because price competition was weak.[19] Consequently, more concentrated industries will not necessarily exhibit larger divergences between price and marginal cost than do other, less concentrated, ones.

Factors besides concentration that influence price competition in Japan

Because the relatively great industrial concentration of Japan affords a weak basis for judging the intensity of price competition there, attention may be directed to two factors that bear more directly on pricing behavior.

First, the antitrust laws of Japan are more permissive than those of the United States; the penalties for violating Japan's anti-monopoly laws are minute, and the resources devoted to their enforcement are rather minimal. To the extent that US antitrust laws do impede collusive practices, these considerations favor weaker price competition in Japan than in the United States.

Second, business firms in Japan are somewhat inclined to have long and persistent trading relations with one another. These relations are implicit—not detailed in written agreements—but are neither entered into lightly nor broken off abruptly. The most tangible manifestation of such long-term trading ties are the business groups of various kinds with which a large number of Japanese corporations are affiliated. But even households in Japan are far more likely than Americans to patronize the same shops repetitively and habitually. These durable ties between firms and their customers divert competition away from price reductions and toward higher product quality and more reliable service.

Both of these topics warrant further attention and to that we now turn.

Anti-monopoly laws of Japan

Japan's anti-monopoly laws are a legacy of the American Occupation. Originally enacted in 1948 as a part of the package of reforms that also included the breakup of the zaibatsu, the anti-monopoly laws of Japan have several features in common with the antitrust laws of the United States. First, some of the specific language of the Sherman Act and Clayton Act (the US antitrust laws) is incorporated into the Japanese statute—"conspiracy in restraint of trade", "tend to monopolize", and so on. Second, the Act established a new government agency, the Fair Trade Commission of Japan, charged with the responsibility for investigating violations of the anti-monopoly laws, and also empowered to reach judgments and issue decrees. The Fair Trade Commission of Japan has an analogous role to that of the Federal Trade Commission of the USA. And third, many of the same practices that have been the subject of antitrust cases in the United States have also run afoul of anti-monopoly law in Japan—resale price maintenance, exclusive dealing, customer restrictions, price-fixing rings, and mergers.

For all the similarities, however, there are also striking differences between Japanese and US antitrust laws. First, there are significant exemptions to the anti-monopoly laws of Japan that have no counterpart in the US statutes. The Fair Trade Commission can designate an industry as in recession, and therefore temporarily exempt from anti-monopoly laws. Additionally, an industry may be granted exemption from anti-monopoly laws for the purpose of "rationalization". There is no intellectually respectable basis for either exemption; neither promotes an economically efficient allocation of resources. In the ensuing years there have been hundreds of industries designated either as recession cartels or rationalization cartels. Perhaps surprisingly, there is very little evidence that this widespread legalization of blatant price-fixing has actually resulted in contractions of output or rises in price in the designated industries. A cartel, legal or illegal, is a prisoners' dilemma: though it is mutually advantageous for firms in the same industry to contract output or raise prices, it is more profitable for any one of them to do the opposite. Legal authorization to form a cartel does not in itself change this.

A second difference between Japan's antitrust law and that of the USA is that the resources devoted to investigating potential violations of anti-monopoly laws are rather limited in Japan. The Fair Trade Commission is the only agency of the Japanese government authorized to pursue such cases. In the United States, not only the Federal Trade Commission (in many ways the model on which Japan's Fair Trade Commission was founded) but also the Justice Department and private citizens (if arguing that they themselves have been harmed) are empowered to bring suit against antitrust violators.[20] Private citizens are encouraged in this by the prospect of receiving treble damages—compensation equal to thrice the value of harm inflicted as judged by a court. In Japan the executive branch prosecutions of anti-monopoly cases are not strictly for violation of the anti-monopoly laws, but for failure to comply with a Fair Trade Commission order, always the end result of the Commission's own tortuous investigation and negotiations with the violator. The Fair Trade Commission has a meager staff (fewer than 200 inspectors), with limited powers of subpoena and a small operating budget. It is therefore hardly surprising that it brings few actions (a total of thirty in fiscal year 1992, for instance) compared with the hundreds of antitrust actions brought in the USA each year.

A final difference between antitrust laws in Japan and the USA is that the penalties for violating the anti-monopoly laws of Japan are both trivial and seldom even invoked. In 1977 the anti-monopoly laws were amended to raise the highest civil fine allowed by a factor of ten to 5 million yen (well under $50,000) and also to allow the FTC to set a surcharge of 0.5–2 percent of a cartel's earnings. The aggregate of such surcharges levied in 1997 totaled 5.9 billion yen. The highest fine that can be invoked against even the largest corporations is typically in thousands of dollars only. The criminal penalties for violation of a Fair Trade Commission order include imprisonment, but this penalty has never been applied. In contrast, the maximum fine for violating the US Sherman Act is currently set at $10 million, and treble damage awards in US antitrust cases are essentially boundless and have reached millions of dollars. The usual outcome of antitrust actions brought by Japan's Fair Trade Commission is either a consent decree or a cease and desist order, neither entailing any fine at all. US companies often employ in-house attorneys to determine that each aspect of their ongoing operations is in compliance with antitrust laws. Few Japanese corporations bother to do this. This is hardly surprising when the worst penalty likely to be invoked is whatever adverse publicity attends a public reprimand from the Fair Trade Commission.

The anti-monopoly laws of Japan have never received the enthusiastic support of the long-ruling Liberal Democratic Party. As early as 1953, the first year after the American Occupation ended, the anti-monopoly laws of Japan were significantly amended to weaken proscriptions against mergers of large firms and widen the explicit exceptions even from prohibitions on price fixing. Recently, the "weak" anti-monopoly laws of Japan have been the basis for US complaints in the ongoing Japan–US trade talks, and the government of Japan has promised to devote more resources to investigating violations. But so far, Japan's anti-monopoly laws are more permissive and less of a weight in the calculations of firms than is true of the US antitrust statutes. However, one can argue on this basis that price competition is weaker in Japan than in the United States only to the extent that US antitrust laws have proscribed collusive practices. And the many critics of antitrust laws argue, to the contrary, that their main effect on the operations of US companies has been to raise the costs of organizing production or informing customers about products.[21]

Besides antitrust laws, there is another important factor influencing price competition in Japan—the prevalence of long-term trading ties.

Long-term trading ties

Firms rely upon a variety of measures to assure that their trading partners comply fully with specifications pertaining to the characteristics of the product or service exchanged, the promptness of delivery, and so on. In the United States the threat of a lawsuit in event of contract breach is one of the important factors. But in Japan lawsuits are seldom resolved quickly, and even in the event of a favorable outcome are unlikely to fully compensate for business losses. The main protection against fraud in Japan, and to only a slightly smaller degree elsewhere, is the firm's diminished reputation. A reputation is, precisely, an expectation of a level

[19] This idea is developed by John Sutton, *Sunk Costs and Market Structure*, Cambridge, Mass.: MIT Press, 1991.

[20] There is a formal provision in the anti-monopoly laws of Japan that allows private suits, but in fact there have only ever been a handful of such suits and none has ever resulted in compensation of the plaintiff: J. Mark Ramseyer, "The Costs of the Consensual Myth: Antitrust Enforcement and Institutional Barriers to Litigation in Japan", *Yale Law Journal*, vol. 94 (1985), pp. 604–45.

[21] For a cogent statement of this position, see Harold Demsetz, "How Many Cheers for Antitrust's 100 Years?" *Economic Inquiry*, vol. 30 (1992), pp. 207–17.