for competition policy, which held the risk of marginalising the FTC. That risk had already been indicated in the case of the holding company reform (see Chapter 5).

Besides its relationship within the government, there were two other sources of vulnerability for the FTC. The first was the relationship between the FTC and business through the *Koseitorihiki Kyokai* (Fair Trade Association). The *Koseitorihiki Kyokai* was a public corporation partly funded by subscriptions from nearly 700 companies/organisations. Some of the top executives were retirees from the FTC. While information exchange between the FTC and business was not harmful by itself, the *amakudari*-like relationship through this organisation inevitably created suspicions of collusion.[67] One of the severest criticisms was posed by a group of 'discount' retailers in 1994. The group strongly argued against the resale price maintenance on cosmetics, and suspected that the apparent reluctance of the FTC to ban that practice was caused by its collusion with cosmetics companies sponsoring the *Koseitorihiki Kyokai*. The group publicly asked the FTC about the effect of that relationship.[68] While their action did not make any practical difference, it successfully alerted the public to the vulnerability of the FTC in that aspect.

The second source of the FTC's vulnerability was the FTC's very status as an 'independent administrative commission'. It is true that the absence of the direct control of a particular minister other than the Prime Minister could help the FTC take strong actions, as actually demonstrated in the mid-1970s. Without vigorous support from the Prime Minister, nevertheless, independence would turn into isolation, increasing vulnerability to external pressure. Most typical of this was the case of collusive tendering among construction firms in 1992 (the so-called 'Saitama Doyokai' case). In that case, Setsuo Umezawa, the then Chairman of the FTC, was suspected to have abandoned a formal accusation due to political pressure from Kishiro Nakamura, the then construction minister (Nakamura was arrested afterwards). The case might be exceptional (and the parties themselves denied the accusation), but it revealed the difficulties the FTC Chairman faced in resisting such external political pressure. On this point, it should be noted that many observers suspected that the FTC had made a compromise with the government politicians in exchange for the promise of organisational reform, discussions about which had just begun.[69]

After all, the FTC does not have any political patron other than the Prime Minister. If there had been a 'competition policy minister', the FTC could have defended itself. It was obvious that the FTC Chairman could not (or should not, given those suspicious bureaucratic connections mentioned above) be granted equal status with politicians at ministerial level. The absence of a ministerial portfolio for competition policy also led to the absence of political experts similar to the competition policy *zoku*. The FTC's position was too precarious to depend on the will of the Prime Minister, who could not concentrate solely on

competition policy. It should also be noted that it was very difficult to demonstrate the Prime Minister's leadership in the face of various existing *zoku* groups, which generally had strong sympathies for business interests.

Conclusion

In Chapter 5, it was shown that the direction of competition law reform was far more consistent with the position of business representatives in the 1990s than it had been in the 1970s. This chapter has discussed matters of power structure and suggested that a possible explanation for that change was the rise of the relational power of business interests *vis-à-vis* other actors over time.

However, this is not because major business associations such as the CBI and the *Keidanren* increased their power. It is true that the CBI considerably extended the scope of its membership to non-manufacturing sectors, and that the growth of the debate on Europe helped stress the role of the CBI as representative of British business interests. Nevertheless, socioeconomic changes came to destabilise its internal unity and weaken its authority as the representative organisation. This offset the above positive changes. The weakness of the CBI was symbolically indicated by the fact that its leaders quickly changed their position from anti- to pro-reform once they encountered strong opposition from the business world. The weakness of the CBI was also revealed when the Conservative government was apparently reluctant to take steps towards reform, even after the CBI changed its position in favour of reform. The relationship between the Conservative Party and the CBI had not been very strong in the 1970s, and it remained weak in the 1990s.

Yet the retreat of the 'major organisation approach' was not only seen in relations between the Conservative Party and the CBI. The relationship between the Labour Party and the Trades Union Congress (TUC) also became precarious, especially under the Blair government. Whereas the Labour Party still largely depends on its traditional electoral/financial support, party leaders came to distance themselves from the TUC. After all, the TUC's representative strength had shrunk just like that of the CBI, due to socioeconomic changes such as the shrinkage of the blue-collar population, one of the TUC's chief power bases.

The result was the emergence of a new type of cooperative relationship between the Labour government and the CBI. On this point, it should be remembered that the Labour government finally dropped its proposal for a 'public interest test' for mergers, even though this had persistently been supported by the TUC.[70] By contrast, the government made much effort to ensure 'that the new competition law would be easier and less costly for business to follow'.[71]

In this framework, however, the CBI's influence was naturally limited. Indeed, the Labour government did not accept all of the arguments made by the CBI for competition law reform. Paradoxically, the less of a threat the CBI became, the more easily the Labour government felt it could approach it. For the Labour

government, cooperation with the CBI was the best way to avoid such criticisms as 'the Labour government ignores business interests' while blocking sectoral/individual business interests, which would perhaps be more formidable.

The influence of the major business associations also seemed to be on the wane in Japan. Yet Japan was different from Britain in the sense that the sectoral/individual approach became far more successful. The simultaneous growth of *zoku* groups helped sectoral/business interests find political support more easily.

The abandonment of all-business donations promoted this move. Internationalised and deregulated sectors and companies had now left the traditional framework, and politicians and public officials became more dependent on political donations and *amakudari* posts from remaining less internationalised/deregulated (hence less effective) sectors and companies. Some other factors, such as the economic slump and electoral reform, had widened the gap between the supply from businesses and the demand from politicians/public officials.

Since competition policy is applied to all industrial sectors in principle, one may argue that the reform of competition law had little to do with the rise of the sectoral/individual approach. Notwithstanding, it should be noted that some sectors/companies were more concerned about particular competition regulations than others. In fact, when the reform of the holding company regulation was discussed, relatively few sectors or companies were interested in it. It is true that the major business associations, particularly the *Keidanren*, were persistently interested in this issue, but the rapid change in the political atmosphere came after the financial sector became serious about it. It should also be remembered that the interests of the employees of one particular company, NTT, had a definitive impact on the reform.

In parallel with the structural change in the triangular relationship, the change in status of competition policy officials was quite remarkable. In Britain, even though the formal positions of the OFT and the MMC were still relatively weak, they gradually gained public confidence and substantially improved their position *vis-à-vis* other core actors in the competition policy network. They heavily depended on the DTI for their staff and financial resources, but the DGFT and the MMC commissioners were recruited from a wide range of expertise. It seems that in recent years the DTI has begun to see the competition law agencies not as its subsidiaries but as its partners.

In Japan, by contrast, it is questionable whether the FTC made the most of its formal status of 'independent administrative commission'. The FTC gained more staff and a bigger budget, a new office and a new ranking system for its Secretariat staff in the 1990s, but those changes did not appear to compensate for the FTC's vulnerability to pressure from the MoF and other ministries, from business interests and from politicians. What was worse, the political changes of the 1990s resulted in the radical breakup and retreat of the Socialist Party, the leading political supporter of the FTC in previous decades. While sectoral/individual triangular relationships developed in many other fields, competition policy

officials were isolated, rather than independent. In the mid-1980s, Karel van Wolferen had appreciated the FTC as 'the only official Japanese institution that has tried to hold out…against the system's informal practices and relationships that undermine the formal rules',[72] but it is doubtful whether he still did so in the 1990s.

8 Conclusion

The reform of competition law and development of the competition policy network in Britain and Japan

Unlike other textbooks of competition policy, this book attaches greatest importance to the interests and resources of core actors, as well as their power relationships. The underlying idea is that the policy output of competition law could better be described as the result of highly politicised processes, rather than solely the result of legal/economic considerations. By the same token, it is necessary to take account of domestic political factors in addition to the international economic/political factors in order to understand the recent phenomenon of the international convergence of competition law.

The previous chapters have shown that policy output was largely consistent with the power relationship between core actors in all of the four cases under examination. The metaphor of a 'network' seems to successfully conceptualise multiple inter-actor relations. After all, competition policy often leads to a more complicated decision-making process than other policies, due to the dualism of competition policy and industrial policy in government. Competition policy and industrial policy do not necessarily contradict each other, but their relationship is often critical, as shown in the above case studies.

To conclude the study, this chapter first highlights the characteristics of four competition policy networks (in Britain and Japan, in the 1970s and the 1990s) that have been discussed above. Referring to some very recent changes, the final section supplies some implications for the future development of British and Japanese competition policy.

Britain's competition policy network in the 1970s

In terms of actor interests, the British competition policy network was not very cohesive in the 1970s. In particular, there was a large gap between business interests and government politicians, whether Labour or Conservative, as discussed in Chapter 3.

With regard to restrictive trade practices, British companies had on the whole reduced their involvement already by the 1960s. It is true that the British economy had been full of restrictive trade practices until the early 1950s, but such practices had become less and less popular. More and more foreign competitors entered the national market following trade liberalisation, and

restrictive practices among domestic companies became less and less effective. The successful implementation of the Restrictive Trade Practice Act 1956 also discouraged many managers from conducting inter-firm collusion. On the other hand, the progress of the mass production/mass consumption system, as well as the rise of international competition, required British businesses to pursue economies of scale. Tough regulation on inter-firm collusion induced many companies to turn to the strategy of 'internalising' inter-firm relationships by consolidation. While the government initiative of creating 'national champions' was not very popular, British companies were on the whole very keen on mergers and acquisitions.

Since British businesses had on the whole reduced their involvement in restrictive trade practices, they were understandably not particularly concerned to block any strengthening of the rules on restrictive trade practices at much political cost. By contrast, British businesses were understandably intolerant of the development of controls on mergers. Given their interests as such, it was not surprising that major business leaders advocated introduction of the European model, which was extremely weak in implementing monopolies and mergers control at that time.

Governments (and the industrial policy officials guiding them) had different interests. From the late 1960s to the 1970s, their main concern was how to stop rampant inflation combined with economic slump and public frustration at this. Governments tried to solve the problem by various measures, most of which (including persuading trade unions to accept wage control) failed. The reform of competition policy came up in this context. The idea was that prices would fall if the government implemented tougher control over restrictive trade practices and industrial concentration. As a result, both Labour and Conservative governments proposed the reinforcement of competition policy against the interests of business. To this end, Labour and Conservative governments established the Commission for Industry and Manpower (CIM) and the Office of Fair Trading (OFT) respectively. Although the Conservative government was less radical and interventionist than the Labour government, both wanted to strengthen the regulatory scheme, particularly for industrial concentration. The prosperity of M&As and the growing industrial concentration in the British economy was so remarkable that even Conservative politicians became concerned at their impact on prices and consumer interests.

Under those circumstances, the competition policy officials could have played the role of bridging the gap between business and politicians/industrial policy officials, as the experts in competition policy. Apparently, however, they were not given enough chances to express their views, and neither did they seem interested enough to participate in policy discussions. They were presumably happy with the reform, since it reinforced the existing regulations, including the establishment of a new regulatory body. Nevertheless, the policy output failed to solve long-recognised problems such as the lack of an effective penalties scheme. It also introduced the mixture of competition policy and consumer protection, which was unnecessary from the viewpoint of the competition policy experts.

Weak cohesion of actor interests implies that power relationships in the policy network will be an important determinant of final policy output. From this perspective, Chapter 4 examined the power resources of core actors. For business interests, attention was drawn to the Confederation of British Industry (CBI), since it was quite active in the policy debate on the reform of competition policy. With over 10,000 members, the CBI was the largest business group in Britain, and was considered the leading business representative. However, it suffered seriously from lack of representative strength and internal unity. Its membership was mostly restricted to manufacturers and not seen as representing all industries. On the other hand, the size of the membership was too large to maintain sufficient internal unity. It should also be remembered that the CBI was very young as an organisation. It was only in the mid-1960s that three smaller business associations had merged into the CBI.

At least partly due to those weaknesses, the CBI could not establish a close enough relationship with government. Of course, government could never neglect the interests of businesses, for they played a major role in creating economic prosperity, which would very likely affect the electoral popularity of government politicians, and because they were the major sources of donations to some political parties, particularly the Conservative Party. Nonetheless, even the Conservative Party was not always consistent with the CBI, at least over the reform of competition policy. Even when a former CBI leader (John Davies) was appointed Secretary of State for Trade and Industry, the CBI did not appear to exploit that personal connection very much. Worse, the industry minister was replaced when the government proposed the Fair Trading Bill. The CBI's influence seems to have further waned as a result. Moreover, business leaders did not appear to exert any effective control over public officials. Industrial policy officials did not seem to be so sympathetic to particular business interests as to prioritise them over the public interest.

The lack of power resources and inter-actor connections was far more serious for the competition policy officials. Formally, the competition policy agencies were mere subsidiaries of the industry ministry in Britain. They had no authority to draft legislation on reform of competition policy, even though they were the only experts on that policy. Furthermore, they did not have a unitary organisation. Officials were separated into the restrictive trade practices part and the monopolies/mergers part. While they were experts in the specialised legal and economic field, they were not regarded as experts in policy-making, as were other government departments. In other words, British competition policy officials were isolated in the competition policy network, or it may even be said that they were virtually outside of the policy-making process.

To summarise, the British competition policy network of the 1970s had neither strong interest cohesion nor strong inter-actor connection between core actors. Government politicians and industrial policy officials were quite independent of business interests and competition policy experts. Hence they had a wide discretion in designing the policy output.

Japan's competition policy network in the 1970s

Just as in the case of Britain, the reform of Japanese competition law in the 1970s highlighted a large interest gap between business representatives and government politicians. The initial government proposal was rendered less stringent on the way, but inconsistency between the final policy output and the position of business interests was apparent. In fact, business leaders appeared to make every effort to get the bill ditched until the very last minute.

Compared with British companies, Japanese companies were interested more in restrictive trade practices and less in mergers and acquisitions. Although the US occupation forces introduced stringent rules after the Second World War, Japanese companies were not deterred from close inter-firm connections. The occupation forces dissolved the traditional framework for inter-firm collusion known as *zaibatsu*, but companies again got together under a new framework, the *keiretsu*. Often based on this framework, restrictive trade practices in Japan were in general very successful. This was mainly because of the originally closed domestic market, but the prosperity of restrictive trade practices in turn lessened the chances for foreign competitors to enter into Japanese market.

On the other hand, Japanese companies were not very active in mergers and acquisitions. It is true that a 'merger boom' came to Japan in the 1960s just as in Britain, but most mergers represented the consolidation of companies with the same *keiretsu* identity. Hence, industrial concentration was unlikely to go beyond the *keiretsu* boundaries. Of course, there were several cases (notably the Yawata/Fuji merger in the steel sector) where companies dissolved by the occupation forces were reunified and gained a strong market position. Yet those cases were rather limited. In fact, the degree of market concentration had by and large remained the same through the 1960s and the 1970s. Generally speaking, Japanese companies at that time were rather cautious about mergers. Japanese workers often opposed a merger plan partly because they had a strong attachment to their company, and partly because they were worried about the merger of their own (company-based) trade unions. Japanese managers were also reluctant, partly because they favoured co-existence and co-development strategies over relentless takeovers, and partly because their major shareholders (often banks and companies in the same *keiretsu* group) rarely applied much pressure for raising short-term profits by way of mergers and acquisitions.

Given the lack of interest in market domination among Japanese companies, the reforms would not have been evidence of the deviation of political interests from business interests if they had only been concerned with industrial concentration (e.g. the order of asset divestiture for dominant companies). In reality, the reforms were much more than that. Government proposals also included a reinforcement of the rules for restrictive trade practices, such as a new system of administrative surcharge. In contrast to the British case, the reforms clearly reflected the proposals made by competition policy officials.

There were several reasons why government politicians of the Liberal Democratic Party (LDP), who were normally quite sympathetic to business inter-

ests, went along with the ideas of competition policy officials even at the cost of their friendship with business. The prime reason was the same as in the British case: politicians were concerned about high-speed inflation and popular frustration against it. Yet there were more reasons particular to the Japanese case. One of those reasons was the conciliatory relationship between government and the opposition parties. The voice of the opposition parties was particularly influential in the 1970s, for the LDP was on the verge of losing its majority in the Diet.

Another reason why politicians supported the reforms was the lack of cohesion on this issue within the ruling party. Some factions were eager to regain electoral popularity by the reforms, while others were more concerned about business interests. Consequently, this issue was turned into a matter of political struggle between the factions, which was beyond the control of business.

Rather than the politicians, it was the industrial policy officials who were strongly against the reinforcement of competition policy. However, their interest was to keep their control over industry, and was different from the interests of business. While businesses and industrial policy officials agreed on the miscarriage of the reforms, they did not share the same interests. The formation of an effective anti-reform alliance was thus hindered by this lack of cohesion.

Although business interests exerted very little influence in the competition policy network in both Britain and Japan in the 1970s, the relational power of Japanese business *vis-à-vis* other actors was generally much stronger than that of British business. The peak business association, the *Keizai Dantai Rengokai* (Federation of Economic Organisations, *Keidanren*), was more powerful both internally and externally. Membership of the *Keidanren* was small (around 1,000) and limited to similarly large companies, which sufficed to maintain strong internal unity. At the same time, the *Keidanren* had strong representative authority, since it was composed of the leaders of the *keiretsu* groups followed by the large majority of Japanese companies.

Furthermore, the *Keidanren* had a strong connection with the LDP, as it collected political donations from its members for the sake of the party. Japanese companies also kept up good ties with public officials, particularly those working in industrial policy. After all, many companies employed retired public officials under the name of *amakudari*. The re-employment of ex-public officials in the private sector was not in itself strange in Britain, but the Japanese case was peculiar in the sense that ministries often sponsored a systematic replacement with a view to maintaining a good clientele relationship. The network between business, LDP politicians and industrial policy officials was so tight that it was often labelled the 'iron triangle'.

If that was the case, why then were businesses unable to persuade the government to abandon the reform plan despite such a close connection? This question is important as it hints at the particularity of competition policy in Japanese politics, which has often been ignored by Japanologists. Unlike other government agencies, the Fair Trade Commission (FTC) was not engaged in *amakudari* practices. It is true that many of its chairmen and commissioners were seconded from other ministries, but the number of the secondments from the industrial

ministry (the Ministry of International Trade and Industry, MITI) was relatively small. The competition policy agency was not put under the authority of the industry ministry, unlike its British counterpart.

Moreover, the independent status of the competition policy agency helped block the influence of MITI. Japanese competition policy officials did not have any formal authority to draft legislation (as in the case of Britain), but neither did industrial policy officials.

Of course, it was not very easy for competition policy officials to make alliance with government politicians against the strong 'iron triangle' connection. The 1970s reforms were very special in the sense that there were at least some factions sharing a positive view on reform, and the FTC had a vigorous chairman with strong leadership qualities (Toshihide Takahashi). However, it is worth noting that the Japanese competition policy network of the 1970s had the ability to maintain the independence of competition policy in the face of pressure from business and from industrial policy officials.

Britain's competition policy network in the 1990s

Reflecting the progress of economic and political internationalisation from the 1970s to the 1990s, as shown in Chapter 5, the actors finally agreed on introducing a European model of reform. However, their interests were not very cohesive at the beginning.

It was the competition policy officials who advocated reform most persistently. While there had been no comprehensive review of competition law since the 1973 reforms, British competition policy effected a substantial shift to the European/effect-based approach and away from the traditional/form-based approach. Having pursued this 'silent revolution', competition policy officials then pursued a formal legal change consistent with the substantive move. They also became more active in the policy debate, presumably reflecting the change in their work from the simple application of legal provisions to substantial considerations of illegality.

Despite strong calls from the competition policy officials, others did not align themselves until the mid-1990s. As for businesses, they were more and more inclined to consider introduction of the European model as beneficial, given the rapid progress of European integration in the 1990s. Nonetheless, growing pressure for international competition drove British companies more to mergers and acquisitions. As a result, some companies, especially the largest ones, became very reluctant to have the European model, which included tougher regulations on industrial concentration. This was why the business leaders at the CBI kept a conservative position in the earlier years of the reform discussions. However, the CBI later realised that British companies did not on the whole support its position. Hence it eventually effected a U-turn and supported the introduction of the reform.

Industrial policy officials appeared to be very cautious about large-scale reform of the existing system when Michael Heseltine, who did not put much

importance on competition policy, headed their department. They nonetheless became more positive about reform after that minister left office.

Against that background, the Conservative government, which had long been reluctant to carry out reform, gradually changed its position to a positive one. Nevertheless, some Conservative members were persistently hostile to the reform on the grounds that it was based on the European model. Other Tories opposed the reform because they opposed the extension of any type of economic regulation. As a result, the Conservative Party could never join in the pro-European reform alliance to a full extent.

By contrast, the Labour Party took a very positive attitude towards reform. The party had originally proposed more interventionist schemes such as the 'public interest test' for mergers, but those radical elements were withdrawn along the way. Despite the opposition of radical MPs, the party's leaders modified their position to make it more acceptable to other actors. They took advantage of this policy issue, contrasting their dynamic management with their rival's extended procrastination. Of course, it is noteworthy that the Labour Party became so liberal that it came to appreciate the benefits of market competition, reduced its traditional adherence to state intervention, and was now far more sympathetic to the interests of business. Accordingly, all core actors, except the Conservative Party, shared a more or less similar enthusiasm for reform when the Labour Party took office in 1997.

The convergence of many actors' interests in the pro-European reform position reflected some changes in the relational patterns between core actors. One of the most remarkable changes was the increase of centripetal force towards competition policy officials. Since the establishment of the semi-independent body (OFT), competition policy officials gained both self-confidence and public approval as the experts in competition policy. While they were mostly quiet under the leadership of 'anti-bureaucrat' Margaret Thatcher in the 1980s, they began publishing their own views quite actively thereafter. Although formal policy recommendations (i.e. Green Papers and White Papers) were still proposed by the Department of Trade and Industry (DTI), the OFT was widely recognised as the real expert. Now the Director General of Fair Trading (DGFT) was invited to appear before the House of Commons Trade and Industry Committee, and appears to have had a significant influence on its members.

The relationship between competition policy officials and industrial policy officials also changed. The DTI now treated the OFT as a partner. Industrial policy officials asked competition policy officials for advice more frequently. They seemed to be more respectful towards this advice than they had been in the 1970s. This was mainly because of the growing competence of the competition policy experts. However, it should also be remembered that the industrial policy officials became relatively less ambitious in consequence of the public sector reforms of the Thatcher government. In other words, the relational balance between competition policy and industrial policy changed in favour of competition policy.

Besides the growth of centripetal force towards competition policy officials, the retreat of collective approach by the top business organisation (i.e. the CBI)

also represented a remarkable change from the 1970s to the 1990s. The CBI extended its membership considerably to the service sector from the late 1980s. Yet the City and some other sector-based trade associations remained independent, and it was not clear to what degree the CBI had increased its representative strength. On the contrary, the extension of membership seemed to exacerbate the problem of internal dissension. It seems that CBI members' interests diversified further due to the progress of economic internationalisation. This decrease in the CBI's power to lead business was conspicuously demonstrated when it was forced to U-turn on its negative attitude to reform in the face of opposition from other interests. It should also be noted that there was still a gulf between the CBI and the Conservative Party. Before the CBI's U-turn, it was the Conservative government which was thought to be cautious about reform because of the CBI's opposition. Yet this idea was questionable, given that the Conservative government was still reluctant to change its position even after the CBI came to support reform.

Since its relationship with the Conservative Party was not very tight, the CBI could easily ally itself with the Labour Party when it took office in 1997. On the other hand, the Labour Party also wanted to establish good and stable relations with business. It carried out the reform that constrained the influence of trade union leaders, who were often hostile to business interests. This relaxation of the relationship between the Labour Party and trade unions was another important change of the 1990s. It also enabled the party's leaders to avoid the pressure of radical proposals for competition policy. As a result, business seemed to have gained more political influence with the Labour government than with the previous Conservative administration. However, relations between the core actors were generally very loose, and the relational power of business was limited. The loose structure of the British competition policy network was also an important precondition for many actors' coming to agree with the position of the competition policy officials rather easily.

Japan's competition policy network in the 1990s

In contrast to the British case, in Japan the 'iron triangle' network of businesses, LDP politicians and industrial policy officials became even tighter in the 1990s. As a result, it was even more difficult for Japanese competition policy officials to take the initiative than in the 1970s.

However, the traditional all-business type of triangular network was no longer the case in the 1990s. The progress of economic internationalisation together with tough competition diversified the interests of different sectors and companies, as in the case of Britain. Even in Japan, many companies became more market-oriented and less dependent on state intervention. Against this background, the *Keidanren* stopped providing collective political donations to the LDP. On the other hand, there were certain industrial sectors and companies still stuck in traditional modes of government/industry connections.

The rise of the sectoral/individual approach corresponded to the development of *zoku* groups in the LDP. Each *zoku* group specialises in a particular industrial/political sector, and the group's members have much knowledge of and many connections with those sectors. While the traditional top-down approach of faction leaders was still crucial, the bottom-up approach of those *zoku* groups became more significant in the decision-making process of the LDP from the 1980s on. The rise of *zoku* groups enabled individual sectors and companies to exert their political influence on the policy-making process more effectively.

Besides the development of the sectoral/individual approach, the rise in the bargaining power of business *vis-à-vis* politicians helped extend their influence over the policy-making process. Despite several reforms in political financing, Japanese politicians were still in great need of donations for election campaigns. In particular, the change in the electoral system to the small constituency system, although it was aimed at moving away from costly person-based voting, intensified person-based voting and rather increased the cost. On the other hand, the number of political donations generally fell due to the economic slump. Consequently, politicians became more and more dependent on their existing party donors.

The bargaining power of businesses *vis-à-vis* public officials also seems to have increased in the 1990s. The *amakudari* connection was considered less important as the government reduced the scope of economic regulation. Under the economic slump, furthermore, many companies became sensitive to the cost of hiring additional labour. Nevertheless, there was no change in the traditional promotion and retirement system of the civil service, and many public officials still sought their *amakudari* places. Against this background, it was not surprising that public officials generally became more sympathetic to those companies still willing to pursue *amakudari* practices.

The closer sectoral iron triangles were developed in such sectors as banking and construction, and the deregulation of the holding company prohibition was a typical case where the banking sector triangle functioned effectively. While the majority of companies did not have much interest in the reform, LDP politicians became anxious after the banking sector showed a serious interest. The support of another side of the triangle, the Ministry of Finance (MoF), was also significant, not only because the ministry was the most influential in the government, but also because it had a special relationship with the FTC. Although there was no evidence, it was widely thought that the MoF had exerted pressure on the FTC about this issue, through various personal connections.

Apart from the banking sector triangle, MITI vigorously backed up promotion of the reform. Taking account of the historic rivalry between MITI and the FTC, it was not surprising that MITI should want to reduce the regulatory scope of the FTC. MITI retreated from its traditional heavy interventionism and anti-competition policy stance by the 1990s, but this did not mean that the ministry lost its significance for competition policy officials. On the contrary, MITI

officials seemed motivated to extend the scope of their functions to competition policy, as their traditional function became obsolete. Their interest in competition policy seemed to have increased especially after competition policy began to be discussed in the context of trade policy under the Structural Impediment Initiative (SII). MITI was now able to participate in discussions on competition policy, provided that the issue was seen to affect international trade. In other words, the internationalisation of competition policy gave MITI a chance to get involved in it.

The drastic changes in the party political landscape after 1993 also changed politicians' views on competition policy. The FTC could no longer expect as much support from the opposition alliance as in the 1970s. The Socialist Party, which had long been the leading opposition party, was divided and reduced to a very small grouping. The new leading opposition party, the Democratic Party, did not have any firm pro-FTC position as a party. It is true that the LDP also became less powerful, relying on coalition government, and the power of its coalition partners was sometimes effective. The opposition of the Social Democratic Party (the former Socialist Party) to the holding company reform was a case in point. As typically shown in that case, however, discussions within the coalition tended to be informal and more likely to be influenced by other political factors.

Against that background, competition policy officials appeared very weak in the 1990s. While its status as an 'independent administrative commission' was a great advantage in the 1970s, the FTC suffered from an isolation caused by that status. Its close relationship with the MoF had been useful in creating a counterbalance to MITI in the past, but that relationship became rather problematic as the financial sector increasingly became the target of competition policy. Since there were no such political supporters as *dokkin* (anti-monopoly) *zoku*, the FTC was vulnerable to pressure from other political interests. This explains why many reforms could only be seen as 'window dressing', and why the FTC had been so powerless throughout the process of holding company reform.

British and Japanese competition policy: recent changes and future prospects

The reforms studied in this book did not complete the transformation of competition law. On the contrary, they can only be seen as the launchpad for further transformation.

In Britain, conditions are getting more favourable for the competition policy officials. Their strong supporter on the political side, the Labour Party, again won a landslide victory in the general election of 2001. Just after its re-election, the Labour government published a document[1] calling for radical reform of the competition regime. This was soon followed by a White Paper entitled *A World Class Competition Regime*.[2] The White Paper called for various reforms in the institutional framework in order to make the competition policy agencies strong, proactive and independent. Competition policy officials are now expected to

'take on a high profile advocacy role, both by advising on the impact of the Government's own laws and regulations on competition; and more widely acting to promote competition in the economy in a variety of ways'.[3] To respond to this increase in their responsibilities, the competition policy agencies are beginning to recruit more and more expert competition lawyers and economists rather than civil servants. The most symbolic appointment has been that of John Vickers as DGFT. He was previously Chief Economist at the Bank of England and a professor of economics at Oxford University with expertise in regulation and competition.

However, the new step is not seen as a revival of the old interventionism of the Labour Party, either. For example, the White Paper also proposes the modernisation of the merger regime. According to the proposal, the authority to make decisions on the vast majority of mergers will be transferred from the DTI to the competition policy agencies, so as to minimise political intervention. At the same time, the government has declared a clear shift from the conventional 'public interest test' to a new 'competition-based test' . Although sceptical about a plan to criminalise cartels, the CBI 'gives strong backing to government plans for enhancing competition' as it stated in its own news release.[4]

In other words, the new government proposal clearly reflects the above-discussed framework of the British competition policy network, which is mainly characterised by the rising status of competition policy officials and an increasing consistency between business and government interests.

In Japan, by contrast, recent changes have often suggested a weakness of competition policy *vis-à-vis* other political interests. There have been a number of remarkable positive steps, such as the abolition of most of the authorised/exemption cartels and the improvement of legal procedures to enable private individuals to take action. Notwithstanding, Japanese competition policy was on balance marginalised under the historic economic slump. The rescue of ailing companies took high priority over market competition. After the 1997 reforms, the Japanese government quickly carried out a large-scale relaxation of merger control in the 1998 session. When the government held its 'Industrial Competitiveness Council' in 1999, furthermore, businesses requested the removal of the stockholding limit for large companies,[5] apparently supported by MITI and the MoF. The industry minister, who was also a member of the Industrial Competitiveness Team of the LDP, openly argued that controls over industrial concentration should be relaxed for the sake of international competitiveness.[6] Against those proposals, competition policy officials did not apparently offer any constructive argument or counter-argument. The FTC Chairman himself once suggested that looser criteria should be applied to mergers if they contributed to the rescue of failing companies.[7] Whether his suggestion is economically justifiable or not, it evidently reveals the political atmosphere surrounding competition policy in the late 1990s.

This lack of concern for competition policy was obvious also when the government carried out a large-scale reform of the ministerial structure in January 2001.[8] While there was no change in the FTC's status of 'independent administrative commission', the restructuring of other ministries eventually

made the FTC an extra-ministerial agency affiliated to the Ministry of Public Management, Home Affairs, Posts and Telecommunications. While the introduction of competition policy into the postal and telecommunications sectors is becoming an important issue, it seems to have become more difficult for the FTC to argue for implementing competition policy in the Posts and Telecommunications section under the new regime.

Certainly, the economic slump also caused a further breakdown of traditional business styles. The fusion of the banks that had formed the core of the business groups was a case in point. Together with the Industrial Bank of Japan (IBJ), Fuji Bank and Daiichi Kangyo Bank, the core banks of the Fuyo and Ichikan groups respectively, established a common holding company, Mizuho, in September 2000. The core banks of Mitsui and Sumitomo groups, Sakura Bank and Sumitomo Bank, also started a new bank, the Sumitomo Mitsui Banking Corporation. However it would be misleading to say that the mergers of the core banks immediately led to the breakup of the traditional business groups. According to the survey reports of the FTC in 2000, nearly 70 per cent of companies affiliated with the merging banks (i.e. Daiichi Kangyo, Fuji, IBJ, Sumitomo and Sakura) believed that the mergers of their main banks would not promote the restructuring of their own industries. Furthermore, over 50 per cent of Fuyo and Ichikan group members expected their own group to survive or develop. The corresponding figure was even much higher (over 80 per cent) in the case of Mitsui and Sumitomo.[9] There is no doubt that Japanese companies will inevitably change their traditional market strategies and corporate governance with the growing influx of foreign competitors and investors. Yet because of Japanese companies' strong adherence to traditional practices, the speed of change is very slow, as discussed in Chapter 6.

The installation of a popular reformist, Junichiro Koizumi, as Prime Minister has apparently changed the political climate for competition policy. The government's plan of structural reform includes the promotion of market competition and the reinforcement of competition policy. Running before the wind, the FTC announced that it would ask for a budget enabling it to double the number of staff over the next five or six years.

Nevertheless, this does not seem to be bringing about a genuine development of competition policy. From the viewpoint of this study, the most crucial problem of Japanese competition policy lies in the power distribution of the competition policy network. In other words, the FTC is extremely vulnerable to pressure from various iron triangles between businesses (that are often less internationalised and more anti-competitive), *zoku* politicians and the ministries sponsoring them. This problem cannot be solved by a simple increase in staff.

In this respect, the British case hints at the right prescription for the development of Japanese competition policy. As stated earlier, one of the key differences between British and Japanese competition policy is the tightness of inter-actor relationships. In Britain, actors appear to keep some distance from one another, and this enables competition policy agencies to take the initiative. The planned reforms appear to be extending this opportunity, as they are aimed at enhancing

the independence of the competition policy agencies and developing their powers deserving of that independence.

On the other hand, all actors except competition policy agencies are too close in the Japanese competition policy network. Formal independent status gave an advantage to the FTC when other actors experienced serious dissensions as in the 1970s, but that same status seems to have driven the FTC to isolation in recent years. There is no need to change the formal status, but much need to change the circumstances surrounding that agency. In order to strengthen the relational power of the FTC *vis-à-vis* others, furthermore, it is necessary to upgrade the quality of staff, rather than to simply increase their quantity. Following the example of the British reforms, attempts should be made to recruit more and more expert competition lawyers and economists, so as to establish a 'revolving door' to the legal community and the universities.[10]

The development of competition policy is a never-ending story. Competition law needs reform as markets and business practices change. As the result of deregulation and market-oriented reforms in various sectors, the scope of competition policy will become even larger in both Britain and Japan. However, the reform of competition law should not be controlled by narrow-minded interests. Even if a reform is seen as a move to international convergence, judgement should be made by cautious analysis of its effect on the national economy. The most popular medicine does not always work. Different medicines should be prescribed for different symptoms. For the right prescription, the doctors – the competition policy agencies – should be competent enough, both formally and substantially, to preserve their independence from unsound outside intervention.

Notes

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5 External changes and the reform of British and Japanese competition law in the 1990s

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6 Interests of the core actors in the competition policy network of the 1990s

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7 Changes in the distribution of power resources from the 1970s to the 1990s

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22 It may also be noteworthy that he was responsible for the presentation of the Competition Bill at the time of its second reading in the House of Lords in October 1998.
23 The *Financial Times*, 8 November 1997, for instance, quotes the statement of Sir Clive Thompson, a chief executive of Rentokil, the environmental services company, that 'Businesses support centre-right policies. This [Labour government] is a centre-right government'.
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38 S. Wilks, 'Institutional Insularity: Government and the British Motor Industry since 1945', in M. Chick (ed.) *Governments, Industries and Markets: Aspects of government/industry relations in the UK, Japan, West Germany and the USA since 1945*, Aldershot, Elgar, 1990, p. 173. This view was widely shared, according to Theakston. See K. Theakston, 'Whitehall, Westminster and Industrial Policy', in D. Coates (ed.) *Industrial Policy in Britain*, London, Macmillan, 1996, p. 172.
39 Nihon Keizai Shimbunsha (ed.), *Kanryo – Kishimu Kyodai Kenryoku (Bureaucrats – Creaking Great Power)*, Tokyo, Nihon Keizai Shimbunsha, 1994, pp. 427–35.
40 *Ibid.*, p. 424.
41 See J. M. Ramseyer and F. M. Rosenbluth, *Japan's Political Marketplace*, Cambridge MA, Harvard University Press, 1993, pp. 115–19.

42 S. Wilks, *The Office of Fair Trading in Administrative Context*, London, Centre for the Study of Regulated Industries, 1994, p. 21.
43 I. Ramsay, 'The Office of Fair Trading: Policing the Consumer Market-place', in R. Baldwin and C. McCrudden (eds) *Regulation and Public Law*, London, Weidenfeld and Nicolson, 1987, p. 182.
44 John Methven, the first DGFT, once stated that

> my staff, which has to span a wide field – after all, competition policy, consumer affairs and consumer credit is a wide field – is recruited both from within the UK civil service and from outside it. Thus we have drawn people from retailing, industry (like myself), advertising, consumer organisations, new towns and local government.

See M. J. Methven, 'The Office of Fair Trading', in D. G. Lethbridge (ed.) *Government and Industry Relationships: The Lubbock Memorial Lectures 1974–5*, Oxford, Pergamon, 1976, p. 68.
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48 See David Sawers' 'Personal View', in the *Financial Times*, 4 August 1992.
49 For more details, see S. Wilks, *In the Public Interest: Competition policy and the Monopolies and Mergers Commission*, Manchester and New York, Manchester University Press, 1999, p. 87.
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53 Those two cases concerned the exclusive agreements on the trade of new motor cars and the restrictive agreements on free ice cream freezers. See P. W. Dobson and M. Waterson, *Vertical Restraints and Competition Policy*, London, OFT, 1996.
54 *Financial Times*, 21 July 1995 (parentheses added).
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58 A large part of the authority to supervise the financial sector was removed from the MoF with the establishment of the Financial Supervisory Agency in June 1998. Further transfer was carried out when the Financial Supervisory Agency was renamed the Financial Services Agency in July 2000.
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60 Asahi Shimbun Keizaibu, *Okurasho: Yuganda kenryoku (MoF: The distorted power)*, Tokyo, Asahi Shimbunsha, 1997, pp. 193–4
61 T. Ikuta, *Kanryo: Japan's hidden government*, Tokyo, NHK Publishing, 1995, pp. 168–9.
62 FTC, *Koseitorihikiiinkai Nenjihokoku (Annual Report of the FTC) 1991*, Tokyo, Koseitorihikikyokai (my emphasis).

63 In the interview of January 1998. A similar comment also appears in *Foresight*, December 1997, p. 99.
64 T. Ikuta, *Kanryo: Japan's hidden government*, Tokyo, NHK Publishing, 1995, pp. 166–7, 171.
65 This has been pointed out by Professor Atsuya, who currently works for Hokkaido University and was formerly head of the FTC Secretariat Bureau (1988–90), in the interview of January 1998.
66 See *Nikkei Business*, 28 October 1996, p. 131.
67 For example, see S. Kitazawa, *Shinku tanku mo kan no shuchu (Think Tanks are also in the Power of Bureaucrats)*, Naguricom, 2000. Available online at http://www.the-naguri.com/kita/kita24.html (30 May 2001).
68 See for example *Shukan Toyokeizai*, 4 June 1994, pp. 40–3.
69 It is impossible to find out if this was true. For example, however, E. Washio, the JTUC leader, openly complained that 'the FTC turned round its attitude in exchange for its organisational reinforcement'. See *Asahi Shimbun*, 5 December 1996.
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71 *CBI Annual Review 1998*, London, CBI, p. 5. With regard to the CBI's view of the Labour government, see CBI, *A Prohibition Approach to Anti-competitive Agreements and Abuse of a Dominant Position Draft Bill: CBI response*, London, CBI, 1997.
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8 Conclusion: the reform of competition law and development of the competition policy network in Britain and Japan

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2 DTI, *Productivity and Enterprise: A world class competition regime*, Cm. 5233, London, HMSO, 2001.
3 *Ibid.*, para 4.14.
4 CBI news release, 31 July 2001. Available online at http://www.cbi.org.uk/ (20 August 2001).
5 See *Keidanren*, *Wagakuni Sangyo no Kyosoryoku Kyoka ni muketa Daiichiji Teigen (The First Proposal for the Reinforcement of the Competitiveness of Japanese Industry)*, Tokyo, *Keidanren*, 1999.
6 Mr Mitsuo Horiuchi, see *Asahi Shimbun*, 12 May 1999.
7 *Asahi Shimbun*, 9 June 1999.
8 With regard to the administrative reform in 2001, see for example Administrative Reform Council, *Final Report of the Administrative Reform Council (Executive Summary)*, Tokyo, Official Residence of the Prime Minister, 3 December 1997. Available online at http://www.kantei.go.jp/foreign/971228finalreport.html (19 July 2001).
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