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## EXECUTIVE SUMMARY

The very heart of Kodak's case involves a "distribution bottleneck" by which Fujifilm allegedly keeps Kodak off Japanese retail shelves. This complaint has emerged as the major focus of what Kodak wants from the Section 301 case: access to the Fujifilm primary wholesalers (the so-called "tokuyakuten") to enable Kodak to reach Japanese consumers.

With this submission, Fujifilm provides new and compelling factual information -- the results of extensive surveys assisted by experienced market research firms -- that demonstrates Kodak is dead wrong. Kodak may try, but it cannot hide from these facts:

- The vast majority of customers of the Fujifilm tokuyakuten already carry Kodak or have an existing relationship with a Kodak supplier. According to a survey of the tokuyakuten's customers, 78 percent of them -- accounting for 87.3 percent of the tokuyakuten's total surveyed sales volume -- either carry Kodak or have ready access to it. This degree of penetration applies equally throughout Japan, not just in Tokyo and Osaka. There can be no "bottleneck" blocking Kodak's access if the tokuyakuten's customers already carry Kodak.
- The tokuyakuten are not an "essential facility." Indeed, although there are many outlets in Japan, 17 percent of the outlets represent 73 percent of the sales volume. The survey results demonstrate that Kodak has substantially penetrated these high volume outlets.
- Kodak is carried by a wide range of secondary dealers and those dealers thoroughly cover the entire country of Japan. Indeed, if one considers the effective sales areas of only 17 of the 91 dealers listed in "Rewriting History," these alone provide coverage for all of Japan.
- In the survey of tokuyakuten customers, we separately identified those customers that provided a significant reselling function (secondary dealers, photofinishing labs, and those who resell to small outlets such as resort shops). Approximately 80 percent of the sales volume to those resellers goes to resellers either carrying Kodak or having an existing relationship with a Kodak supplier.

- In a third party survey of Kodak availability in retail outlets, the results show Kodak widely available throughout Japan. Kodak is present in outlets accounting for between 56.4 and 77.4 percent of total film sales volume, depending on the geographic region. This finding fundamentally undermines Kodak's case.
- Kodak's best coverage is in photo shops, the outlets where Kodak alleges the greatest degree of Fujifilm control. Depending on geographic region, Kodak is available in photo shops representing between 74.0 and 91.8 percent of total sales volume for this outlet type.
- Consumer preference survey results corroborate what the coverage survey results show: that in any one region of Japan no more than 17 percent of consumers cite lack of availability as a reason not to purchase Kodak film. The vast majority of Japanese consumers do not perceive any problem with Kodak's availability at the retail level.

The evidence provided in this submission shows that the alleged "distribution bottleneck"-- the centerpiece of Kodak's case -- is a sham. The bottom line is that Kodak is widely available in Japan: not just in Tokyo and Osaka, but all over Japan; not just in large discounters, but even (and indeed especially) in the supposedly Fujifilm-affiliated photo specialty stores. Where Kodak is not available, not much buying and selling goes on. Kodak is available where it matters -- where the substantial volume of sales take place.

This new evidence utterly destroys Kodak's case and lends further support to the issues discussed in Section IV of "Rewriting History": the reasons for Kodak's difficulties in Japan have to do with issues like brand preference, home team advantage, innovation, quality, and Kodak's own mistakes in Japan -- not some public-private anticompetitive plot.

## DISCUSSION

A. A Survey of The Tokuyakuten's Customers Shows That There Is No "Distribution Bottleneck"

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Kodak's argument about a "distribution bottleneck" fails both empirical and logical tests.

A survey of virtually all of the tokuyakuten's customers reveals that the vast majority of these customers already carry Kodak film. Since Kodak Japan and the Fujifilm tokuyakuten are at the same point in the distribution chain, it is only logical that they compete for the same customers and would therefore overlap. The tokuyakuten survey proves empirically what theory would predict.

1. Most of the tokuyakuten's customers already carry Kodak

The most basic empirical test of Kodak's "distribution bottleneck" theory is to examine the buying patterns of the tokuyakuten's customers. If most of the retailers and dealers that purchase Fujifilm from the tokuyakuten do not carry Kodak, then at least there is an argument that Kodak's lack of a relationship with the tokuyakuten is causing it to lose customers. On the other hand, if most of the tokuyakuten's customers also purchase Kodak from other sources, then Kodak's theory is dead on arrival: there cannot be a bottleneck if the companies that buy from the tokuyakuten already carry Kodak.

Fujifilm, with the assistance of the tokuyakuten, has now subjected Kodak's theory to this basic test. The theory failed -- spectacularly. The tokuyakuten have surveyed all of their significant customers to determine whether they carry Kodak. Most do, and the number is even more impressive when controlled for volume. Those customers that do not carry Kodak were then asked whether they have a regular relationship with Kodak Japan or with secondary dealers or

photofinishing labs that sell Kodak film. When these customers that have an existing relationship with a Kodak supplier are added to those that already carry Kodak, it is clear that Kodak's lack of a relationship with the tokuyakuten has been completely irrelevant to its ability to attract customers.

Each of the four major tokuyakuten surveyed all customers that buy a significant quantity of film.<sup>1</sup> A total of 4,772 retailer, secondary dealer, and photofinishing lab accounts-- including 13,445 retail outlets -- were included in the survey.<sup>2</sup> NTT Telemarketing Inc. then supplemented the results of the survey with its own telephone survey of customers not carrying Kodak to ascertain why these companies did not carry Kodak. Finally, the results of the survey were collated by Nippon Research Center Ltd., an independent research firm. Fujifilm is prepared to verify the tabulated results of the survey, broken down by tokuyakuten and by sales region, as well as the raw data on which the tabulations are based. Exhibit 1 provides a more detailed explanation of the survey methodology.

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<sup>1</sup> Specifically, the tokuyakuten sales personnel reviewed their customers and for each one indicated whether the particular customer carries Kodak or has an existing Kodak supplier. When there was any doubt, the sales personnel confirmed either by telephone or by a store visit. For each tokuyakuten, the customers surveyed accounted for more than 95 percent of its total sales volume in the past half year. We did not include the three smaller tokuyakuten that sell Fuji brand film because Kodak has not alleged their participation in the supposed bottleneck.

<sup>2</sup> Since more than one tokuyakuten sell to some customers, in many cases the same customer was surveyed by two or more tokuyakuten. These overlaps have been removed from the total figures provided here.

The results are devastating to Kodak's case, as demonstrated by Figure 1.

Of all the accounts surveyed, 62.0 percent currently carry Kodak film. Another 16.0 percent have regular business with secondary dealers or photofinishers that sell Kodak. Thus, a total of 78.0 percent of the tokuyakuten's combined accounts either already purchase Kodak from another source or have ready access to Kodak through current business relationships.<sup>3</sup> Given this coverage for Kodak, it is obvious that any of the tokuyakuten's customers without an existing Kodak supplier could easily obtain Kodak if they wanted it.

The customers included in the tokuyakuten's survey range from small accounts with a single storefront to huge accounts with dozens of outlets. Accordingly, these customers vary significantly in the volume of their color film purchases. To control for these variations in customer size, the tokuyakuten determined for each customer surveyed the total volume of consumer negative photographic film purchased during the six months from April 21 to October 20, 1995.

Upon collating the survey results with these volume figures, an even stronger picture of Kodak's success with the tokuyakuten's customers emerges. Specifically, customers accounting for 77.3 percent of the tokuyakuten's combined sales volume currently carry Kodak

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<sup>3</sup> Interestingly, one of the retailers that carries Kodak is Asanuma, a wholly owned subsidiary of Asanuma Shokai, the largest of the Fujifilm tokuyakuten. Asanuma buys directly from Kodak Japan. Kodak claims that the tokuyakuten maintain their "distribution bottleneck" by pressuring and threatening retailers not to purchase Kodak. This claim is so far from true that the largest of the tokuyakuten does not even try to stop its wholly owned subsidiary from buying and selling Kodak film.

FIGURE 1

film, and customers accounting for another 10.0 percent of total volume have regular business with an existing Kodak supplier. Accordingly, customers accounting for 87.3 percent of the tokuyakuten's combined surveyed sales volume either already carry Kodak or have ready access to Kodak through established business relationships. See Figure 1.

The results of the survey do not vary significantly by geographic area. Kodak concedes that it has "relatively unimpeded access" to major retailers in Tokyo and Osaka.<sup>4</sup> Yet the survey shows that Kodak is doing as well or better in selling to the tokuyakuten's customers outside the two largest metropolitan areas. See Figure 2.<sup>5</sup> Ironically, Kodak's performance in the areas including Tokyo and Osaka, which Kodak has characterized as a competitive "shark tank,"<sup>6</sup> is no better and no worse than its overall performance. This suggests that Kodak's problem is not one of access, but one of consumer interest.

The results of this comprehensive survey are completely at odds with Kodak's "distribution bottleneck" theory. At the core of Kodak's complaint is the fact that Fujifilm's tokuyakuten are single-brand distributors that do not carry Kodak. Kodak argues that the tokuyakuten are an "essential facility" for selling film in Japan, and that without relationships with the tokuyakuten Kodak is unable to achieve efficient distribution of its products.

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<sup>4</sup> Kodak's November 6, 1995 submission at 50.

<sup>5</sup> The underlying data for Figure 2 are provided in Exhibit 2.

<sup>6</sup> Kodak's November 6, 1995 submission at 31.

FIGURE 2

The results of the tokuyakuten's survey show otherwise. These results show that Kodak is already carried by the overwhelming majority of the tokuyakuten's customers. Relationships with the tokuyakuten would not gain Kodak anything; the vast bulk of the tokuyakuten's customers already buy Kodak or have established business relationships with Kodak film suppliers. Kodak's argument that lack of access to the tokuyakuten prevents it from selling to the tokuyakuten's customers is plainly baseless. Kodak's problem is not that these customers do not buy Kodak, much less that they do not have the opportunity to buy Kodak. Kodak's problem is that these customers do not buy enough Kodak, and the reason for that is that most consumers prefer the Fuji brand. Consumer preference, not distribution problems, explains Kodak's low share of the Japanese market.

In fact, as part of its survey NTT Telemarketing asked the customers that once carried Kodak why they stopped carrying Kodak. The answers are quite revealing, as shown in Figure 3. The dominant explanation -- by 54.6 percent of respondents -- was that Kodak did not sell well.<sup>7</sup> NTT Telemarketing went on to ask customers why they believed Kodak did not sell well. The overwhelming response, as shown in Figure 4, was that consumers simply did not choose Kodak when they came to the store to buy film.<sup>8</sup> Many customers also indicated "bad inventory turnover" as a reason not to continue carrying Kodak.

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<sup>7</sup> Another explanation -- amounting to an impressive 13.6 percent of respondents -- was that Kodak's salesmen did not visit the customers. See Figure 3.

<sup>8</sup> The underlying data for Figures 3 and 4 appear in Exhibit 3.

FIGURE 3

FIGURE 4

These results reveal a fundamental problem for Kodak: even when Kodak is on the shelf, consumers strongly prefer other brands. Fujifilm noted in "Rewriting History" Kodak's failure to keep pace with Fujifilm's innovations, its failure to invest sufficient resources in the Japanese market, its failure to set prices aggressively, and its failure to advertise adequately in Japan.<sup>9</sup> These failures are reflected in a strong Japanese consumer preference for Fuji brand film.<sup>10</sup>

2. The retail market structure in Japan does not impede Kodak's access to the retail store shelf

Kodak contends that the structure of the Japanese film retail sector makes the tokuyakuten an "essential facility" for penetrating the retail market. Specifically, Kodak argues that the large number of film outlets in Japan makes it impossible for Kodak to get wide distribution of its film without the tokuyakuten's assistance.<sup>11</sup> Yet the above survey demonstrates that Kodak in fact has achieved wide distribution. How has this been possible, given the large number of Japanese outlets?

Kodak's arguments grossly exaggerate the difficulties posed by the Japanese retail market structure. First, although there are a large number of outlets in Japan, around one-sixth of those outlets account for about three-quarters of total film sales volume; furthermore, these high volume outlets boil down to a far smaller number of actual retail accounts. Second, with regard to the large number of low volume outlets, access to the tokuyakuten is irrelevant, since these retailers

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<sup>9</sup> "Rewriting History" at 173-96.

<sup>10</sup> As discussed further in Section C.2 below, Japanese consumers have a strong preference for Fuji brand film and rarely cite "lack of availability" as a reason not to buy Kodak.

buy film not from the tokuyakuten, but rather from multibrand secondary dealers that generally carry Kodak.

According to Photo Market 1995, there were 279,000 Japanese retail outlets that sold film in 1994. This figure is certainly a large number, though not significantly larger than the corresponding figure for the United States.<sup>12</sup> But it is a deceptive number, because in fact most of the film in Japan is sold by a relatively small number of retailers. Again, according to Photo Market 1995, a few major outlet types -- photo shops, discounters, department stores, and supermarkets -- accounted for 73 percent of total film sales volume in 1994, but only 17 percent of the total number of outlets.<sup>13</sup> These data are provided in Figure 5. In addition, 147,500 of the 279,000 outlets consisted of tobacco shops, book stores, laundry shops, and other small outlets which collectively accounted for only 10 percent of total film sales. See Exhibit 4.

(..continued)

<sup>11</sup> Kodak's November 6, 1995 submission at 160-162.

<sup>12</sup> Audits & Surveys Worldwide, Inc. determined that there were 239,410 outlets that sold film in the United States in 1994. Note that this figure, unlike the Photo Market 1995 total, does not include outlets in tourist or leisure areas.

<sup>13</sup> Photo Market 1995 at 129-130 (copied and translated pages provided in Exhibit 4). Kodak repeatedly stresses the relative importance of photo shops in distributing film in Japan, as if this fact alone is somehow exclusionary. See Kodak's November 6, 1995 submission at 160-61. While Japan does differ from the United States in this regard, the film markets of other industrialized countries more closely resemble Japan than the United States. For example, photo shops in Germany sell more film than any other type of outlet, representing approximately 40 percent of that country's film sales. It is the dominance of the U.S. film market by discount chains that is unusual, not the relative importance of photo shops in Japan.

FIGURE 5

Even these surprising data, however, grossly understate the degree of concentration in the Japanese distribution chain. According to the tokuyakuten's survey of its customers, over 95 percent of the tokuyakuten's total sales volume went to 4,772 retail or dealer accounts. Most of these accounts are relatively large retailers; the remainder are a few hundred resellers that collectively reach all the other hundreds of thousands of film outlets in Japan.

For a manufacturer of film seeking distribution of its product in Japan, the total of 279,000 outlets is thus a meaningless number. What matters is that fewer than 5,000 sales accounts (or approximately 13,000 outlets) collectively cover the vast bulk of the Japanese film market. And whatever difficulties there are in reaching these key sales accounts, Kodak has already surmounted them. As discussed above, Kodak is already actually present in 62 percent of the accounts serviced by the tokuyakuten, and these accounts comprise 77 percent of the tokuyakuten's combined surveyed sales volume. Moreover, as discussed in Section B, Kodak also has a comparable degree of availability in the resellers that distribute further to smaller retail outlets.

3. If the tokuyakuten carried Kodak brand film, they would be competing directly with Kodak Japan

Kodak says that it wants to be able to sell film through the tokuyakuten.<sup>14</sup> Yet in making this request, Kodak ignores the basic structure of the distribution system: the tokuyakuten are at

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<sup>14</sup> See Kodak's "Request for Remedies," July 27, 1995. See also "Kodak Lays Out Demands to Settle 301 Case on Japanese Film Market," Inside U.S. Trade, at 15 (July 28, 1995); "Kodak Files Request for Remedies," BNA International Trade Reporter, at 1314 (August 2, 1995).

the same level as Kodak Japan and thus compete directly with Kodak Japan.<sup>15</sup> The diagram in Figure 6 illustrates this point. The results of the tokuyakuten customer survey confirm this basic structure and thus make clear that any arrangements between Kodak Japan and the tokuyakuten would be completely impractical. Why would Kodak Japan want to sell film to distributors whose customers overlap so thoroughly with its own? More importantly, why would the tokuyakuten want to buy Kodak film from a company that would be their competitor for Kodak sales to retail and dealer accounts?

Kodak may want to reach that last portion of the tokuyakuten customers, the 13 percent of sales volume to customers without already established business relationships with a Kodak supplier. But consider the situation from the perspective of the tokuyakuten. Kodak Japan wants to supply directly the bulk of the market -- those customers accounting for almost 80 percent of the total sales volume of the tokuyakuten. Kodak wants to leave the tokuyakuten the remainder -- the hard to serve, low volume outlets. In a one-sided deal, Kodak might want

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<sup>15</sup> Note that Kodak complains about single-brand distribution, but has its own single-brand distributor -- Kodak Japan. Furthermore, none of the other Japanese film product markets in which Kodak competes -- x-ray film, graphic arts film, motion picture film, or microfilm -- has a distribution system characterized by primary reliance on multibrand wholesalers. All manufacturers in these other markets rely predominantly on either direct or independent single-brand distribution. Indeed, for its microfilm sales Fujifilm sells through, among others, the same single-brand tokuyakuten through which it sells consumer photographic film. Yet Kodak has admitted on repeated occasions that the microfilm and other product markets are open, competitive, and free of market barriers. See, e.g., Transcript of Ira Wolf Speech to Foreign Correspondents Club of Japan, August 26, 1995, at 5; "Kodak Answers," July 30, 1995, at 2. It makes no sense that single-brand distribution represents a barrier to competition in the color film market, but not in these other markets.

FIGURE 6

to impose this situation on the reluctant tokuyakuten, but such an arrangement would clearly not reflect any mutual business interest.

When a supplier and distributors share essentially the same customers, there is no conceivable business reason why either the supplier should want to sell to those distributors, or the distributors would want to buy from that supplier. Kodak has attempted to avoid rather than respond to this point. The point, however, is crucial: just as Kodak has identified a problem -- the alleged "distribution bottleneck" -- that does not exist, so it has proposed a solution -- selling through the tokuyakuten -- that cannot work.

B. Kodak Obscures The Broad National Coverage Provided By The Secondary Dealers

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Kodak argues that secondary dealers do not provide a meaningful distribution channel for reaching the entire Japanese market. With an unsupportable methodology, Kodak tries to show that secondary dealers cover geographically only a fraction of the Japanese market, and that the rest of the market is therefore inaccessible. Kodak claims that secondary dealers do not provide access to consumers "outside a few large metropolitan areas."<sup>16</sup>

The market reality, however, is quite different than Kodak portrays. The secondary dealers in fact cover a wide geographic area. Even making the conservative assumption that that secondary dealers cover only areas with actual sales offices, virtually all of Japan is covered. If one considers effective sales areas, all of Japan is covered.

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<sup>16</sup> Kodak's November 6, 1995 submission at 49.

1. Kodak improperly narrows the sales range of the secondary dealers

Buried in Kodak's Methodology Appendix is a seriously flawed assumption. Kodak's analysis of the secondary dealers' sales areas rests on the baseless assumption that a secondary dealer covers only that prefecture in which its head office is located. Kodak does not take into account the breadth provided by multiple sales offices for an individual secondary dealer, other than to note that they are mostly limited to neighboring prefectures. Kodak argues that the bias in this approach is offset by the fact that a sales office does not allow a secondary dealer to cover the entire prefecture.<sup>17</sup> Kodak observes that the net effect of these biases is not known.

In fact, the secondary dealers cover a wide range of the geographic market. Fujifilm knows from its experience that the secondary dealers canvass a wide sales area -- usually going beyond the prefectures in which they have sales offices -- to build their individual businesses. Exhibit 5 provides brochures and other documentation for 17 out of the 91 secondary dealers identified by Fujifilm in "Rewriting History" that show the location of sales offices.<sup>18</sup> These 17 secondary dealers alone cover virtually all of Japan. The others simply duplicate the geographic coverage provided by these 17 secondary dealers. The existence of a sales office is a clear

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<sup>17</sup> Kodak's November 6, 1995 submission at M3.

<sup>18</sup> As discussed in Section B.2 below, we continue to believe that the list of secondary dealers identified in "Rewriting History" is the appropriate basis for analysis.

indication that a particular secondary dealer is serious about marketing color film in that area of Japan.<sup>19</sup>

The resulting map in Figure 7 provides a striking picture of the broad geographic availability of Kodak in the Japanese market. Of 47 prefectures in Japan, 37 prefectures have sales offices of secondary dealers that carry Kodak brand film.<sup>20</sup> The 10 prefectures that do not have secondary dealer sales offices represent a small fraction of the Japanese market. Even if we make the totally unrealistic assumption that no secondary dealer makes any effort to reach these other prefectures, secondary dealers fail to reach a mere 19 percent of the total Japanese market.<sup>21</sup> They provide Kodak access to the other 81 percent of the market.

Moreover, the map in Figure 7 reflects very conservative assumptions. Sales offices in fact often cross over to neighboring prefectures. For example, sales offices in Tokyo cover Kanagawa. Given the close geographic proximity, such an approach makes perfect sense. The three prefectures on the island of Shikoku where there are no secondary dealer sales

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<sup>19</sup> We have assumed that if a secondary dealer buys Kodak, it either has or could easily stock Kodak at each of its sales offices. Since the purchasing decisions are made by the company, not the sales office, Kodak in fact has access to all the sales offices of a particular customer. The actual stock at each sales office at a particular time represents the perceived demand for Kodak, not any lack of availability.

<sup>20</sup> In this analysis, we have included all the secondary dealers identified in Exhibit 4 of "Rewriting History."

<sup>21</sup> We use the same table as Kodak, Table F on page 53 of its November 6 submission, to derive share of the Japanese market by region. We note, however, that this breakdown of sales value actually exaggerates the share of the market in certain regions. A more appropriate basis would be market share based on volume.

FIGURE 7

offices -- Ehime, Kochi, and Tokushima -- all receive extensive coverage by Lab Network, a large photofinisher that resells color film and carries Kodak brand film. Hyogo does not have a sales office, but is next to Osaka and is therefore served by Osaka sales offices. These three examples alone explain away most of Kodak's "missing" 19 percent. By considering effective sales areas rather than only sales offices, in fact all of Japan is covered.

It is also important to bear in mind that Japan is a small country, roughly the size of California. Prefectures are more analogous to counties than to states in the United States. Is it reasonable to assert -- as assumed in Kodak's methodology -- that companies would need head offices in every county in the state of California to cover the entire state effectively? In this context, Kodak's methodology is indefensible.

2. Kodak improperly narrows the universe of secondary dealers

Kodak also erroneously limits the universe of secondary dealers. Its analysis is based on a fundamental misunderstanding of the table provided in Photo Market 1995.<sup>22</sup> That table is not an exhaustive list of companies that resell color film, and includes only a selection of major resellers of photographic products. Photo Market 1995 only includes those companies that provided the detailed information requested for the table, or for which such information could be collected. The table was never meant to be an exhaustive list. To provide a particularly telling example of

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<sup>22</sup> Photo Market 1995 at 139 (cited in Kodak's November 6, 1995 submission at Table E (page 52)).

this incomplete nature of this list, we note that one of the largest resellers of color film in the Japanese market, Oriental Photo Supply Co., Inc., is not included on this list at all.<sup>23</sup>

For purposes of identifying secondary dealers, the table in Photo Market 1995 is actually overinclusive as well as underinclusive. The table does not focus on color film, but includes a wide range of photographic products. The table in fact refers only to "sensitive materials," and does not even specifically mention color film. Although Kodak acknowledges this point in its Methodology Appendix,<sup>24</sup> Kodak then assumes that all such companies are reselling both color film and color paper. This assumption is false. For example, Nippon Pro Photo and Kyodo Shashin Yohin resell professional film and other products, but do not resell consumer color film to any significant degree.<sup>25</sup>

When Fujifilm prepared the list of secondary dealers provided in Exhibit 4 of "Rewriting History," Fujifilm sought to identify all of those companies commonly recognized in the industry as providing a significant reselling function. We included pure secondary dealers, as well as those companies that undertake a significant reselling function to supplement their retail sales of

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<sup>23</sup> At least nine of the larger secondary dealers listed in Exhibit 4 of "Rewriting History" are also not included in the Photo Market 1995 list.

<sup>24</sup> Kodak's November 6, 1995 submission at M2.

<sup>25</sup> Kodak mistakenly claims that Fujifilm's Exhibit 4 in "Rewriting History" left off 12 of the major resellers. For four of these companies, Kodak simply misunderstood the names of the companies and did not realize that Fujifilm and Photo Market 1995 were both referring to the same corporate entity. A reconciliation of the different names is provided in Exhibit 6. For the other eight companies, Kodak apparently failed to realize that these companies do not resell color film as a significant part of their business.

color film. Our standard was that if the company resold a significant portion of the color film being purchased, we considered that company to function as a secondary dealer. Although reasonable people might differ over whether every single company on the list has a "significant" reselling function, any knowledgeable observer of the Japanese industry would agree that the vast majority of these companies are in fact performing a significant reselling function.<sup>26</sup>

Kodak's argument about the limited coverage of the secondary dealers is thus quite disingenuous. Although Kodak claims to be showing the geographic coverage of the secondary dealers identified by Fujifilm, in fact Kodak has itself selected a mere 22 companies out of a list of over 90 companies -- a narrow subset of the universe. Kodak assumes that if a company is not listed in the table in Photo Market 1995, then the company should be excluded from the analysis.<sup>27</sup> But it is precisely those smaller secondary dealers that service the parts of Japan outside the major metropolitan areas. Furthermore, Kodak compounds its error by artificially restricting the sales areas of these 22 companies to the prefectures in which their head offices are located. Kodak's flawed conclusions were preordained by its flawed methodology.

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<sup>26</sup> We note that Kodak will undoubtedly cry once again that "Fuji's only source is Fuji." We submit that in trying to understand the true situation of the Japanese market, experts from the industry are the best source of information. There is no reason to limit one's analysis to the universe of information available in industry trade journals. It is far more important to understand what is actually happening in the market. In this regard, it would help this investigation if more of the data provided by Kodak were Kodak's own information. It is perhaps revealing that Kodak relies so much on secondary sources that probably know less about the market than Kodak Japan.

<sup>27</sup> Note that Kodak itself said in its first submission that Japan has more than 400 secondary dealers. "Privatizing Protection" at 33. The reference in its second submission to the secondary dealers listed in Photo Market 1995 represents a change from Kodak's original story and an unsupported limitation of the universe of secondary dealers.

3. Kodak in fact enjoys broad coverage in the secondary dealer channel

The map in Figure 7 shows that secondary dealers provide Kodak with a broad geographic reach throughout Japan. More importantly, Kodak's presence in the vast majority of secondary dealers, and particularly the largest volume secondary dealers, gives Kodak broad coverage of this distribution channel.

For those customers included in the tokuyaken customer survey, Fujifilm separated customers with a primary focus on retailing from other customers with a significant reselling function.<sup>28</sup> As shown in Figure 8, whether viewed on an outlet basis or a weighted sales volume basis, Kodak has very broad coverage among customers with a significant reselling function. It is hard to see how coverage at these levels creates any barrier to access to Kodak. Those resellers accounting for nearly 80 percent of total sales volume in this channel already carry Kodak or have an existing relationship with a Kodak supplier, and those resellers are located all over Japan.

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<sup>28</sup> This analysis included 278 customers, a broader universe than the 91 major secondary dealers listed in "Rewriting History."

Those customers with a significant reselling function include secondary dealers, photofinishing labs, and others that resell a significant portion of amateur color film. Since Kodak's availability among both categories of tokuyakuten customers -- retailers and resellers -- is quite similar, the definitional differences do not affect the analysis. Moreover, on a sales volume basis, the 91 major secondary dealers would play a more significant role than the other smaller resellers.

FIGURE 8

C. Kodak Is Widely Available On The Retail Store Shelf In Japan

The tokuyakuten customer survey discussed in Section A shows that Kodak film is available in the vast majority of customers served by the tokuyakuten and, more importantly, is concentrated in those customers with the largest sales volume. The analysis in Section B shows that Kodak's access to customers through secondary dealers is much greater than Kodak would have us believe. Now we look at Kodak's actual availability on retail store shelves, measured by the results of an additional third party survey performed by Nippon Research Center Ltd.<sup>29</sup> Again, Kodak's view of the world is rocked off its foundation. The Nippon Research survey results corroborate the tokuyakuten survey results: Kodak is widely available throughout Japan and in the stores that matter most.

1. Coverage survey results show wide availability of Kodak film in Japan

To assess how widely Kodak film is sold in Japan, Fujifilm commissioned Nippon Research to survey retail outlets in the Tokyo metropolitan area and the Osaka and Kyoto area, as well as three local cities -- Shizuoka, Niigata, and Okayama. The results of the survey show that Kodak is wrong when it claims to be blocked from the Japanese retail store shelf.

To conduct its survey, Nippon Research randomly selected 600 photo specialty stores located in the above areas, and added any store of any type that sells film and is located within 100 meters of one of the selected photo shops. In addition, Nippon Research included in its survey

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<sup>29</sup> Nippon Research is a well respected market research firm in Japan. Indeed, Nippon Research is a member of Gallup International, a worldwide network of research companies in which each member covers research needs in its home market.

another 114 discount stores, department stores, and supermarkets located in outlying suburban areas around the above areas. Through this methodology, Nippon Research visited 2,274 retail outlets throughout Japan and checked whether Kodak film is available.

Nippon Research then weighted its raw availability figures by the relative film sales volume of the surveyed outlets. For every outlet visited by the survey teams, Nippon Research estimated the volume of that outlet based on film display, and then used estimates of total film inventory and inventory turnover to estimate film sales volume. Nippon Research supplemented these estimates where possible. For photo shops, supermarkets, and convenience stores, Nippon Research used the volume of Fuji film sold to the outlets (based on figures supplied to Nippon Research by the tokuyakuten) to refine its estimates of total film sales of all brands by those outlets. Exhibit 7 provides a more detailed description of the survey methodology.

The results of the survey are strikingly inconsistent with Kodak's allegations of a "distribution bottleneck."<sup>30</sup> The results instead confirm and reinforce the findings of the tokuyakuten customer survey. In the major outlets for color film in Japan accounting for three quarters of the total market by volume<sup>31</sup> -- photo stores, discounters, and supermarkets -- Kodak film is widely available. Furthermore, Kodak's availability is heavily concentrated in the largest volume outlets, thus maximizing its coverage of the total market. While it is true that Kodak is

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<sup>30</sup> Survey results are provided in Exhibit 8.

<sup>31</sup> As discussed above, these outlets types accounted for 73 percent of film sales in 1994. Photo Market 1995 at 130 (see Exhibit 4). Although the Photo Market 1995 category includes discount stores, department stores, and supermarkets, in fact very few film sales are made at department stores.

less present in other outlet types, these other outlets -- although many in number -- are all characterized by limited shelf space and low sales volume. Although Kodak is not present in many of these smaller outlets, on a volume-weighted basis Kodak's overall penetration of the total Japanese retail market is very high. Moreover, while Kodak's coverage is, unsurprisingly, better in Tokyo than in the local cities, the divergence is not that large. Kodak's coverage of the retail market is strong throughout Japan.

Photo stores are the major outlet for color film in Japan, accounting for 50 percent of total film sales volume in 1994.<sup>32</sup> According to Kodak, the alleged "distribution bottleneck" most severely impedes Kodak's ability to sell to this outlet type, since it is supposedly dominated by the tokuyakuten.<sup>33</sup> Fujifilm's alleged control of the photo shops is the key element in Kodak's "distribution bottleneck" theory.

Yet the coverage survey, as shown in Figure 9, shows that Kodak's availability in photo stores could hardly be improved. In Tokyo, Kodak is available in 66.7 percent of the surveyed photo stores, which account for 91.8 percent of total outlet type volume. The figures are somewhat lower outside Tokyo, but still very impressive. In the three local cities surveyed, Kodak is available in 52.3 percent of the photo stores, which account for 77.4 percent of total outlet type volume. These numbers are comparable to Osaka and Kyoto,

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<sup>32</sup> Photo Market 1995 at 130 (see Exhibit 4).

<sup>33</sup> Kodak's November 6, 1995 submission at 60.

FIGURE 9

where Kodak is available in 57.0 percent of outlets representing 74.0 percent of outlet type volume.<sup>34</sup> See also Figure 10. This, emphatically, is not a "distribution bottleneck."

Discount stores and supermarkets represent the next most significant outlet type, collectively accounting for 23 percent of color film sales in 1994. Although Kodak's penetration of these outlet types is not as complete as in photo stores, it is still very high, particularly on a volume-weighted basis. Kodak's availability ranges from 22.4 percent in Osaka and Kyoto to 46.1 percent in Tokyo; on a volume-weighted basis, these figures jump to 56.8 percent and 85.9 percent, respectively. See Figure 10.

Other outlet types -- convenience stores, kiosks, laundry shops, tobacco shops, etc. -- while they account for over 80 percent of the film-selling storefronts in Japan, collectively comprise only around one-quarter of total film sales volume.<sup>35</sup>

Accordingly, when Kodak's availability across all outlet types is calculated on a volume-weighted basis, the real story of Kodak's penetration of the retail store shelf in Japan emerges. Even if one assumes Kodak is correct when it claims to be present in only 15 percent of all film-selling outlets -- a claim for which Kodak has provided no substantiating

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<sup>34</sup> In other words, Kodak is available in stores representing around three-quarters of Japanese film sales, the same as Fujifilm's coverage in the United States, according to Kodak. Kodak's November 6, 1995 submission at 157. By Kodak's own test, then, the Japanese market for film is not closed.

<sup>35</sup> Photo Market 1995 at 129-130 (see Exhibit 4).

FIGURE 10

evidence -- that figure is irrelevant in assessing Kodak's real availability to Japanese customers.<sup>36</sup>

The crucial fact, which Kodak omits, is that the outlets in which Kodak is available account for the vast majority of Japanese film sales. What is important, ultimately, is not to be in all the shops, but to be where the sales are. Kodak has accomplished this latter goal; by succeeding in penetrating the highest volume stores (*i.e.* photo shops, supermarkets, and discounters), Kodak is already in those retail outlets where consumers are making from 56.4 to 77.4 percent of their total film purchases, as shown in Figure 10 summarizing the coverage results on a volume-weighted basis.

Kodak's success with larger volume stores is corroborated by analyzing the Nippon Research data, not by outlet type but by estimated outlet sales volume. These data are presented in Figure 11.<sup>37</sup> In outlets selling not more than 500 rolls per half-year, Kodak is

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<sup>36</sup> See, *e.g.*, "Kodak Answers," July 30, 1995, at 6; "Kodak Petitions U.S. Government Under Section 301," Business Wire, May 18, 1995. It is possible to calculate overall figures for Kodak's availability in each geographic region by taking the outlet type-specific availability figures and weighting them according to the figures in Photo Market 1995 which give the percentage of total film sales volume accounted for by each outlet type. Using this methodology, Kodak is present in 24.0 percent of all film-selling outlets in Tokyo, 17.4 percent in Osaka, and 17.7 percent in the selection of three smaller cities. Given the rough comparability between these figures and Kodak's claim of 15 percent outlet coverage, it is clear that Kodak has no basis to complain about the reliability of our sample. If Kodak had bothered to extend its own analysis to the logically necessary next step, *i.e.*, to determine the percentage of total sales volume covered by the stores in which it is present, Kodak too would have been forced to acknowledge its broad coverage. In this context, Kodak's decision to focus only on outlet coverage, rather than adjusting for sales volume, is an implicit admission of a seriously flawed argument.

<sup>37</sup> The data on which Figure 11 is based are provided in Exhibit 9.

FIGURE 11

available in only 14.4 percent of such stores in Tokyo, and only 4.9 percent in the local cities. But in those stores selling more than 5,000 rolls per half-year, Kodak is available in 96.6 percent of the stores in Tokyo, and 84.2 percent in the local cities.

We note that Kodak's limited coverage in very small volume outlets is completely consistent with common sense. Small volume outlets are the most likely to carry only a single brand, and to choose the most popular brand. For the same reason that small volume outlets in the U.S. carry only Kodak, small volume outlets in Japan often carry only Fuji brand color film.

Thus, the coverage survey confirms that Kodak is widely available in the highest volume stores and the most important outlet types. Kodak is already in the stores that are making the vast majority of film sales, and this is true in local cities as well as in the large metropolitan areas.

There is no "distribution bottleneck."

2. Consumer preference survey results also show that availability is not Kodak's problem

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A separate survey of consumer perceptions of availability reinforces the point that Kodak is widely available. Nippon Research conducts monthly surveys of Japanese consumer attitudes. In its October 1995 survey, in response to a request by Fujifilm, Nippon Research posed the following question to its consumer panel: "Why did you not buy Kodak?" The answers are very revealing.

The dominant answer given was that the consumer preferred other brands. Out of 925 consumers surveyed, 416 (or 45.0 percent) indicated a preference for another brand. Only 116 consumers (or 12.5 percent) cited a lack of availability. This very low response rate confirms the

findings of other survey data -- that Kodak is widely available.<sup>38</sup> Moreover, as demonstrated in Figure 12, this very small number of consumers citing availability as a problem is consistent throughout Japan, regardless of geographic region. The results are also consistent for small as well as large cities, as also shown in Figure 12.<sup>39</sup>

Consumers throughout Japan thus recognize that Kodak is widely available. These consumer perceptions more accurately reflect Japanese market realities than do Kodak's strained efforts to create a "distribution bottleneck" where none exists.

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<sup>38</sup> Kodak's own surveys show only 24 percent of consumers identify lack of availability as a problem. "Privatizing Protection" at 3. Although Kodak touts this number, it shows that 76 percent of Japanese consumers perceive no availability problem.

<sup>39</sup> The data on which Figure 12 is based are provided in Exhibit 10.

FIGURE 12

## CONCLUSION

Kodak of course will challenge the factual findings provided in this submission. But Kodak must somehow explain away the consistency of the various empirical surveys collected and presented here by Fujifilm. The results of the tokuyakuten customer survey, the retail coverage survey, and the consumer preference survey all refute Kodak's position. Moreover, all of these empirical data are also consistent with a basic market fact: Kodak Japan actually competes with the tokuyakuten. Why would the tokuyakuten want to buy from Kodak Japan only then to compete with their supplier?

Furthermore, it is not enough for Kodak to dismiss Fujifilm's new evidence because it does not come from published sources. There are no published sources of the information needed to assess Kodak's "distribution bottleneck" theory. The answer must come from the business records of the companies in the industry, and from surveys where necessary to supplement those records. An unsubstantiated claim by Kodak that its film is available in only 15 percent of outlets alone says very little, and does not address at all how much of the total market those outlets cover. We have no doubt that the business records of Kodak Japan contain voluminous information relevant to the key issues discussed here: the overlap between Kodak Japan's and the tokuyakuten's customers; the sales areas of secondary dealers; the availability of Kodak in major outlet types; and Kodak's retail coverage of the Japanese market on a volume-weighted basis. We challenge Kodak, if it disputes Fujifilm's new evidence, to offer conflicting evidence on these key issues from its own business records or from third party surveys. In the end, we are confident that a detailed examination of any evidence put forward by Kodak will confirm Fujifilm's position: there is no distribution bottleneck.

