

Venture Business and IPR Policies in Japan

Ulrike Schaeede

Graduate School of International Relations and Pacific Studies
(IR/PS)

University of California, San Diego

March 7, 2008

The New Policy Thinking

- Postwar period: Growth by strategic champions
 - Large firms favored in patent process
 - Small firms = “losers”
 - Supportive policies, little room for innovative startups
- New Japan: Strategic inflection point
 - Koizumi: “Leave it to the Market”
 - 1999 Revision of SME law
 - Small firms = “engines of growth”
 - New Venture Capital and Firm Formation Processes
 - New IPR Regime

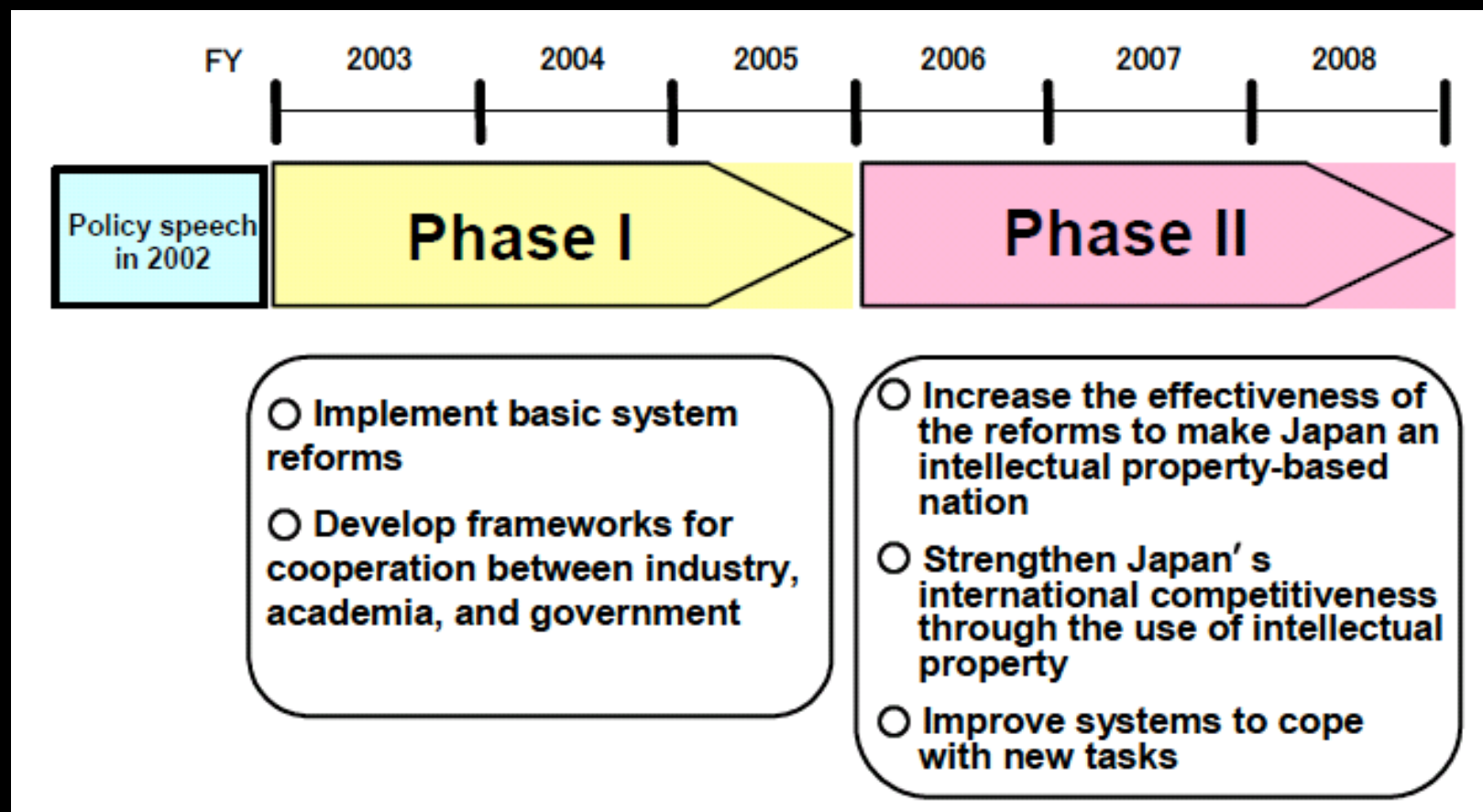
1998-2006: Strategic Inflection Point

- A point in time/event when industry dynamics are altered so profoundly that there is a fundamental change what it takes to win (Burgelman/Grove)
- Japan's tipping point
 - Banking crisis
 - Globalization
 - Social distress
 - Political entrepreneurship (Hashimoto, Koizumi)
- ⇒ Revision of all laws pertaining to commerce, processes of regulation, and markets
- New strategic context for Japanese firms
- New industrial architecture

5 Years of Intellectual Property Strategy

- “The first version of the Intellectual Property Strategic Program was formulated in 2003 in order to indicate a national policy in the field of IP. Upon formulation of the Intellectual Property Strategic Program 2007, Japan has entered the fifth year in its history with intellectual property strategy.”

IPR Policy Plan



Phase 1: Legal Reforms

- 2003 Intellectual Property Basic Law
- 2003 Revision of Customs Tariff Act
 - prohibits imports of patent-infringing products
- 2004 Revision of Unfair Competition Law
 - punishes wrongful acquisitions or disclosures
- 2004 Revision of Patent Law
- 2005 Establishment of IPR High Court
- 2005 Revision of Bankruptcy Law
 - IP licenses protected
- 2005 Revision of Court Organization Law
- 2004 Revision of Trust Business Law
 - IP included in scope of assets under consignment

Phase 2: System Reforms

- Implement IP strategy on a global scale
- Extent IP strategy to SMEs and startups
- Support university-based research and industry-academia cooperation (TLOs, incubators)
- Reform patent application and examination system
 - Reform of Japan Patent Office
 - Amari Program (Advanced Measures for Accelerating Reform toward Innovation)
 - IP Digital Library
- Develop the content industry (*anime*, manga)
- Promote the Japan brand
- Develop human resources related to IP

IPR Support Policies for Small Firms

- Regional IP Advisory Counters
- Acquisition of IP Rights
 - Support in and acceleration of examination
 - reduce pendency to 29 months in 2008, to 11 months in 2013
 - Fee reduction
 - Support of research created by universities
- Use of IP Rights
 - R&D assistance for commercialization projects
 - Regional strategy support programs
 - Consultation service center for transfer of technology
 - Database of R&D projects conducted at universities
 - Funding of university-based venture businesses
 - IP Protection Program abroad
 - Funding for international patent applications

What we used to know: Japan's Systemic Obstacles to Startups

- Lifetime employment
 - Strong values of what constitutes a “successful career”
 - Limited cross-fertilization
- Social stigma associated with failure
 - No safety net
- Industrial policy goals
 - Patent policies favoring large firms
 - Difficulties for innovators to earn monopoly rents
- Highly diversified large firms
 - Outsourcing only through often exclusive supplier hierarchies
 - Nobody to sell to

What has Changed

- Increased labor mobility
 - Glamour of the “salary-man” has worn off
 - Work-life balance; rich is good
- Star status of startup pioneers
 - Son, Horie, Murakami, Ito, Mikitani
- Fundamental shift in industrial policy
 - AML: disallow stealing of IP from supplier
- Strategic repositioning: Choose and Focus
 - Large firms focus on core businesses, outsource the rest
 - Supplier hierarchies undermined through globalization and spot pricing

⇒ A market for talent, the law and courts, and ideas

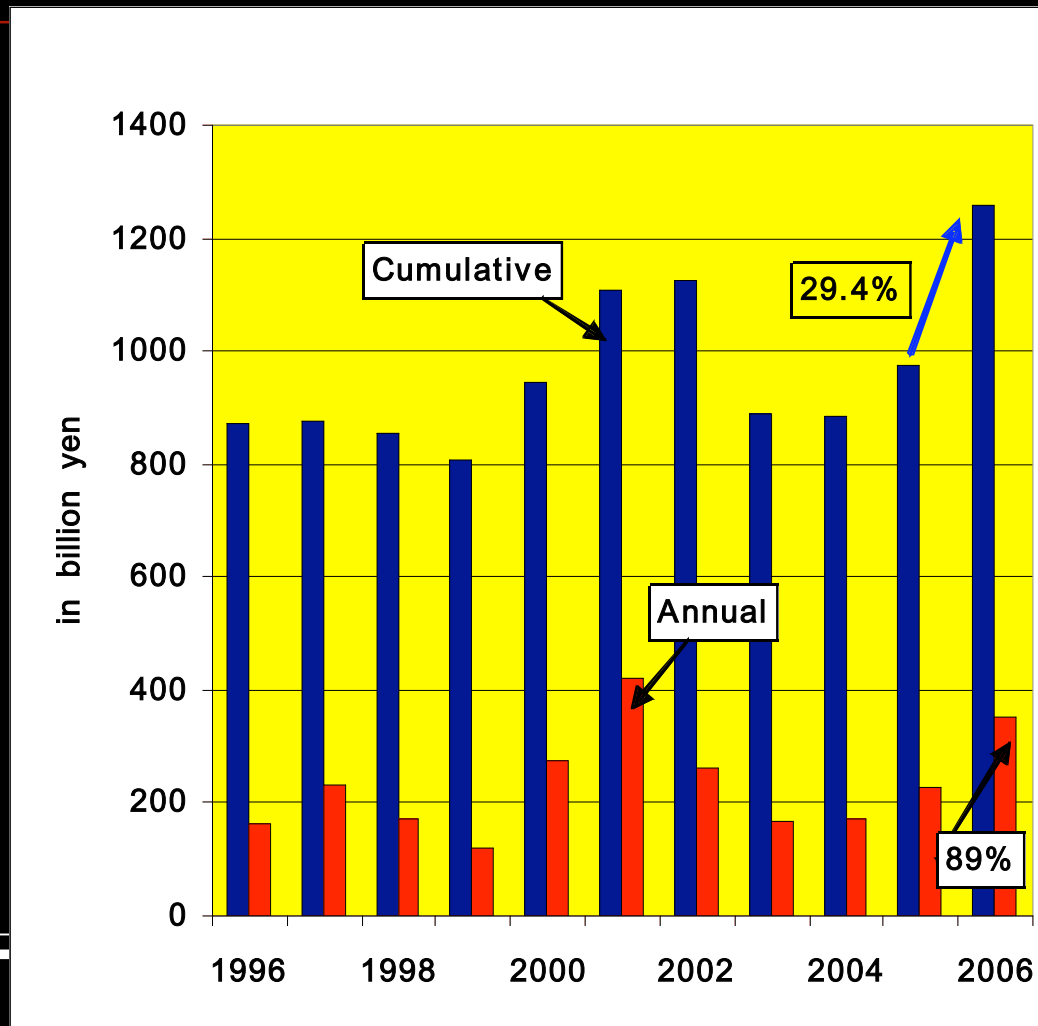
Support of New Company Creation

- 1990s: initiated by METI
 - “New Industries Section” in METI IP Bureau
 - Initial focus on IT, Internet, communications
- Slowly emerging: biotechnology
 - Health care reform: new pricing system
 - Global consolidation in pharmaceuticals
 - Strategic repositioning by Japan’s pharmaceutical industries: pipeline
- Two-Step Process:
 - Access to finance (VC industry, company formation)
 - Cross the IP divide

VC as Industrial Policy

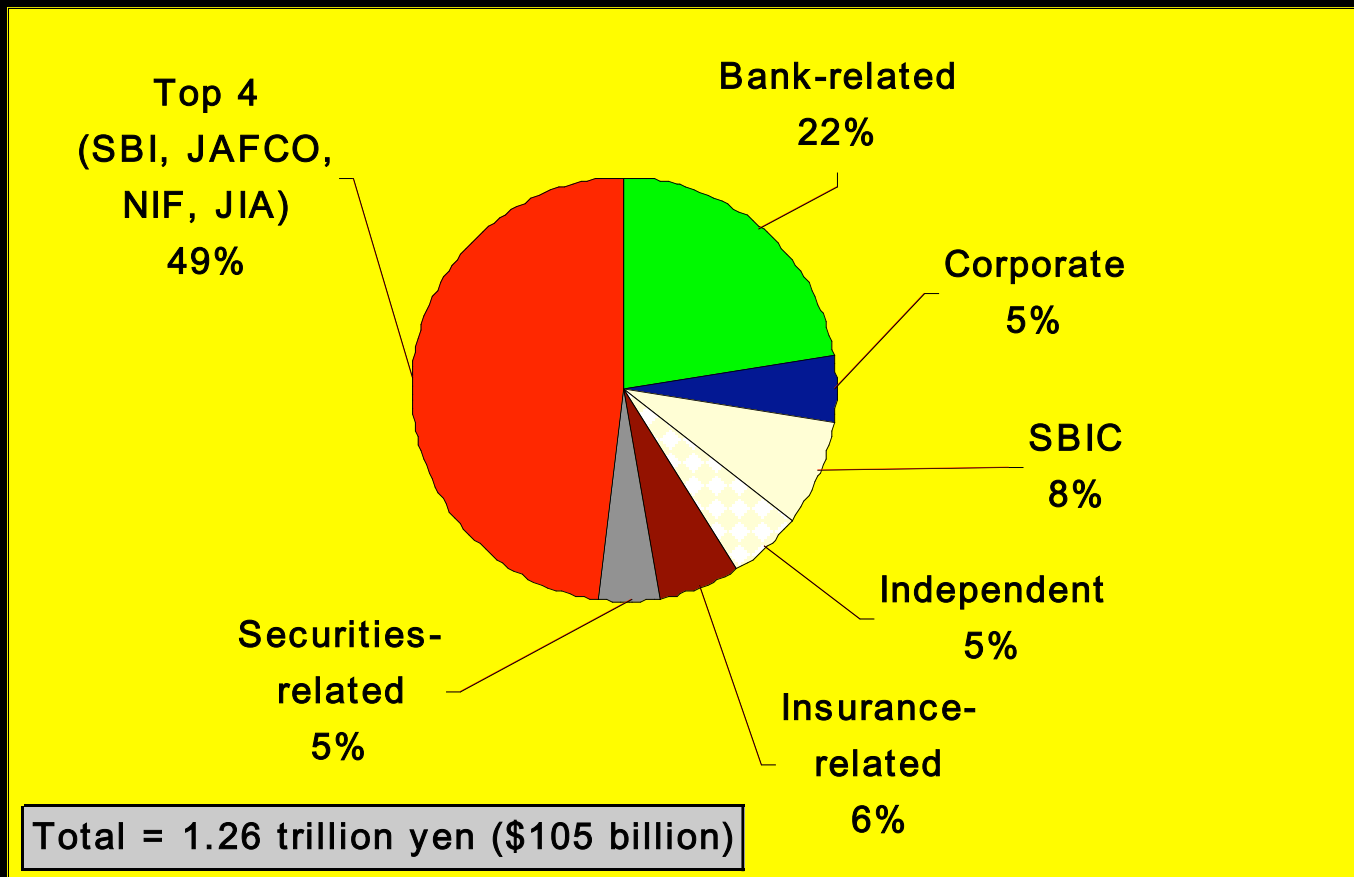
- 1995 Startup Creation Promotion Law
- 1998 Introduction of LLP, TLO, incubator initiative
- 1998 New Business Formation Promotion Law
- 1999 Relaxation on rules for university professors
- 1999 Relaxation of IPO requirements
- 2003 “¥1 Company” System
- 2004 Privatization of national universities
- 1999-2006 Annual revisions of Commercial Code
- 2006 Corporation Law

Development of the VC Industry



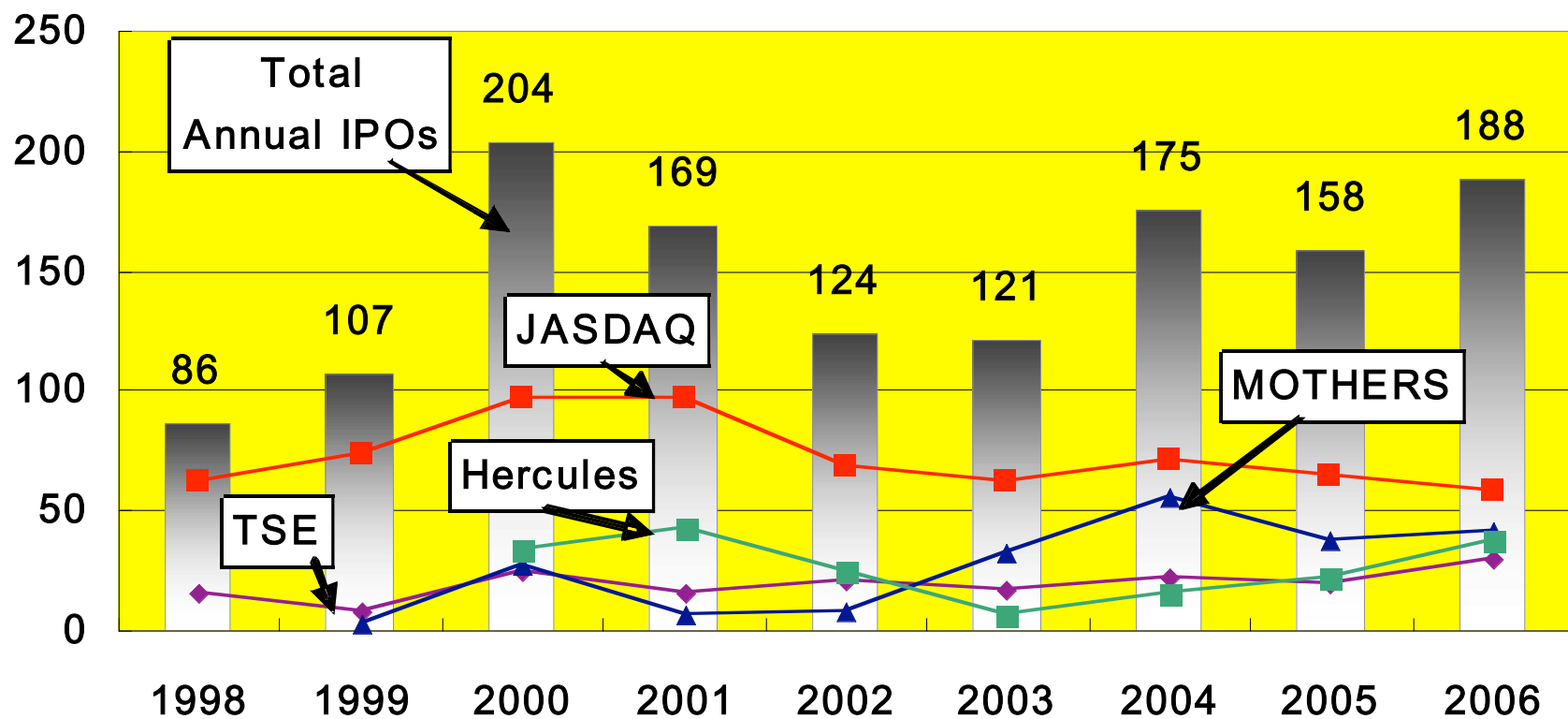
VC Competition

(Market share by affiliation of VC Firms in 2006)

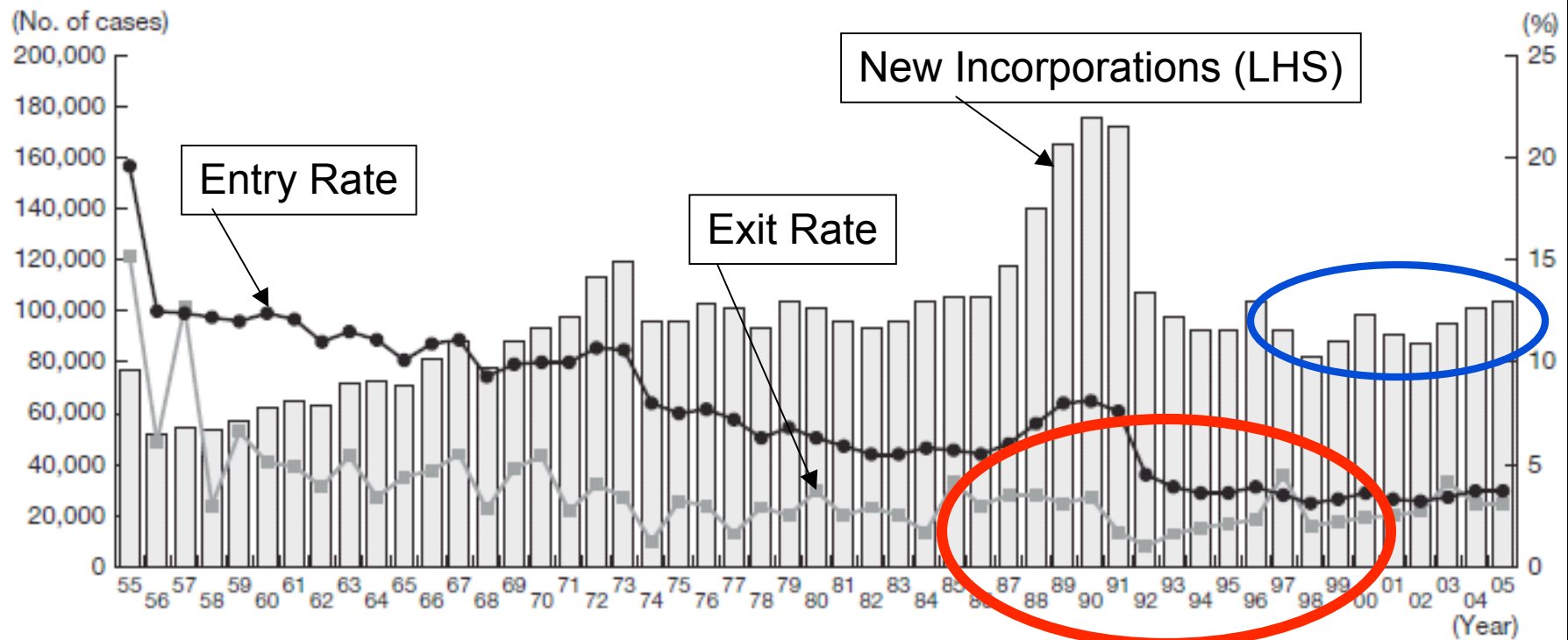


Based on *Nikkei Kinyu* survey; does not include small VC or Angels

Junior Markets

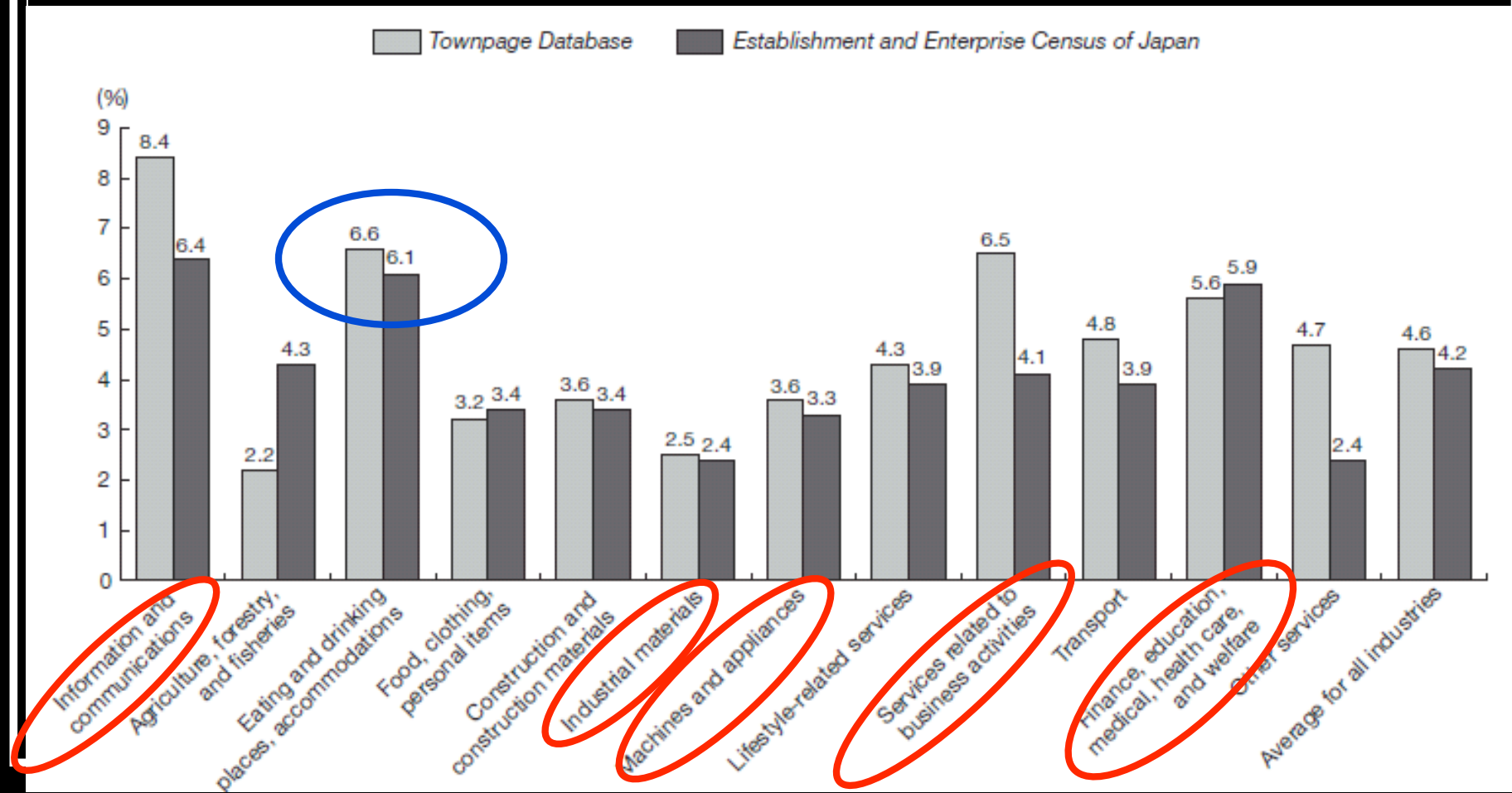


Entry and Exit Rates (in % of firms of previous year)



Source: 2007 White Paper for SME

Entry into what industries?



Famous Case Studies

- Rakuten: internet shopping mall
- Kakaku.com: price comparison
- Digital Garage
- DeNa *Moba-oku* (Mobile auction)
- mixi.Inc (J-version of MySpace)
- Gungho (online entertainment)
- Takara Bio
- GCA (M&A advisory)
- Kabu.com, Monex, SBI E*Trade

Conclusion: The New Paradigm

- Policy Change towards Small Firms
 - “Worms” vs. “caterpillars”
 - Cutting-edge, new frontier, source of growth
 - Large firms no longer favored in patent rights
- Access to Finance
 - Financial deregulation; government programs; market
- IPR Regime Change
 - Leave it to the Market → a market for rights
- Deregulation of buyers’ markets
 - Cell phones: internet, price transparency
 - New competition, new markets
 - New social status of independent innovators