Major Business Combination Cases in Fiscal Year 2021

(Tentative Translation)

June 22, 2022

The Japan Fair Trade Commission

The Japan Fair Trade Commission (hereinafter referred to as "JFTC") has so far developed and published its idea of applying the Antimonopoly Act to business combination reviews as "Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (Business Combination Guidelines)" (May 31, 2004, the JFTC), as well as compiling and publishing the major results of the business combination review cases every fiscal year, from the perspective of securing the transparency of business combination reviews and improving the predictability.

It decided to publish the major results of business combination review cases in FY 2021.

For companies planning business combinations, please make use of these published major business combination cases, together with the Business Combination Guidelines.

Major business combination cases in FY 2021

Number	Case (main area of consideration)	Major characteristics							Page
		Horizontal	Vertical	Conglomerate	Remedy	**Economic analysis**	**Exchange of information with authorities abroad**	Joint relationships	
1	Acquisition of stocks of TOKYO ROPE MFG. CO., LTD. by NIPPON STEEL CORPORATION							○	1
2	Acquisition of stocks of Siltronic AG by GlobalWafers GmbH (Silicon Wafers) (published on November 26, 2021)	○				○	○		6
3	Absorption-type split of steel guardrail and soundproof wall business of NIPPON STEEL METAL PRODUCTS CO., LTD. by Kobelco Engineered Construction Materials Co., Ltd. (guardrail)	○			○	○			17
4	Acquisition of stocks of Mitsubishi Heavy Industries Machine Tool Co., Ltd. by Nidec Corporation (gear machinery)		○						34
5	Acquisition of stocks of Japan Renewable Energy Corporation by ENEOS Corporation (renewable energy)	○							46
6	Consolidation of Salesforce.com, Inc. and Slack Technologies, Inc. (customer management software) (published on July 1, 2021)			○		○	○		52
7	Acquisition of stocks of Saison Information Systems Co., Ltd. by MELCO HOLDINGS INC. (file transfer service)			○					89
8	Acquisition of stocks of Toichi Kanda Seika Co., Ltd. by Tokyo Seika Co., Ltd. (fruits and vegetables wholesale)	○							101
9	Acquisition of stocks of FUJI CO., LTD. by AEON Co., Ltd. (supermarket, drugstore)	○						○	112
10	Acquisition of stocks of YJFX, Inc. by GMO Financial Holdings, Inc. (FX trading)	○						○	120

(Note 1) A list of cases is ordered by the business related to goods and services subject to business combination reviews, according to the Japan Standard Industrial Classification.

(Note 2) In each case, confidential information concerning the parties and names of competitors is concealed. Arbitrary alphabets are used for competitors.

(Note 3) Enumeration of the level of market share or HHI (Herfindahl-Herschman Index, the same shall apply hereinafter) after the conduct, stated in each case, HHI increment, etc., due to the conduct, is stated as approximate figures by the JFTC, after being calculated according to the materials, etc., submitted by the parties. When doing that, it basically states the figures by 5% units, for example, "about 40%," if the market share is 37.5% or more and less than 42.5%. Therefore, the total figure will not necessarily be 100.

(Note 4) In each case, a horizontal business combination means a business combination between companies in competition with each other in the same particular field of trade, a vertical business combination means a business combination between companies with a different trade phase, for example, a manufacturer and a distributor of their goods, and a conglomerate business combination means a business combination which is applicable to neither a horizontal business combination nor a vertical business combination, for example, a merger between companies belonging to different industry types, a shareholding between companies with different geographic range in a particular field of trade.

(Note 5) Besides this, as a major case of the business combination of which the review was finished in FY 2021, there was a case of an acquisition of stocks of the Fukuho Bank, Ltd. by the Fukui Bank, Ltd. Because this case was published on June 16, 2021, and was listed as case 9 in "Major business combination cases in FY 2020" (published on July 7, 2021), it is not listed here.

Case 1 Acquisition of stocks of TOKYO ROPE MFG. CO., LTD. by NIPPON STEEL CORPORATION

Part I. The parties

NIPPON STEEL CORPORATION (JCN 3010001008848) (hereinafter referred to as "NIPPON STEEL") is mainly operating the manufacturing and sales business of steel products.

TOKYO ROPE MFG. CO., LTD. (JCN 7010001034997) (hereinafter referred to as "TOKYO ROPE") is mainly operating the manufacturing and sales business of wire ropes and steel cords.

Hereinafter, a group of firms already forming a joint relationship, having NIPPON STEEL as an ultimate parent company, is called "NIPPON STEEL group" and a group of firms already forming a joint relationship, having TOKYO ROPE as an ultimate parent company, is called "TOKYO ROPE group," and NIPPON STEEL group and TOKYO ROPE group all together are called "the parties group."

Part II. Outline of this case and applicable provisions

This case concerns NIPPON STEEL acquiring the voting rights of 10% related to the stock of TOKYO ROPE by the way of a takeover bid, and as a result, the ratio of the voting rights of NIPPON STEEL became 19.91% (hereinafter referred to as "the conduct").

Applicable provision is Article 10 of the Antimonopoly Act.

Part III. Background of the conduct

The background of the conduct is as follows.

January 2021	• NIPPON STEEL announced the start of the takeover bid (hereinafter referred to as "the TOB") related to the conduct. • In the written announcement, after the completion of the TOB, toward the reconstruction of the management system and the governance system of TOKYO ROPE, NIPPON STEEL conducted consultation concerning the new selection of directors of the company within the company personnel, the composition of the board of directors to secure independence and diversity, etc., and indicated its intention to make necessary proposals based on the consultation.
February of the same year	• TOKYO ROPE announced opposition to the TOB.
March of the same year	• The TOB was concluded.
June of the same year	• In the ordinary general shareholders' meeting of TOKYO ROPE, TOKYO ROPE submitted a company proposal for selecting all the directors and auditors. • All the proposed candidates for directors and auditors were newly selected ones, and the composition was in accordance with the intention of NIPPON STEEL, which was shown in the above-mentioned written announcement.

	• In the ordinary general shareholders' meeting of TOKYO ROPE, the above-mentioned company proposal was approved by a majority vote. Directors and auditors were replaced in accordance with the intention of NIPPON STEEL.

Part IV. Whether a joint relationship existed or not between NIPPON STEEL and TOKYO ROPE

1 Identification of problems

NIPPON STEEL was the largest shareholder which held 9.91% of the voting rights related to the stock of TOKYO ROPE at the time when the start of the TOB was announced. According to Part I. 1 (1) B. of the Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination (May 31, 2004, the JFTC. Hereinafter referred to as "Business Combination Guidelines"), if the ratio of the voting rights is 10% or less, "a relationship in which multiple firms are integrated to a certain extent or entirely by the acquisition of stocks, merger, etc., to conduct business activities" or a joint relationship, is not formed, maintained, or strengthened so that the case will not be subject to a business combination review.

However, if the conduct was carried out (if the TOB was successful), the ratio of the voting rights of NIPPON STEEL would be 19.91%, and therefore, whether a joint relationship would be formed, maintained, or strengthened between NIPPON STEEL and TOKYO ROPE by the conduct would become an issue.

Furthermore, after the execution of the conduct, as the ratio of the voting rights of NIPPON STEEL would be less than 20%, the conduct would not be subject to a notification in advance, stipulated in Article 10, paragraph 2 of the Antimonopoly Act.

2 Examination related to the joint relationships

(1) The ratio of voting rights, business relations between the parties, the relation between interlocking officers, etc.

According to Part I. 1 (1) B., when the ratio of voting rights of [1]a single company acquiring stocks is more than 10%, and the ranking of the ratio of the voting rights is within the top 3, situations such as the extent of the ratio of the voting rights, the ranking of the ratio of the voting rights, the relation whether a director or an employee of one company is also a director in other company, business relations between the parties, relations such as business ties between the parties, are considered, and the existence of a joint relationship is judged.

As previously stated, if the conduct was carried out (if the TOB was completed), the ratio of the voting rights of NIPPON STEEL would be 19.91%. Moreover, the ranking of the

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[1] According to Part I.1(1) A. of the Business Combination Guidelines,
(a) when the ratio of the total voting rights held by companies, etc., that belong to the group of combined companies (the group of combined companies prescribed in Article 10, paragraph 2 of the Antimonopoly Act, the same shall apply hereinafter) to which the stockholding corporation belongs exceeds 50%, or
(b) when the ratio of the total voting rights held by companies, etc., that belong to the group of combined companies to which the stockholding corporation belongs to exceeds 20%, and the said ratio stands alone as the top-ranked,
it is recognized to have a joint relationship between the stockholding corporation and the share issuing company. Moreover, according to the proviso of Part I.1 (1) B. of the Business Combination Guidelines, if "the ratio of the voting rights is 10% or less or the ranking of the ratio of the voting rights is the 4th or lower," a joint relationship is not formed, maintained, or strengthened, and thus the case will not be subject to a business combination review.
Therefore, in this document, "when the ratio of the voting rights of a single company acquiring stocks is more than 10%, and the ranking of the ratio of the voting rights is within the top 3" means the case which does not apply to the above-mentioned (a) or (b), nor applies to the above-mentioned proviso.

ratio of voting rights remains top, the same as before the start of the TOB. But the stockholders in the second place and after are trust banks, etc., and their ratios of the voting rights are limited to a few %. Thus, the gap in the ratio of voting rights with other stockholders would considerably widen.

Moreover, NIPPON STEEL had a business relation with TOKYO ROPE as a parent material manufacturer, supplying wire rods, etc., that are materials for wire rope, etc., which are the main products of TOKYO ROPE. Besides, it had a relation with TOKYO ROPE in which they conducted joint development of products related to steel cord business, and joint research and development of steel rope and steel wire business.

Furthermore, before the start of the TOB, there was no relationship in which a director or an employee of NIPPON STEEL was a director of TOKYO ROPE, or a director or an employee of TOKYO ROPE was a director of NIPPON STEEL.

(2) Purpose of the TOB and change of the management group of TOKYO ROPE after the TOB completion

When starting the TOB, NIPPON STEEL said that the purpose of the TOB was to raise the enterprise value by improving the long-standing poor business performance of TOKYO ROPE.

NIPPON STEEL said that the causes of the long-standing poor business performance of TOKYO ROPE were the wrong management policy of the management group of the company and the malfunction of the governance system of the company.

Moreover, NIPPON STEEL said that although it had continuously encouraged to change the management policy against the management group of TOKYO ROPE, and had continued to vote against the proposal to select multiple directors of TOKYO ROPE, TOKYO ROPE did not try to improve the problems.

NIPPON STEEL said that the TOB will encourage the reconstruction of the management system and governance system of TOKYO ROPE, and if the TOB is completed, it planned to newly select directors within the company personnel, and carry out consultation with TOKYO ROPE concerning the composition, etc., of the board of directors to secure independence and diversity, and make necessary proposals based on the consultation.

TOKYO ROPE initially indicated opposition to the start of the TOB by NIPPON STEEL, but after the completion of the TOB, it informally decided the change of all directors and auditors in the board of directors meeting, as well as submitting the selection proposal as a company proposal to the ordinary general shareholders' meeting. Proposed candidates for directors and auditors were all new appointments, and the composition was in accordance with the intention announced by NIPPON STEEL at the start of the TOB (however, among the candidates in the proposal, a director or an employee, or a retired person of NIPPON STEEL was not included).

In the ordinary general shareholders' meeting of TOKYO ROPE held in June 2021, the above-mentioned company proposal was approved by a majority vote, and directors and auditors of TOKYO ROPE were replaced in accordance with the intention of NIPPON STEEL.

(3) Summary

As previously mentioned in (1), by the conduct, the ratio of the voting rights of NIPPON

STEEL in TOKYO ROPE would be 19.91%, its ranking remains top, the gap of the ratio of the voting rights with other stockholders ranking 2nd and after is considerable, a business relation of materials exists between the parties, a relation to conduct joint research and development between the parties exists. Besides, as previously mentioned in (2), although NIPPON STEEL continued to encourage the change of management policy by replacing the management group of TOKYO ROPE, it was not realized, and therefore it carried out the conduct so through the TOB it can replace the management group of TOKYO ROPE and change the management policy, and in fact in the ordinary general shareholders' meeting of TOKYO ROPE, it realized the change of the management group in accordance with its intention. When all these situations are comprehensively considered, it can be recognized that a joint relationship was formed for the parties group as a result of the conduct.

Therefore, the JFTC informed NIPPON STEEL that it would conduct a business combination review concerning the conduct because a joint relationship was formed for the parties group due to the conduct.

Part V. Proposal of remedies by the parties

1 Contents of the remedies

When the JFTC informed NIPPON STEEL as previously stated in Part IV.2(3), NIPPON STEEL proposed remedies including the following contents (hereinafter referred to as "the remedies") to resolve the joint relationship among the parties group.

(i) To reduce the ratio of the voting rights of TOKYO ROPE to 10% or less, NIPPON STEEL will sell 1,625,500 shares in the market, etc. (after selling, the ratio of voting rights of NIPPON STEEL would be 9.91%, the same as it was just before the start of the TOB).
(ii) The sale mentioned in (i) above will be done as soon as possible, at the price of the purchase price of the conduct (1,500 yen per share) or more, and at the timing and volume which the stakeholder and the security market evaluate that the ultimate aim of the TOB, which is the recovery and improvement of the enterprise value of TOKYO ROPE, is achieved.
(iii) NIPPON STEEL will not exercise its voting rights concerning the part which surpasses 10% of the ratio of the voting rights of the common stock of TOKYO ROPE that it holds at the shareholders' meeting of TOKYO ROPE, until the above-mentioned sale of (i) is completed. However, after the sale of stocks, if the new stockholders cannot exercise their voting rights due to the record date, it cannot be prevented from exercising its voting rights according to the instructions of the new stockholders.
(iv) NIPPON STEEL will not let its own director or employee concurrently serve as a director of TOKYO ROPE, and will not recommend persons from its company to be a director of TOKYO ROPE, until the above-mentioned sale of (i) is completed.
(v) Until the above-mentioned sale of (i) is completed, it will report annually to the JFTC about the status of sales and holding of the stocks of TOKYO ROPE.

2 Assessment of the remedies

(1) Concerning the remedies (i)

The remedies (i) can be evaluated as appropriate to resolve the joint relationship among the parties group.

(2) Concerning the remedies (ii)

Although it is desirable to sell the stocks of TOKYO ROPE as soon as possible, it is considered unavoidable to set certain conditions for the timing of the sale. Moreover, since NIPPON STEEL announced of its own accord that it would implement the remedies, if it did not sell the stocks of TOKYO ROPE despite the conditions being met, it is expected to encounter criticism from the capital market, and the stock that cannot exercise the voting rights is poor in asset value in the first place, if it did not sell them early, the NIPPON STEEL management group is predicted to be exposed to the criticism by its stockholders, it is considered all the more that the incentive for NIPPON STEEL to delay the timing of sales of stocks of TOKYO ROPE is meager. Furthermore, since the remedies (iii) below will be applied until the sale is completed, it is considered that no considerable actual harm will be generated even if it took some time before the sale.

(3) Concerning the remedies (iii)

The contents of the remedies (iii) can be evaluated as appropriate, based on the assumption that the stocks surpassing 9.91% will be sold as soon as possible, and as transitional measures before that, they secured that NIPPON STEEL will not exercise its impact on TOKYO ROPE in regards to the part surpassing 10% of the ratio of the voting rights, and until the sale is completed, they create a similar situation as the one after it sold the stocks of TOKYO ROPE.

(4) Concerning the remedies (iv)

The contents of the remedies (iv) can be evaluated as appropriate when they are evaluated together with the other remedies, as they secure that NIPPON STEEL will not exercise its impact on TOKYO ROPE.

(5) Concerning the remedies (v)

The remedies (v) are considered as appropriate, to understand the implementation status of the remedies (i) to (iv).

Part VI. Conclusion

Based on the assumption that the remedies proposed by the parties will be implemented, the joint relationship between the parties group will be resolved. Therefore, it is judged that a business combination review is not necessary concerning the conduct.

Case 2 Acquisition of stocks of Siltronic AG by GlobalWafers GmbH

Part I. The parties group

GlobalWafers GmbH (hereinafter referred to as "GW" and the group of firms forming a joint relationship with Sino-American Silicon Products Inc. headquartered in Taiwan and an ultimate parent company of GW is referred to as "GW group") is headquartered in Germany, and GW group operates manufacturing and sales business of silicon wafers.

Siltronic AG (hereinafter referred to as "Siltronic" and Siltronic and a group of firms forming a joint relationship with Siltronic is referred to as "Siltronic group") is headquartered in Germany, and Siltronic group operates the manufacturing and sales business of silicon wafers.

Hereinafter, GW group and Siltronic group combined are referred to as "the parties group."

Part II. Outline of this case and applicable provisions

This case concerns a plan of GW to acquire more than 50% (13.7% to 70.0% or more) of the voting rights pertinent to the stock of Siltronic (hereinafter referred to as "the conduct").[2]

Applicable provision is Article 10 of the Antimonopoly Act.

Part III. Sequence of events, etc.

1 Sequence of events

Since December 2020, the parties group has voluntarily submitted to the JFTC written opinions and materials which state that it thinks that the conduct would not substantially restrain competition, and the JFTC exchanged opinions several times with the parties group, in response to the request of the parties group. After that, on May 17, 2021, as GW submitted a written notification of the plan concerning the conduct, based on the provisions of the Antimonopoly Act, the JFTC accepted this and started a preliminary review. Based on the above-mentioned written notification and written opinions and materials submitted by the parties group, the JFTC proceeded with the preliminary review, conducting interviews with competitors, etc. As a result, since it is recognized that a further detailed review is necessary, the JFTC requested GW to provide reports, etc., on June 15 of the same year and started a secondary review, as well as announcing the start of the secondary review and the acceptance of the public comments from third persons on the same day.[3]

[2] On February 1, 2022, GW group announced that it could not meet the conditions of the takeover bid for Siltronic by the deadline of January 31, 2022.

[3] Public comments from third persons were not submitted by the deadline of the submission of the comments.

In the secondary review, the JFTC exchanged opinions several times with the parties group and explained and discussed the point at issue, etc. Concerning the request for the provision of reports, etc., to GW, with the reports, etc., submitted on October 4, 2021, all the reports, etc., were submitted.

Moreover, besides the reports, etc., submitted by GW in stages, based on the results of interviews with users and competitors, document investigations, economic analysis, etc., the review concerning the impact of the conduct on competition proceeded.

In addition, the conduct was subject to reviews by competition authorities abroad and the JFTC proceeded with the review, while exchanging information between the Competition and Consumer Commission of Singapore and the U.S. Federal Trade Commission.

2 Brief summary of the review

The JFTC conducted a focused review on 5 business areas which are considered to have a large impact on competition, among competing business areas of the parties group. Then, it judged that the conduct would not substantially restrain competition in any of the areas as shown in Part IV. to VII. below.

Part IV. Silicon wafers

1 Overview

A wafer is a thin slice of round plate with a thickness of around 1 mm. It is used as a substrate to load circuits of semiconductor devices such as diodes, transistors, and integrated circuits. Users are semiconductor device manufacturers producing semiconductor devices.

A wafer can be (i) a silicon wafer made of silicon, (ii) a wafer which does not contain silicon, and (iii) a wafer made of silicon and other materials (hereinafter (ii) and (iii) combined is referred to as “wafer containing materials other than silicon”). Moreover, a silicon wafer has different properties such as conductive property, depending on the combination of factors including the production method of single crystal silicon, caliber, processing method, etc., dopant, and crystal orientation (hereinafter, a silicon wafer produced by combining the above-mentioned factors is referred to as “type of silicon wafer”).

Details of each factor are as follows.

(1) Production method of single crystal silicon

A silicon wafer manufacturer produces single crystal silicon from polycrystal silicon, processes it, and produces a silicon wafer.

Production method of single crystal silicon includes CZ method, MCZ method, and FZ method, and depending on the difference of the production method, the size, conductive property, etc., of silicon wafers that can be produced change.

CZ method is a method to melt polycrystal silicon in the quartz crucible, and immerse thin stick-shaped single crystal silicon (seed crystal) in the melted silicon, and by rotating and slowly pulling up the seed crystal, single crystal silicon of necessary size is produced. MCZ method is a method to create single crystal silicon by the same method as the CZ method, but using a magnetic field generating device when pulling up the seed crystal.

FZ method is a method to install a column-shaped polycrystal silicon on an induction coil and install single crystal silicon (seed crystal) under that, and by high frequency magnetic field, the silicon underneath the polycrystal silicon will be melted, and as adjusting the flow of silicon on the single crystal underneath by the induction coil, the single crystal silicon of a necessary size is produced.

(2) Caliber

The caliber of a silicon wafer includes 50 mm, 75 mm, 100 mm, 125 mm, 150 mm, 200 mm, and 300 mm.[4]

(3) Method of processing, etc.

Method of processing, etc., of silicon wafers and characteristics of silicon wafers by different methods are shown in Table 1.

[Table 1 Method of processing, etc.][5]

Method of processing, etc.	Characteristics
Unpolished	A silicon wafer without its surface being polished. The surface is rough compared with other silicon wafers.
Polished	A silicon wafer with one side or both sides mirror-polished. The surface is extremely flat and it is most standard.
Epitaxial	A very thin layer of single crystal silicon is deposited on the silicon wafer which completed the polishing process. Damages of silicon wafers generated in the production process can be repaired.

(4) Dopant

A dopant is impurities added to silicon wafers to generate differences in properties such as conductive property, etc., of semiconductor devices.

A dopant includes phosphorus, arsenic, antimony, and boron, and depending on the type or amount of these, the properties of silicon wafers change.

[4] These calibers are commercial standards determined by SEMI (Semiconductor Equipment and Materials International).

[5] Method of processing includes annealing and diffusion besides this, but silicon wafers processed in such methods do not compete among the parties.

(5) Crystal orientation

Crystal orientation is a specification of cut plane of the surface of silicon crystal contained in single crystal silicon, and it has three kinds including “100,” “111” and “110.”

2 Particular field of trade

(1) Scope of goods

A. Silicon wafers and wafers containing materials other than silicon

Silicon wafers and wafers containing materials other than silicon cannot be used alternatively, because wafers made with materials other than silicon have higher performance and price, and thus, a demand substitutability is not recognized.

Moreover, silicon wafers and wafers containing materials other than silicon have different production facilities, and besides requiring cost and time to introduce a production facility, in order to start a new business with users of silicon wafers, a review of quality, etc., of silicon wafers by users (hereinafter referred to as “certification review”) is required, and as this also requires a certain period of time, a supply substitutability is not recognized either.

Therefore, silicon wafers and wafers containing materials other than silicon have different scopes of goods.

B. Silicon wafer types

Users are procuring silicon wafers by designating the combination of each factor including production method of single crystal silicon, caliber, processing method, etc., dopant, and crystal orientation. In some cases, there are multiple types of silicon wafers with properties needed by users, and in other cases, there is only one type of them. Thus, the demand substitutability between types of silicon wafers is limited.

Considerations of each factor concerning the supply substitutability between types of silicon wafers are as follows.

(a) Production method of single crystal silicon

Production methods of single crystal silicon can be categorized into CZ method, MCZ method, and FZ method. When a manufacturer of silicon wafers introduces a production facility of CZ method, it usually installs a magnetic field generating devices as well, and it is possible to switch between CZ method and MCZ method by switching the magnetic field generating device on and off. Thus, it is not necessary to introduce a new production facility to switch from CZ method to MCZ method, and only a period for a certification review by users is needed, and it is considered to be possible to switch in a short period of time. Therefore, a supply substitutability between CZ method and MCZ method is recognized.

On the other hand, CZ/MCZ method and FZ method require different devices, and it takes certain cost and time to introduce a new production facility. Therefore, a supply substitutability is not recognized.

Thus, silicon wafers using single crystal silicon made by CZ method and MCZ method, and silicon wafers using single crystal silicon made by FZ method have different scopes of goods.

(b) Caliber

As previously stated in 1(2), calibers of silicon wafers can be categorized into 50 mm, 75 mm, 100 mm, 125 mm, 150 mm, 200 mm and 300 mm.

Production facilities of silicon wafers differ by caliber, but usually, production facilities for different calibers are not used.

However, as production volume of silicon wafers of 150 mm or less is small, the actual situation is that the production facilities of 150 mm are also producing silicon wafers with calibers smaller than 150 mm. Thus, a supply substitutability between silicon wafers of 50 mm, 75 mm, 100 mm, 125 mm, and 150 mm is recognized.

Based on the above, "150 mm or less," "200 mm" and "300 mm" have different scopes of goods.

(c) Method of processing, etc.

Manufacturers of silicon wafers are conducting processes of slicing to polishing in a series of production facilities, and it is easy to switch between the unpolished and the polished.

While epitaxial requires installment of necessary processing devices after polishing, introducing those processing devices needs a certain cost and time, as well as a period of time for a certification review by users to trade a new type of silicon wafers. Thus, it is difficult to newly supply silicon wafers with epitaxial in a short period of time.

Therefore, although a supply substitutability is recognized between the unpolished and the polished, a supply substitutability is not recognized between the unpolished/polished and the epitaxial.

However, as it is considered that the impact on competition is larger when the unpolished and the polished are supposed to have different scopes of goods, from the perspective of being careful, in this case, it is supposed that "unpolished," "polished" and "epitaxial" have different scopes of goods.

(d) Dopant

When a manufacturer of silicon wafers switches to different type of dopant, although cleaning, etc., of the production device will be necessary, it does not need to introduce a new facility. Thus, a supply substitutability is recognized.

Therefore, although different types of dopants are used in silicon wafers, they consist the same scope of goods.

(e) Crystal orientation

In order for a manufacturer of silicon wafers to produce silicon wafers with different crystal orientations, it only needs to change the seed crystal used in the production of single crystal silicon, and it is possible to produce them in the same production facilities. Thus, a supply substitutability is recognized.

Therefore, although the silicon wafers have different crystal orientations, they consist the same scope of goods.

(f) Summary

Based on the above, scopes of goods were defined by types of silicon wafers according to the combination of each factor of production method of single crystal silicon ("CZ method" (includes MCZ method. The same shall apply hereinafter.), "FZ method"), caliber ("150 mm or less," "200 mm," "300 mm"), method of processing, etc. ("unpolished," "polished," "epitaxial").

(2) Geographic range

Silicon wafers currently traded in the world do not have performance and quality which are remarkably different by manufacturers in Japan and abroad. Suppliers are dealing with users regardless of which country they are located, and users are also dealing with suppliers at home and abroad without any distinction.

Moreover, results of economic analysis also did not show that it should be defined within Japanese domestic market.[6]

Therefore, the geographic range was defined as "worldwide."

[6] Specifically, the Elzinga-Hogarty test (see Elzinga, K. G, and T. F. Hogarty (1973) "The Problem of Geographic Market Delineation in Antimerger Suits," Antitrust Bulletin, Vol. 18(1), 45-82, etc., for more details), which is an economic analysis method, quantitatively evaluating outflow and inflow of goods, etc., for areas to be the candidates of the geographic range, was carried out for the Japanese domestic market, and there were no goods of which the indicators related to outflow and inflow went below the threshold value (threshold of the indicator related to outflow and inflow was set at 10%).

Part V. Eligibility for the safe-harbor criteria in a particular field of trade

1 Position and competition status of the parties group

The parties group is competing in the following 10 fields. As the business fields (vi) to (x) of 150 mm or less stated below have relatively many competitors with a certain level of share compared with the other business field, in this case, the business fields (i) to (v) will be focused in the review.

Production method of single crystal silicon	Caliber	Method of processing	Business field
CZ method	150 mm or less	Unpolished	(vi)
		Polished	(vii)
		Epitaxial	(viii)
	200mm	Polished	(i)
		Epitaxial	(ii)
	300mm	Polished	(iii)
		Epitaxial	(iv)
FZ method	150 mm or less	Unpolished	(ix)
		Polished	(x)
	200mm	Polished	(v)

Market share statuses of business fields (i) to (v) are shown in Table 2 to Table 6, and they do not fall under the safe-harbor criteria of horizontal business combination.

[Table 2 2020 Share of business field (i)]

Ranking	Company name	Market share
1	GW group	About 25%
2	Company A	About 25%
3	Company B	About 20%
4	Company C	About 10%
5	Siltronic group	About 5%
6	Company D	0-5%
-	Others	About 5%
Total		100%
HHI after acquisition of stock (maximum): 2372.0 HHI increment: 364.0		

[Table 3 2020 Share of business field (ii)]

Ranking	Company name	Market share
1	GW group	About 25%
2	Company E	About 20%
3	Company F	About 20%
4	Siltronic group	About 15%
5	Company G	About 10%
6	Company H	About 5%
-	Others	0-5%
Total		100%
HHI after acquisition of stock (maximum): 2428.0 HHI increment: 650.0		

[Table 4 2020 Share of business field (iii)]

Ranking	Company name	Market share
1	Company I	About 30%
2	Company J	About 20%
3	Company K	About 20%
4	GW group	About 15%
5	Siltronic group	About 15%
-	Others	0-5%
Total		100%
HHI after acquisition of stock (maximum): 2452.0 HHI increment: 416.0		

[Table 5 2020 Share of business field (iv)]

Ranking	Company name	Market share
1	Company L	About 35%
2	Company M	About 30%
3	Siltronic group	About 15%
4	Company N	About 15%
5	GW group	About 10%
-	Others	0-5%
Total		100%
HHI after acquisition of stock (maximum): 2764.0 HHI increment: 252.0		

[Table 6 2020 Share of business field (v)]

Ranking	Company name	Market share
1	Siltronic group	About 50%
2	Company O	About 25%
3	Company P	About 15%
4	GW group	About 5%
-	Others	0-5%
Total		100%
HHI after acquisition of stock (maximum): 3946.0 HHI increment: 700.0		

Part VI. Legal assessment based on the Antimonopoly Act

1 Substantial restraints on competition by unilateral conduct

(1) Position of the parties group and status of competitors

In business fields (i) to (v), many competitors exist, including multiple powerful competitors.

Moreover, as demand in silicon wafers is considerably growing in response to the rise of demand in semiconductor devices, there is a concern about excess capacity of silicon wafer manufacturers. However, the situation is not that the excess capacity in each business field is not at all left, and silicon wafer manufacturers are making investments to expand their capacity. Thus, in a certain period of time, excess capacity of competitors is expected to increase further.

Therefore, competitive pressures from competitors are recognized.

(2) Entry

Procurement of materials for producing silicon wafers is easy, and there is no barrier to entry, such as authorizations and intellectual property rights, and silicon wafer manufacturers producing mainly 150 mm silicon wafers are actually joining business fields (i) to (v). Therefore, it is considered that an entry pressure is functioning.

However, when starting to supply silicon wafers by newly arranging production facilities, or when starting to supply new type of silicon wafers by renovating the existing production facilities, in either case, a period of time to introduce production facilities and certification review is required, and a certain period of time would be necessary for the entry.

Based on the above, an entry pressure is recognized to some extent.

(3) Adjacent market

In order for users to use different types of silicon wafers alternatively, renovation, etc., of the semiconductor device production facilities are necessary, and it is basically difficult. However, it is technically not impossible, and there are concrete cases in which they used them alternatively.

However, for example, as the production cost can be made lower to use silicon wafers with large calibers of 300 mm, instead of smaller calibers of 200 mm or 150 mm, from perspective of the cost, silicon wafers with small calibers are usually not used as substitutions to large ones.

Based on the above, competitive pressure from adjacent markets is limited.

(4) Competitive pressure from users

There are many semiconductor device manufacturers, which are users of silicon wafers, and they are actively competing and have strong price bargaining power.

Moreover, as users are purchasing multiple silicon wafers according to the type that they procure, they frequently increase and decrease the amount of procurement from the suppliers which went through certification reviews.

Based on the above, a competitive pressure from users is recognized.

(5) Economic analysis

When carrying out economic analysis, as the level of product differentiation between silicon wafer manufacturers is low, it was judged appropriate to focus on the model supposing Cournot competition (quantity competition) of homogenous goods.[7] Based on this, using market share, marginal cost estimated from accounting data, and price data, the

[7] GUPPI (Gross Upward Pricing Pressure Index. For more details, see Farrell, J. and C. Shapiro (2010) "Antitrust evaluation of horizontal mergers: An economic alternative to market definition," *B.E. Journal of Theoretical Economics: Policies and Perspectives,* 10(1)) presupposing Bertrand competition (price competition) of product differentiation, CMCR (for more details, see Werden, G. J. (1996) "A robust test for consumer welfare enhancing mergers among sellers of differentiated products," *Journal of Industrial Economics*, 44(4), 409-413) supposing Bertrand competition (price competition) and price increase rate supposing demand function of price elasticity (for more details, see Shapiro, C. (1996) "Mergers with differentiated products," *Antitrust Magazine*, Spring, 23-30, etc.) were also calculated. Then, the results strongly suggested that there was a high possibility that competition restraints would be generated, although there was difference in extent by models and goods. However, in this case, as it remains to be judged appropriate to focus on the model supposing Cournot competition (quantity competition) of homogenous goods, these results are not stressed.

index called CMCR (Compensating Marginal Cost Reduction. Hereinafter referred to as "Cournot CMCR")[8], supposing Cournot competition, was calculated to evaluate how many % of marginal cost needed to be reduced theoretically in order to maintain the current price.[9]

Cournot CMCR in the case of consolidation of Company X and Company Y can be shown in the following formula.[10]

$$Cournot\ CMCR = \frac{2 \times Market\ share\ of\ Company\ X \times Market\ share\ of\ Company\ Y}{[Price\ elasticity\ of\ demand \times (Market\ share\ of\ Company\ X + Market\ share\ of\ Company\ Y) - (Square\ of\ market\ share\ of\ Company\ X\ +\ Square\ of\ market\ share\ of\ Company\ Y)]}$$

In general, it is suggested that when Cournot CMCR surpasses 5%,[11] a possibility of competition restraints emerges, and when it surpasses 10%, a substantial concern for competition emerges. Concerning business fields (i) and (iv), they were 3.8% and 4.8% respectively in 2019, and 2.4% and 4.5% respectively in 2020, and they were less than 5% in either case. On the other hand, concerning business fields (ii), (iii), and (v), they were 6.1%, 7.9%, 4.2%, respectively in 2019, and 6.3%, 6.8%, and 7.8%, respectively in 2020. Except for the business field (v) in 2019, they surpassed 5% but did not surpass 10%.

As a result, concerning business fields (ii), (iii) and (v), considering the Cournot CMCR values, although it can be evaluated that an issue for competition may arise, it cannot be said that such possibility is strongly suggested only by this analysis, and it was evaluated that it would be appropriate to judge together with other factors for judgement.

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[8] Cournot CMCR was developed in 'Froeb, L. M., and Werden, G. J. (1998) "A robust test for consumer welfare enhancing mergers among sellers of a homogeneous product," Economics Letters, 58(3), 367-369'. Although it is a simple analysis method, it does not set assumptions, and is used as a common model.

[9] Furthermore, concerning a special model of 'Perry, M. K., and Porter, R. H. (1985) "Oligopoly and the incentive for horizontal merger," *American Economic Review*, 75(1), 219-227.,' which is a Cournot competition model, taking supply restraints of firms into consideration, price increase rate after consolidation was calculated by the estimation according to the method of 'McAfee, R. P., and Williams, M. A, (1992) "Horizontal mergers and antitrust policy," *Journal of Industrial Economics,* 181-187.' However, some goods showed price decrease, and some goods showed extreme price increase, and results which seem to be rational could not be obtained.

[10] Price elasticity of demand was calculated by the weighted average of estimation by the parties, after deriving price elasticity of demand $Price\ elasticity\ of\ demand = \frac{Market\ share\ of\ Company\ z}{(Price - Marginal\ cost\ of\ Company\ z)/Price}$ from the relational expression $\frac{Price - Marginal\ cost\ of\ Company\ z}{Price} = \frac{Market\ share\ of\ Company\ z}{Price\ elasticity\ of\ demand}$ pertinent to price cost margin of each firm, derived from Cournot model.

[11] This is stated in 'Werden, G. J. and Froeb, L. M., (2011) "Choosing among tools for assessing unilateral merger effects," *European Competition Journal*, 7(2), 155-178.'

(6) Summary

Based on the above, the share of the parties after the conduct will have a certain percentage, and from the results of economic analysis, although the results showed that an issue may arise for competition concerning business fields (ii), (iii), and (v), as it cannot be said that such possibility is strongly suggested, and in every market there are powerful competitors, it is recognized that the competitive pressure from users is functioning. Moreover, the entry pressure is recognized to a certain extent.

Therefore, it is considered that the unilateral conduct would not substantially restrain competition.

2 Substantial restraints on competition by coordinated conduct

In all business fields from (i) to (v), as there are many competitors including multiple powerful competitors, user pressure is recognized, entry pressure is recognized to a certain extent, it is considered that the coordinated conduct would not substantially restrain competition.

Part VII. Conclusion

It is judged that the conduct cannot be said to substantially restrain competition in a particular field of trade.

Case 3 Absorption-type split of steel guardrail and soundproof wall business of NIPPON STEEL METAL PRODUCTS CO.,LTD. by Kobelco Engineered Construction Materials Co., Ltd.

Part I. The parties

Kobelco Engineered Construction Materials Co., Ltd. [1] (JCN 7140001049116) (hereinafter referred to as "KOBELCO Engineered Construction Materials") is a company which mainly operates manufacturing and sales business of steel construction materials.

NIPPON STEEL METAL PRODUCTS CO.,LTD. (JCN 9010601024974) (hereinafter referred to as "NIPPON STEEL METAL PRODUCTS") is a company which mainly operates manufacturing and sales business of steel construction materials.

Hereinafter, KOBELCO Engineered Construction Materials and NIPPON STEEL METAL PRODUCTS together are called "the parties." Also, a group of firms forming joint relationships already with KOBELCO Engineered Construction Materials is called "KOBELCO Engineered Construction Materials group," and a group of firms forming joint relationships already with NIPPON STEEL METAL PRODUCTS is called "NIPPON STEEL METAL PRODUCTS group," and KOBELCO Engineered Construction Materials group and NIPPON STEEL METAL PRODUCTS group combined is called "the parties group."

Part II. Outline of this case and applicable provisions

This case concerns a plan of KOBELCO Engineered Construction Materials to succeed production and sales business of steel guardrail and soundproof wall of NIPPON STEEL METAL PRODUCTS by means of absorption-type split (hereinafter referred to as "the conduct").

Applicable provision is Article 15-2 of the Antimonopoly Act.

Furthermore, between the goods, etc., produced and sold by the parties group, many are in competitive or business relationships. Among these examined, the following gives a detailed account of horizontal business combination of production and sales business of guard rails, guard pipes, and guard cables, that is considered to have relatively large impact on competition.

Part III. Particular field of trade

1 Overview of goods

(1) Guardrail for vehicles

A guardrail for vehicles is a rail installed to prevent deviation and fall of cars, and depending on its form, etc., it can be divided into forms of guardrail, guard pipe, guard cable, balustrade, concrete guardrail, etc. Among these, as guardrails, guard pipes, and guard cables are made of steel, hereinafter, these are referred to as "steel guardrail for vehicles" all together.

[1] On December 1, 2021, it changed its trade name to "NIPPON STEEL KOBELCO METAL PRODUCTS CO.,LTD."

(2) Steel guardrail for vehicles

A. Structure

Steel guardrails for vehicles consist of pillars which are installed with certain intervals, which are connected with constructions called "beams." Depending on the form, what are used for beams change. Thin steel sheets are used for guardrails, round steel tubes are used for guard pipes, and wire ropes are used for guard cables.

B. Type

Types of guardrail for vehicles are divided by road classification, design speed, and strength according to the section where they will be installed, and they are defined as SS, SA, SB, SC, A, B, C[2], in order of strength according to "the installation standards of guardrails.[3]" As long as a guardrail for vehicles corresponds to the types, any forms can be installed.

Applicable sections defined by "the installation standards of guardrails" are shown in Table 1.

[Table 1 Applicable sections by type]

Road classification	Design speed	General sections	Sections that are feared to have serious damage[4]	Sections which intersect or come close to bullet trains
National expressways, motorways	80 km/h or more	A	SB	SS
	60 km/h or less		SC	SA
Other roads	60 km/h or more	B	A	SB
	50 km/h or more	C	B[5]	

Moreover, the lineup of forms of steel guardrails for vehicles by type is shown in Table 2.

[2] According to "the installation standards of guardrails," depending on the location of installation, suffixes are sometimes added (e.g., "Am" for the separating zone of type A, and "Ap" for the boundary of sidewalk and roadway. Suffix is not set for the roadside, and thus just "A."), but there are no differences in types if they have the same strength. Therefore, in this case, suffixes are omitted for examination.

[3] Circular notice by Director General, Road Bureau, Ministry of Land, Infrastructure, Transport and Tourism dated March 31, 2004.

[4] They are intersections and adjacent sections of railways in metropolitan areas and their suburbs and local mainline, intersections and adjacent sections of national expressways, motorways, etc., and among sections where guardrails are installed at separating zones, sections where running speed is especially high and traffic is heavy, and furthermore, sections with fear of serious secondary damage or sections where off-street level of danger is extremely high, for the prevention of personal damage of occupants.

[5] For roads with design speed of 40 km/h or less, type C can be used.

[Table 2 Production status of forms of steel guardrails for vehicles by type]

	Guardrail	Guard pipe	Guard cable
SS	○		
SA	○		
SB	○		
SC	○	○	
A	○	○	○
B	○	○	○
C	○	○	○

Furthermore, a production method of each form of steel guardrail for vehicles does not differ by type. Instead, in the same production facility, they change the strength by changing thickness, etc.

2 Scope of goods

Although direct customers for guardrail manufactures are contractors, etc., it is not contractors, etc., that are making decisions on which guardrails to install in which roads, but it is road managers such as expressway companies, Ministry of Land, Infrastructure, Transport and Tourism, and municipalities. Therefore, it is appropriate to consider the demand substitutability between guardrails from the perspective of road managers.

(1) Guardrails for vehicles and rails for pedestrians and bicycles

Although there are guardrails for pedestrians and bicycles used for pedestrians, etc., the purpose of installing them is to prevent pedestrians, etc., from falling or crossing outside the road. On the other hand, guardrails for vehicles are for cars, and the purpose of installing them is to prevent cars from deviating from the road. Because of these differences, as the necessary strengths are also different, there are no demand substitutability between the two.

Moreover, guardrails for vehicles include concrete guardrails and balustrades besides steel guardrails for vehicles such as guardrails, guard pipes and guard cables. While the structure of rails for pedestrians and bicycles consists of pillars made of round steel tubes connected by beams made of round steel tubes, guard pipes among guardrails for vehicles use round steel tubes for pillars and beams, and thus the structure is in common with rails for pedestrians and bicycles. However, diameters and thickness of round steel tubes used for guard pipes are larger than the ones used for rails for pedestrians and bicycles. Therefore, they cannot be produced only by cutters and perforators that are used for the production of rails for pedestrians and bicycles. Therefore, supply substitutability between guard pipes and rails for pedestrians and bicycles is limited.

Furthermore, as the production method of guardrails for vehicles excluding guard pipes (guardrails, guard cables, concrete guardrails, and balustrades) is different from the one for guardrails for pedestrians, due to the difference in materials and forms, there is no supply substitutability between guardrails for vehicles excluding guard pipes and guardrails for pedestrians.

Therefore, guardrails for vehicles and rails for pedestrians and bicycles constitute different scopes of goods.

(2) Steel guardrail for vehicles and concrete guardrail

Guardrails for vehicles include concrete guardrails. However, they are made of concrete and have stiffness (the quality of almost never being deformed). On the other hand, steel guardrails for vehicles are made of steel and they have flexibility (the quality to bounce). In this regard, "the installation standards of guardrails" stipulates that "in principle, flexible guardrails should be selected for guardrails for vehicles. However, when they are installed at constructions such as bridges and overpasses, and if they are installed at the section where deformation of guardrails cannot be tolerated, such as separating zones with narrow width, stiff guardrails can be selected as necessary." Supposing that a car collided with a guardrail, if stiffness is high, the shock degree against the car itself becomes high, and the occupants of the car will be significantly damaged, while if it is flexible, the shock degree can be curbed, and the damage against the occupants may be limited to minimum, and it is easier for the car to be back on the right track. Thus, guardrails for vehicles should in principle be flexible, which are superior in shock-absorbing properties, but for the sections where preventing cars from deviating outside the road due to the road structure is the highest priority, or for the sections with heavy traffic where obstruction of transportation becomes considerable if traffic had to be frequently restricted for repairing the bent guardrails, stiff guardrails can be selected exceptionally. Therefore, demand substitutability is limited, because concrete guardrails that are stiff guardrails and steel guardrails for vehicles that are flexible guardrails have different installation locations and purposes. Moreover, as materials used and production methods are also different, there is no supply substitutability.

Therefore, steel guardrails for vehicles and concrete guardrails constitute different scopes of goods.

(3) Steel guardrail for vehicles and balustrades

A balustrade is a guardrail for vehicles that is installed at constructions in the high positions such as bridges and overpasses. Supposing that a car falls from a higher position, as there will be an extensive damage at the point it fell, the purpose of installing a balustrade is to prevent cars from falling, and high stiffness is needed among flexible guardrails. Meanwhile, steel guardrails for vehicles are not installed at constructions, and in addition, as previously mentioned in (2), in order to minimize the damage to car occupants and to recover the direction of cars, flexibility is more stressed than stiffness. Therefore, as balustrades and steel guardrails for vehicles have different installation locations and purposes, demand substitutability is limited. Moreover, although there are balustrades made of steel, in order to respond to such difference in properties, there are many balustrades made of other materials such as aluminum, cast iron, and stainless steel, and their production facilities and methods are different from steel guardrails for vehicles, and it is not easy to switch productions. Thus, the supply substitutability is also limited.

Therefore, steel guardrails for vehicles and balustrades constitute different scopes of goods.

(4) Between the forms of steel guardrail for vehicles

Road managers decide type of strength of steel guardrails for vehicles installed based on the road classifications, design speed, etc., in Table 1, and they are comprehensively judging the price of each steel guardrail for vehicles within the type of strength, forms of roads of the installation locations, and the difficulty of maintenance and restoration, etc., and selecting which form of steel guardrails for vehicles should be installed. Thus, they can select steel guardrails for vehicles with different forms alternatively if they have same

strength. However, as shown in Table 2, there are some forms of steel guardrails for vehicles that are not produced, depending on the strength types. Thus, road managers cannot fully alternatively select forms. Therefore, demand substitutability between forms of steel guardrails for vehicles is limited.

Moreover, every form of beam part of steel guardrails for vehicles is different, and production facilities are also different except for the painting process and switch of production is not easy. Thus, there is no supply substitutability between forms of steel guardrails for vehicles.

Therefore, each steel guardrail for vehicles has different scope of goods by form.

(5) Summary

Based on the above, in this case, “guardrail,” “guard pipe,” and “guard cable” are defined as scopes of goods.

Hereinafter, guardrail, guard pipe and guard cable are referred to as “3 goods” all together.

3 Geographic range

Users of 3 goods as defined in 2 above, are purchasing 3 goods from manufacturers in all regions of Japan. Moreover, manufacturers of 3 goods sell them in all regions of Japan, and there is no situation in which the price differs by regions. Therefore, in this case, for 3 goods, “all regions of Japan” is defined as geographic range.

Part IV. The impact of the conduct on competition

All the parties operate production and sales business of 3 goods in all regions of Japan. Thus, the conduct falls under horizontal business combination.

1 Guardrail

(1) Position of the parties and conditions of competing enterprises

Market share of guardrails is shown in the table below. After the conduct, HHI is about 5,900, and HHI increment is about 2,400. Thus it does not fall under the safe-harbor criteria of horizontal business combination.

[Market share of guardrails in FY 2020]

Ranking	Company name	Market share
1	NIPPON STEEL METAL PRODUCTS	About 40%
2	KOBELCO Engineered Construction Materials	About 30%
3	Company A	About 30%
4	Company B	0-5%
Total		100%
Combined market share and ranking: about 70% and top		

After the conduct the market share of the parties becomes about 70% (top-ranked) and although there is Company A with market share of about 30% as a powerful competitor, there is only one powerful competitor, and the gap of the market share with the parties is large. Considering these situations, the competitive pressure from competitors is limited.

(2) Import

Existence of foreign manufacturers bearing exporting guardrails to Japan in mind is recognized, and it is considered that barriers against import are low or non-existent.

On the other hand, according to a questionnaire, majority of users answered that because they have concern for quality of imported guardrails, and they think that there is a problem regarding stable and continuous supply from foreign manufacturers, and thus, even if in the near future a considerable amount of guardrails is imported and those imports have equal quality as domestic products, regardless of the price level, they will not consider them. From this, even if the imports would have price advantage compared with domestic products, it is not expected that the sales would reach the amount that would have a restraining power against price increase of domestic products.

Based on the above, an import pressure is not recognized.

(3) Entry

Although there are no legal barriers to entry, considerable costs are needed to introduce new production facilities and secure performances for production of guardrails. Demand for guardrails is in the decreasing trend in the long term, and increase of demand in the future cannot be expected. In such situation, enterprises which are willing to enter by bearing considerable cost cannot be identified. Also, if they do not have sufficient production facilities, it is difficult to produce and sell with equal quality and lineup as the parties. Therefore, entry pressure is not recognized.

(4) Competitive pressure from adjacent markets

Instead of guardrails, other facilities with better landscape qualities such as curbstones, bollards[6], planting strips can be considered to be used. However, these facilities are largely different from guardrails in terms of roles and safety, and replacement of guardrails with these facilities is limited, and it is not recognized that the replacement will advance proactively in the future either.

Based on the above, competitive pressure from adjacent markets is limited.

(5) Competitive pressure from users

As users such as contractors are carrying out works by making successful bids organized by road managers, it can be considered that the price competition between users is active. However, according to the questionnaire for users, many users answered that if the price of guardrails increased, they could pass on the increase to customers. Moreover, users who answered that it was easy to change to other manufacturers were limited to a certain extent, because of the price gap or existence or non-existence of trade routes, although it is considered that qualities of guardrails between manufacturers do not differ.

Based on the above, competitive pressure from users is limited.

(6) Economic analysis

As shown in 4 below, the results showed that in general, concerns for competition might arise in any analyses on guardrails.

(7) Summary

As shown above, due to the conduct, market share of the parties will become about 70% (top-ranked), and in addition to import pressure and entry pressure not being recognized, competitive pressure from competitors, competitive pressure from adjacent markets, and competitive pressure from users are limited, and the results of economy analyses suggest that concerns for competition may arise. Therefore, it is feared that the conduct may cause substantial restraints on competition in the business field related to guardrails by unilateral conducts or coordinated conducts of the parties.

2 Guard pipe

(1) Position of the parties and conditions of competing enterprises

Market share of guard pipes is shown in the table below. As after the conduct, HHI is about 5,200, HHI increment is about 2,300, it does not fall under the safe-harbor criteria of horizontal business combination.

[6] Pickets installed at roads to restrict passing and entering of cars

[Market share of guard pipes in FY 2020]

Ranking	Company name	Market share
1	KOBELCO Engineered Construction Materials	About 35%
2	NIPPON STEEL METAL PRODUCTS	About 30%
3	Company C	About 20%
4	Company D	About 15%
Total		100%
Combined market share and ranking: about 70% and top		

After the conduct the market share of the parties becomes about 70% (top-ranked) and although there are Company C with market share of about 20% and Company D with market share of about 15% as powerful competitors, there are only two powerful competitors, and the gap of the market share with the parties is large. Considering these situations, the competitive pressure from competitors is limited.

(2) Entry

Status of entry is the same as 1(3) above, and the entry pressure is not recognized for guard pipes either.

(3) Competitive pressure from adjacent markets

Status of competitive pressure from adjacent markets is the same as 1(4) above, and competitive pressure from adjacent markets is also limited for guard pipes.

(4) Competitive pressure from users

Status of competitive pressure from users is the same as 1(5) above, and competitive pressure from users is also limited for guard pipes.

(5) Economic analysis

As stated in 4 below, different results were given regarding the possibility of concerns for competition for guard pipes, depending on the models of economic analysis and data used. Therefore, it was judged that we should not rely strongly on the analysis results.

(6) Summary

As shown above, due to the conduct, market share of the parties will become about 70% (top-ranked), and in addition to unrecognized entry pressure, competitive pressure from competitors, competitive pressure from adjacent markets, competitive pressure from users are also limited. Therefore, it is feared that the conduct may cause substantial restraints on competition in the business field related to guard pipes by unilateral conducts or coordinated conducts of the parties.

3 Guard cable

(1) Position of the parties and conditions of competing enterprises

Market share of guard cables is shown in the table below. After the conduct, HHI is about 4,600, and HHI increment is about 1,800. Thus it does not fall under the safe-harbor criteria of horizontal business combination.

[Market share of guard cables in FY 2019]

Ranking	Company name	Market share
1	KOBELCO Engineered Construction Materials	About 35%
2	NIPPON STEEL METAL PRODUCTS	About 25%
3	Company E	About 25%
4	Company F	About 15%
Total		100%
Combined market share and ranking: about 60% and top		

After the conduct the market share of the parties becomes about 60% (top-ranked) and although there are Company E with market share of about 25% and Company F with market share of about 15% as powerful competitors, there are only two powerful competitors, and the gap of the market share with the parties is large. Considering these situations, the competitive pressure from competitors are limited.

(2) Entry

Status of entry is the same as 1(3) above, and the entry pressure is not recognized for guard cables either.

(3) Competitive pressure from users

Status of competitive pressure from users is the same as 1(5) above, and competitive pressure from users is also limited for guard cables.

(4) Economic analysis

As shown in 4 below, the results showed that concerns for competition might arise in any analyses.

(5) Summary

As shown above, due to the conduct, market share of the parties will become about 60% (top-ranked), and in addition to unrecognized entry pressure, competitive pressure from competitors and competitive pressure from users are limited, and the results of economic analyses suggest that concerns for competition may arise. Therefore, it is feared that the conduct may cause substantial restraints on competition in the business field related to guard cables by unilateral conducts or coordinated conducts of the parties.

4 Economic analysis

Economic analysis was conducted using market share, marginal cost and price calculated based on data obtained from the parties, and conversion ratio, etc., calculated from questionnaire for users. 3 goods are standardized as shown in Part III.1 above, and they are considered to be homogenous goods with product qualities or performances, etc., which do not significantly differ between enterprises. Thus, it is considered appropriate to use indices given by models supposing competition of homogenous goods. However, as there may be a possibility that differentiation is arising due to brand image, etc., of each enterprise, analysis related to indices given by models supposing competition of product differentiation goods was also conducted.

Furthermore, for market share, price and marginal cost, yearly data from FY 2017, FY 2018, and FY 2019 were used, and indices of (1) to (4) below were used to calculate index figure of each fiscal year. Moreover, concerning indices from (2) to (4) below, to check the robustness, namely to check whether we could have similar results even if partial data were replaced with others, instead of conversion ratio calculated from questionnaire survey, conversion ratio calculated by using market share corresponding each fiscal year was used to calculate the value.

(1) CMCR supposing homogenous goods Cournot competition (production volume competition)

In general, when the homogenous goods Cournot competition is existent and entry pressure, etc., is not generated, in theory, if the number of enterprises decreases in a market, the price will always increase. In order to understand the vulnerability to price increase after the business combination in theory concerning 3 goods, we calculated the index evaluating how much % of marginal cost reduction would be needed to maintain the current price after business combination, supposing the homogenous goods Cournot competition, which is called CMCR, supposing homogenous Cournot competition (Compensating Marginal Cost Reduction, hereinafter referred to as "Cournot CMCR").[7] [8]

In general, when Cournot CMCR surpasses 5%, there is a possibility of concern[9] for competition, and when it surpasses 10%, high possibility of concern for competition is suggested. Results showed 9-12% for guardrails, 6-9% for guard pipes, and 24-36% for guard cables.

[7] For Cournot CMCR, see 'Froeb, L. M., and Werden, G. J. (1998) "A robust test for consumer welfare enhancing mergers among sellers of a homogeneous product," *Economics Letters*, 58(3), 367-369.'

[8] Cournot CMCR in the case of consolidation of Company X and Company Y can be shown in the following formula.

$$Cournot\ CMCR = \frac{2 \times Market\ share\ of\ Company\ X \times Market\ share\ of\ Company\ Y}{[Price\ elasticity\ of\ demand \times (Market\ share\ of\ Company\ X\ +\ Market\ share\ of\ Company\ Y) - (Square\ of\ market\ share\ of\ Company\ X\ +\ Square\ of\ market\ share\ of\ Company\ Y)]}$$

[9] This is stated in 'Werden, G. J. and Froeb, L. M., (2011) "Choosing among tools for assessing unilateral merger effects," *European Competition Journal*, 7(2), 155-178.'

Thus, results for guardrails and guard cables generally and consistently suggested that there was a high possibility that concerns for competition might arise regardless of the fiscal year of data that were used. Results for guard pipes suggested that there was a possibility that concerns for competition might arise regardless of the fiscal year of data that were used.

(2) CMCR supposing differentiated goods and Bertrand competition (price competition)

Next, supposing Bertrand competition (price competition) of goods with product differentiation, like (1) above, in order to understand the vulnerability to price increase after the business combination in theory related to 3 goods, indices to evaluate how much % of marginal cost reduction would be needed in theory to maintain the current price (hereinafter referred to as "Bertrand CMCR") were calculated.[10][11]

In general, as is the case with Cournot CMCR, when Bertrand CMCR surpasses 5%, there is a possibility of concern for competition, and when it surpasses 10%, high possibility of concern for competition is suggested. Results showed about 9-12% for guardrails, about 2% for guard pipes, and about 12-18% for guard cables, when the conversion rates given from the questionnaire for users are used. Moreover, when conversion rates given from the market share of each fiscal year are used, results showed about 14-18% for guardrails, about 6-12% for guard pipes, and about 20-28% for guard cables.

Thus, results for guardrails and guard cables suggested consistently in general that there was a high possibility that concerns for competition might arise whichever data were used. As for guard pipes, different results were given regarding the concerns for competition, depending on the data that were used.

[10] For Bertrand CMCR, see 'Werden, G. J. (1996) "A robust test for welfare enhancing mergers among sellers of differentiated products," *Journal of Industrial Economics*, 44(4), 409-413.'

[11] Bertrand CMCR in the case of consolidation of Company X and Company Y can be shown in the following formula.

$$Bertrand\ CMCR\ of\ Company\ X = \frac{Profit\ rate\ of\ Company\ X \times Conversion\ rate\ of\ Company\ Y\ to\ Company\ X \times Conversion\ rate\ of\ Compar + Profit\ rate\ of\ Company\ Y \times Conversion\ rate\ of\ Company\ X\ to\ Company\ Y \times \frac{Price\ of\ Comp}{Price\ of\ Comp}}{(1 - Profit\ rate\ of\ Company\ X)(1 - Conversion\ rate\ of\ Company\ Y\ to\ Company\ X \times Conversion\ rate\ of\ Com}$$

(3) GUPPI

GUPPI (Gross Upward Pricing Pressure Index) is a method developed to analyze the existence, non-existence, and extent of price increase incentive caused by business combination, concerning goods with product differentiation.[12]

When GUPPI surpasses 5%, it is said that there is a possibility of concern for competition. Results showed about 4-6% for guardrails, about 1-2% for guard pipes, and about 6-9% for guard cables, when the conversion rates given from the questionnaire for users were used. Moreover, when conversion rates given from the market share of each fiscal year were used, results showed about 5-6% for guardrails, about 2-4% for guard pipes, and about 9-12% for guard cables.

Thus, results for guardrails and guard cables suggested in general that there was a possibility that concerns for competition might arise whichever data were used. Results for guard pipes suggested that no concerns for competition would arise whichever data were used.

(4) Price increase rate supposing price elasticity of demand function

Supposing that the price elasticity of demand is constant, an analysis was conducted using method of evaluating by simple merger simulation to see how much price increase companies would implement after the business combination.[13][14]

In the analysis using this method, normally, when price increase surpasses 5%, it is said that there is a possibility of concern for competition. Results showed price increase of about 10-14% for guardrails, about 2-3% for guard pipes, and about 13-22% for guard cables, when the conversion rates given from the questionnaire for users were used. Moreover, when conversion rates given from the market share of each fiscal year were used, results showed price increase of about 14-17% for guardrails, about 7-12% for guard pipes, and about 18-25% for guard cables.

Thus, results for guardrails and guard cables suggested consistently that there was a possibility that concerns for competition might arise regardless of the fiscal year of the data that were used, and whichever conversion rates were used. As for guard pipes, different results were given, depending on the data that were used.

(5) Summary

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[12] GUPPI can be calculated by the following formula.

$$GUPPI\ of\ Company\ Y\ to\ Company\ X = \frac{Price\ of\ Company\ Y - Marginal\ cost\ of\ Company\ Y}{Price\ of\ Company\ Y} \times \frac{Price\ of\ Company\ Y}{Price\ of\ Company\ X} \times Conversion\ rate\ of\ Company\ X\ to\ Company\ Y$$

[13] For price increase rate supposing price elasticity for demand function, see 'Shapiro, C. (1996) "Mergers with differentiated products," *Antitrust*, spring, 23-30.'

[14] Supposing that the Slutsky symmetry (meaning cross price elasticity is symmetric between goods A and goods B) is satisfied, price increase rate of Company X can be calculated by the following formula.

$$Price\ increase\ rate\ of\ Company\ X = \frac{\begin{array}{c} Profit\ rate\ of\ Company\ X \times Conversion\ rate\ of\ Company\ Y\ to\ Company\ X \times Conversion\ rate\ of\ Company\ X\ to\ Company\ Y \\ +Conversion\ rate\ of\ Company\ X\ to\ Company\ Y \times Profit\ rate\ of\ Company\ Y \times \frac{Price\ of\ Company\ Y}{Price\ of\ Company\ X} \end{array}}{\begin{array}{c} 1 - Conversion\ rate\ of\ Company\ Y\ to\ Company\ X \times Conversion\ rate\ of\ Company\ X\ to\ Company\ Y - Profit\ rate\ of\ Company\ X \\ -Conversion\ rate\ of\ Company\ X\ to\ Company\ Y \times Profit\ rate\ of\ Company\ Y \times \frac{Price\ of\ Company\ Y}{Price\ of\ Company\ X} \end{array}}$$

As shown in (1) to (4) above, results of economic analysis showed that for guardrails and guard cables, in general, consistently, concerns for competition might arise in 4 models, and such results were consistent with the evaluation shown in 1 or 3 above.

On the other hand, as for guard pipes, different results were given regarding whether concerns for competition might arise or not, depending on the models of economic analysis and data that were used. Therefore, it was judged that we should not rely strongly on the analysis results.

Part V. Proposal of remedies by the parties

When we pointed out to the parties that it was feared that the conduct might substantially restrain competition in a particular field of trade related to 3 goods, as shown in Part IV. above, the parties proposed the following remedies (hereinafter referred to as "remedies for the case").

1 Transfer of facility

They shall transfer 45% of the share related to forming and processing facilities of 3 goods in Amagasaki factory of KOBELCO Engineered Construction Materials after the conduct (hereinafter referred to as "consolidated company") to DAIKURE Co., Ltd. (JCN 1240001026093) (hereinafter referred to as "DAIKURE"), which mainly operates production and sales business of grating.[15]

2 Commissioned operation and production of 3 goods

The consolidated company shall indefinitely conduct commissioned operation and production, by way of supplying 3 goods of all types to DAIKURE at the cost corresponding to the production cost of the consolidated company, capping the volume at the one corresponding to the sales volume of the most recent business year of the company having lower market share among the parties. Moreover, the consolidated company will supply to DAIKURE for the price that is less than the corresponding production cost for 5 years after the conduct, so that DAIKURE can at an early stage manifest its presence in the market of the 3 goods right after the conduct.

Furthermore, the specific way of thinking of supply price should be approved by the JFTC in advance of the conduct. Moreover, when DAIKURE judges that it needs to validate the supply price, after consultation with the consolidated company, it should select a financial expert such as certified public accountant, etc., independent from the consolidated company, and let the expert validate the supply price. The selection of the expert should be approved by the JFTC. As a result of such validation, if there is a gap between the supply price of the product and the validated price, the consolidated company and DAIKURE should confer, and then, in principle, based on the validated price by the expert, necessary adjustment should be conducted.

3 Support for operation and techniques

The parties shall disclose customer list to DAIKURE, provide it with information on techniques and qualities, etc., conduct training, etc., for DAIKURE employees before the conduct. Moreover, they will allocate techniques service staff dedicated to DAIKURE in

[15] Grating boards made of metals, etc., for the purpose of drainage, ventilation, etc.

the consolidated company, and the staff will respond to the technical inquiries such as special specifications from users during the assistance of creating construction drawing, handle complaints, etc.

4 Measures to block the flow of information

Take appropriate measures to block the flow of information within the company to prevent competition sensitive information (cost information, delivery volume, delivery destination, material name, etc.) of DAIKURE to be shared by the sales department of the consolidated company, due to the commissioned operation and production of 3 goods. If a noncompliance of the measures to block the flow of information is found at the consolidated company, it should be reported to the JFTC.

5 Independent handling of partial production process by DAIKURE

DAIKURE is considering to independently handle the plating process, etc., among the production process of 3 goods on its own (including companies with capital ties with DAIKURE) in the future, and if DAIKURE proposes to independently handle the partial production process, the consolidated company should sincerely respond to it so that it can conduct commissioned operation and production of semi-finished goods.

6 Regular report

The consolidated company should report to the JFTC the status of remedies for the case for 7 business years, starting with the 1st report of the business year ending for the first time after the conduct. Even after the duration of the regular reporting period, if the remedies for this case is continuing, and if required by the JFTC, it should provide necessary report concerning the implementation status of the remedies for the case.

Part VI. Assessment of the remedies for the case

1 Company to undertake the remedies for the case

DAIKURE is engaged in production and sales of balustrades, which is one of the guardrails for vehicles. Thus it is considered that DAIKURE already has a certain knowledge necessary for selling the 3 goods anew, and that will contribute to the improvement of sales capability of the 3 goods. Moreover, as DAIKURE is setting out a posture to aim for a general construction material manufacturer, when it starts to handle the 3 goods in addition to the current lineup, it is expected to proactively engage in sales and promotion activities, such as developing business routes while receiving support for operation and techniques. In addition, there are no capital ties and interlocking officers between the parties group and DAIKURE, and joint relationship is not formed between the parties group. Based on such situation, it is recognized that DAIKURE is appropriate to undertake the remedies of this case.

2 Transfer of facility

As a remedies should in principle be structural measures such as business transfer, etc., it is desirable to transfer the entire business or all facilities. However, Amagasaki factory of the consolidated company is producing goods other than the 3 goods. Also, suppose that the facilities will be transferred, the production facilities of DAIKURE will be scattered in the factory of the consolidated company. Thus, it can be said that it is difficult to transfer

all facilities or split and transfer part of the facilities, in terms of management, etc., of the facilities. Therefore, the method of transferring some share of the production facilities to the third party is adoptable as structural measures to function as effective restraints against the consolidated company by allowing an entry of a new competitor.

Moreover, as DAIKURE will bear the fixed cost related to the facilities when obtaining the share, for DAIKURE, the more it increases the commissioned production to the consolidated company, the more it can reduce the burden of the fixed cost per unit, leading to profit increase. Thus, it is considered that an incentive to conduct proactive sales activities will be created.

Furthermore, 45% of the production volume of Amagasaki factory is a volume corresponding to the sales volume of the most recent business year of the company with lower market share among the parties, and will be equal to the volume cap of commissioned operation and production stated in Part V.2 above. Thus, it can be assessed that by transferring 45% of the share of the production facilities, DAIKURE can be a competitor that can produce at similar level as the company with lower market share among the parties. Therefore, it can be considered that the share ratio is also appropriate level.

Based on the above, the relevant transfer of facilities is recognized as appropriate.

3 Commissioned operation and production of 3 goods

Setting the volume cap based on the annual sales results of one of the parties is appropriate, because, if DAIKURE sold that volume, that will mean the same as an enterprise with a similar handling volume as one of the parties entered the market.

Moreover, the price of commissioned operation and production corresponds to the production cost of the consolidated company, and it will be able to make a new entry with the same cost as the consolidated company that has knowledge and experience concerning the production of 3 goods. Furthermore, 5 years after the conduct, it will supply at the price less than the amount corresponding the production cost of the consolidated company. Thus, it will be easy for a new entrant DAIKURE, to adopt its pricing policy. In this sense, because it will be supplied at the amount corresponding to the production cost of the consolidated company, cost commonization will be unavoidable between the consolidated company and DAIKURE. However, for DAIKURE, it can set the price with its own intention considering its own profit, and as stated in 2 above, the more DAIKURE increases the commissioned production to the consolidated company, the more it can reduce the burden of the fixed cost per unit, leading to profit increase, and thus, it is considered that an incentive to conduct proactive sales activities will be created. Therefore, it can be assessed that there is sufficient possibility that it will adopt a different pricing strategy from the consolidated company. Moreover, the specific supply price should be approved by the JFTC before executing the conduct,[16] and an expert independent of the consolidated company, who will be selected when DAIKURE validates the supply price should also be approved by the JFTC, and these can be considered to be appraisable.

Besides, it is considered appropriate to include all types of 3 goods for commissioned operation and production, because then the lineup of DAIKURE will be equal to the consolidated company.

[16] The parties explained its specific way of thinking about the supply price, and the JFTC examined it and judged as appropriate. Therefore, it approved it before the execution of the conduct.

4 Support for operation and techniques

It is appropriate, as when DAIKURE starts handling 3 goods anew, receiving support for operation and techniques will help DAIKURE gain operational and technical strength, and by this it could be a sufficient competition unit against the consolidated company.

5 Measures to block the flow of information

It is appropriate, from the perspective of preventing the problem of coordinated conduct through acquisition, etc., of sales information, etc., of DAIKURE by the consolidated company, and also from the perspective of preventing the consolidated company from unfairly taking advantage of information acquired from DAIKURE.

6 Independent handling of partial production process by DAIKURE

Although it is considered to be a factor to gain competitiveness in terms of price by conducting processing on its own, of 3 goods the proportion of goods that go through plating process is not so high. Thus, the appraisal is limited.

7 Regular report

Regular report is an effective remedial measure from the perspective of surveillance over implementation of the remedies for this case.

8 Summary

Supposing the remedies for this case, it can be assessed that DAIKURE will make a new entry as a powerful competitor in the market of 3 goods, and the competition environment at the similar level as the one before the conduct will be maintained. Therefore, it is considered that the conduct will would not substantially restrain competition in the business fields of 3 goods.

Part VII. Conclusion

Supposing that the parties will implement the remedies for this case, it was judged that the conduct would not substantially restrain competition in a particular field of trade.

Case 4 Acquisition of stocks of Mitsubishi Heavy Industries Machine Tool Co., Ltd. by Nidec Corporation

Part I. The parties

Nidec Corporation (JCN 9130001002387) (hereinafter referred to as "Nidec") is a company which mainly operates manufacturing and sales business of small precision motors.

Mitsubishi Heavy Industries Machine Tool Co., Ltd.[1] (JCN 8160001013969) (hereinafter referred to as "Mitsubishi Heavy Industries Machine Tool") is a company which mainly operates manufacturing and sales business of machine tools.

Hereinafter, a group of firms already forming a joint relationship with Nidec is referred to as "Nidec group" and a group of firms already forming a joint relationship with Mitsubishi Heavy Industries Machine Tool is referred to as "Mitsubishi Heavy Industries Machine Tool group." Moreover, Nidec group and Mitsubishi Heavy Industries Machine Tool group combined are called "the parties group."

Part II. Outline of this case and applicable provisions

This case concerns a plan of acquisition of all voting rights related to stocks of Mitsubishi Heavy Industries Machine Tool by Nidec (hereinafter referred to as "the conduct").

Applicable provision is Article 10 of the Antimonopoly Act.

Furthermore, between the goods, etc., produced and sold by the parties group, many are in business relationship. Among these examined, the following gives a detailed account of vertical business combination of gear machines (hobbing machines, gear shapers, and gear grinders) and eAxle business that are considered to have relatively large impact on competition.

Part III. Particular field of trade

1 Overview of goods

(1) Gear machines[2]

A. Overview of gear machines

A gear machine mainly refers to a machine tool used to process metal forms to gear-shape by processing method such as high-precision cutting (gear processing). Gears formed by gear machines are used for power units, etc., inside machines such as cars, industrial machineries, construction machineries, and home electrical appliances. Main users of gear machines are car manufacturers, car component manufacturers, industrial machinery manufacturers, etc., and demand related to automobiles accounts for 70-80% of the entire gear machines.

Durable years of gear machines differ by frequency of usage by users, but they are usually about 10 years.

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[1] On August 2, 2021, it changed its trade name to "NIDEC MACHINE TOOL CORPORATION."

[2] They are also called gear machine tools or gear processing machines.

B. Type of gear machines

Depending on the process flow and usage of gears, gear machine used differs.

The process flow of gears can be divided into "gear cutting process"[3] in which gears are cut out using cutting tools from metal materials, and "finishing process" in which cut-out gears will be polished, etc., and finished. There are gear machines which can be used for both gear cutting process and finishing process by adjusting tool precision and processing conditions.

Type of gear machines mainly consists of hobbing machines, gear shapers, skiving discs, shaving machines, gear grinders, and gear honing machines. Characteristics such as usage and functions of these types of gear machines are shown in Table 1. Users are selecting gear machines that they use by shapes, precision, productivity, etc., of gears.

[Table 1 Characteristics of gear machines such as functions]

Goods	Characteristics such as functions
Hobbing machine	• It is mainly used for gear cutting process, although it can be used for both gear cutting process and finishing process. • For processing external gears (having shapes with external cogs). • It has highest productivity among the ones that can be used for gear cutting process.
Gear shaper	• It is mainly used for gear cutting process, although it can be used for both gear cutting process and finishing process. • It is mainly used for internal gear (having shapes with cogs on the surface of internal holes) processing, although it can be used for both external gear processing and internal gear processing. • It has lowest productivity among the ones that can be used for gear cutting process.
Skiving disc	• It is mainly used for gear cutting process, although it can be used for both gear cutting process and finishing process. • It is mainly used for internal gear processing, although it can be used for both external gear processing and internal gear processing. • Its productivity is slightly lower than hobbing machines, but higher than gear shapers. • Precision is low. • Domestic demand is low at the current moment.
Shaving machine	• It is used for finishing process. • It is used before quenching (heat treatment). • Finishing process precision is lower than gear grinders. • It is in the process of being replaced with gear grinders, and domestic demand is declining.
Gear grinder	• It is used for finishing process.

[3] It is also called crude processing, rough cut, or cutting and processing.

Goods	Characteristics such as functions
	• It is used after quenching (heat treatment). • It has high productivity. • Domestic demand is increasing.
Gear honing machine	• It is used for finishing process. • It is used after quenching (heat treatment). • It has higher precision than gear grinders, depending on the type of gears. • Its productivity is lower than gear grinders.

C. Production method and capacity of gear machines

Gear machines are not produced in divided production lines by types of gear machines, but are produced according to the needs of customers in assembling areas in buildings.

Gear machine manufacturers which are already producing multiple types of gear machines, if demand of a specific type of gear machine among those types increases, by switching the capacity of other gear machines to the capacity of the specific gear machines, they can easily increase the production of the specific gear machines.

D. Adjustment of specifications with users

Although basic structures of gear machines are common, processed objects (gears) by gear machines have different materials and shapes depending on each processed object, and precisions suitable for each processed object are required. Thus, it is necessary to adjust the cutting tools, jigs,[4] etc. Therefore, if there are business inquiries and requests for quotation from users, users and gear machine manufacturers will adjust specifications suitable for the processed objects, and after ordering, before production, specifications will be determined. Users provide gear machine manufacturers with techniques information, information on delivery date, budget, and ordering process, in order to adjust specifications. Users also provide these information for the adjustment of specifications during the change of object processed by gear machines (hereinafter referred to as “diversion adjustment”).

[4] A tool used to attach the objects to be processed to machine tools in order to locate blades correctly.

(2) Gear multitasking machine

In recent years, gear processing machine tools that can be used single-handedly for more processing, such as perforating and milling (processing to shave a fixed workpiece by rotating a tool) in addition to existing gear machine processing, such as hobbing, gear shaper processing, etc., (hereinafter referred to as "gear multitasking machine") are emerging. Gear multitasking machines have actually been used by car manufactures and construction machine manufacturers.

(3) eAxle

A. Overview of eAxle

An eAxle is a driving parts unit combining a motor, a reduction gear, an inverter, etc., that are necessary to move a vehicle of an electric vehicle (hereinafter referred to as "EV"). It is produced and sold by the name of "E-Axle" by Nidec group. eAxle is adopted for development of EV by car manufacturers, because of the convenience of being able to complete EV drive with one product, and besides in-house production, it is produced and sold, and also produced and sold for car component manufactures.

B. Type of eAxle

eAxle comprises products with different outputs, torques, and weights of incorporated motors. This is because car manufactures, which are users of eAxle, are selecting and adopting eAxle from the perspective of EV vehicle class, required performance, anticipated preference of users, etc. Car manufacturers basically adopt types of eAxle that match EV vehicle classes[5] that are produced by their own companies, but sometimes they adopt types with performances required for models of cars that are produced by their own companies, regardless of the class.

C. Production method of eAxle

eAxle is produced by combining a motor, a reduction gear, an inverter, etc., and from the perspective of production cost, quality maintenance, etc., depending on manufacturers, some produce them by externally sourcing part of the components, and some produce them by producing all the components within their own group.

In the production of eAxle, gear machines are used for reduction gear parts of eAxle, and hobbing machines, gear shapers, skiving discs, and gear grinders are mainly used.[6]

Furthermore, in recent years, due to increasing demand for EV, some car manufacturers and car component manufacturers are considering diversion of gear machines used for production of gears for other car components to the ones for producing gears used for eAxle, after going through diversion adjustment. Normally, gear machine manufacturers that produced such gear machines are implementing diversion adjustment at the request of users.

2 Scope of goods

(1) Gear machines

[5] Vehicle class is a categorization of cars divided by total length, etc. of cars.
[6] Not all types are necessarily used, and depending on the shape, etc., of a gear, types of gear machines that are used may be limited.

A. Substitutability of gear machines between types

Among gear machines, some are capable of both gear cutting process and finishing process, while some are capable of both external gear processing and internal gear processing. However, users make use of necessary gear machines and method of using gear machines (whether they are used for cutting process or finishing process) separately, depending on the shapes or precisions of gears that they themselves produce or productivity. Therefore, demand substitutability between gear machines is limited.

Moreover, according to the parties group, as gear machine manufacturers have sufficient techniques, workforces, and production facilities, it is easy for them to produce any types of gear machines. However, according to other gear machine manufacturers, as gear machines have different production techniques and know-how by types, it takes several years for development.

Based on the above, concerning the scope of goods between the types of gear machines, it can either be considered that there are different scopes of goods by types of gear machines, or the same scope of goods. However, at this moment, considering that "hobbing machine," "gear shaper," and "gear grinder" are gear machines that have or have possibility of generating business relationship among the parties group, in this case, from the perspective of further careful review, we will examine "hobbing machine," "gear shaper," and "gear grinder" of gear machines.[7]

B. Substitutability between gear multitasking machines and gear machines

According to the parties group, gear multitasking machines are substituting hobbing machines and gear shapers, and car manufacturers and construction machine manufacturers are actually procuring them. However, according to car manufacturers using gear multitasking machines, if they look solely at gear processing process, such as hobbing and gear shaper processing, gear multitasking machines have lower productivity than gear machines such as hobbing machines and gear shapers, and at this moment, it is difficult to replace single gear machines with gear multitasking machines.

Therefore, demand substitutability between gear multitasking machines and gear machines is limited.

Moreover, according to the parties group, as gear multitasking machine manufacturers have techniques, workforces, and production facilities to develop gear machines, it is easy for them to produce hobbing machines, gear shapers, etc. However, according to other gear machine manufacturers, as gear machines and gear multitasking machines have different production techniques and know-how, it takes several years to develop gear multitasking machines.

In fact, different enterprises are found in the group of gear multitasking machine manufactures and the group of gear machine manufacturers. Thus, there is no supply substitutability between gear multitasking machines and gear machines.

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[7] At this moment, "hobbing machine," "gear shaper," and "gear grinder" are gear machines that have or have possibility of generating business relationship among the parties group. Skiving discs are excluded from the examination, because Mitsubishi Heavy Industries Machine Tool group does not show any sales results in the recent 5 years.

Based on the above, gear multitasking machines and gear machines constitute different scopes of goods.

C. Summary

Based on the above, in this case, concerning gear machines, we examine each of "hobbing machine," "gear shaper," and "gear grinder" as scope of goods.

(2) eAxle

Users of eAxle select types of eAxle with performance that matches the vehicle class of EV which is produced by their companies, and performance required by the type of cars which is produced by their companies. However, it is also possible to use multiple types of eAxle by combining them, instead of a specific type of eAxle. Thus, it can also be considered that there is a demand substitutability between different types of eAxle. On the other hand, for vehicle classes and types of cars which only require eAxle with low power output, eAxle with high power output will not be selected, and in this case, it is considered that demand substitutability is limited between different types of eAxle.

On the other hand, in the examination of vertical business combination of Part IV.2 below, members of manufacturers producing and selling different types of eAxle are almost the same. Thus, it is considered that the contents of examination as a vertical business combination will not differ so much whether we examine eAxle as a whole, or by different types. Therefore, it is sufficient just to examine the entire eAxle.

Based on the above, the scope of goods is defined as "eAxle."

3 Geographic range

(1) Gear machines

Gear machines do not have special situations such as restraints on domestic transportation, etc., and their prices also do not differ by areas. Every manufacturer sets all regions of Japan as its business area, and is selling users in all regions of Japan directly or via distributors. Moreover, users also procure from manufacturers in all regions of Japan. Thus, geographic range is defined as "all regions of Japan" in any case.

(2) eAxle

Domestic car manufacturers, which are users of eAxle, are looking at foreign eAxle manufacturers as potential suppliers, and domestic eAxle manufacturers are also in the situation that they are proactively carrying out sales promotion activities abroad. However, at this moment, domestic car manufacturers which are producing their in-house eAxle, or procuring them from affiliated car component manufacturers, are dominant. Moreover, although eAxle made by domestic eAxle manufacturers are actually adopted by some Chinese EV manufacturers, etc., actual adoption abroad is low.

Therefore, concerning eAxle, geographic range is defined as "all regions of Japan."

Part IV. The impact of the conduct on competition

At this moment, Nidec group has not purchased hobbing machines from Mitsubishi Heavy Industries Machine Tool group, but Nidec group may purchase gear machines from Mitsubishi Heavy Industries Machine Tool group from now on, when it starts to seriously

engage in in-house production.

Moreover, Nidec group is purchasing gear shapers and gear grinders from Mitsubishi Heavy Industries Machine Tool group.

Based on the above, it falls under the following vertical business combination.

Upstream market (Mitsubishi Heavy Industries Machine Tool group)	Downstream market (Nidec group)
Hobbing machine Gear shaper Gear grinder	eAxle

1 Position of the parties of the vertical business combination (vertical business combination with each gear machine in the upstream market and eAxle in the downstream market) and conditions of competing enterprises

(1) Hobbing machine, gear shaper, and gear grinder (upstream market)

Concerning hobbing machines, gear shapers, and gear grinders after the conduct, average market shares from FY 2016 to FY 2020 are shown below. As market share of Mitsubishi Heavy Industries Machine Tool group in the upstream market is 25% or more, it does not fall under the safe-harbor criteria of the vertical business combination.

[Market share of hobbing machines (FY 2016-FY 2020 average)]

Ranking	Company name	Market share
1	Company A	About 45%
2	Mitsubishi Heavy Industries Machine Tool group	About 30%
3	Company B	About 20%
4	Company C	About 5%
5	Company D	0-5%
Total		100%

[Market share of gear shapers (FY 2016-FY 2020 average)]

Ranking	Company name	Market share
1	Mitsubishi Heavy Industries Machine Tool group	About 75%
2	Company E	About 20%
3	Company F	0-5%
4	Company G	0-5%
Total		100%

[Market share of gear grinders (FY 2016-FY 2020 average)]

Ranking	Company name	Market share
1	Mitsubishi Heavy Industries Machine Tool group	About 70%
2	Company H	About 15%
3	Company I	0-5%
4	Company J	0-5%
4	Company K	0-5%
6	Company L	0-5%
7	Company M	0-5%
Total		100%

(2) eAxle (downstream market)

As an accurate market share in the entire eAxle market after the conduct is unknown, it is examined on the supposition that it does not fall under the safe-harbor criteria of the vertical business combination.

2 Examination related to substantial restraints on competition

(1) Substantial restraints on competition by unilateral conduct

A. Vertical business combination with hobbing machines in the upstream market and eAxle in the downstream market

(a) Input closure

Mitsubishi Heavy Industries Machine Tool group sells hobbing machines to multiple eAxle manufacturers. In the upstream market, there are 2 powerful competitors, including Company A with market share of about 45% (top-ranked) and Company B with market share of about 20% (the 3rd). Moreover, 3 competitors including these, with which interviews were conducted, have excess capacity.

Therefore, suppose that the parties group rejected supplying, etc., hobbing machines to eAxle manufacturers outside the parties group in the downstream market, such eAxle manufacturers outside the parties group can easily switch the supplier to other hobbing machine manufacturers. Thus, the parties group does not have ability to conduct input closure.

Therefore, a problem of closure or exclusivity of the market in the downstream market will not occur by input closure.

(b) Customer closure

Currently, Nidec group is not purchasing hobbing machines from Mitsubishi Heavy Industries Machine Tool group, and purchasing hobbing machines from other multiple hobbing manufacturers. Thus, after the conduct, there is a possibility that problems of closure or exclusivity of the market in the upstream market may arise, if Nidec group rejects purchasing, etc., hobbing machines from gear machine manufactures other than Mitsubishi Heavy Industries Machine Tool group.

However, among users of hobbing machines in the downstream market, car manufactures and car component manufacturers that are thought to be powerful enterprises are included. Moreover, users of hobbing machines are not limited to car manufacturers and car component manufacturers, but also reduction gear manufacturers, industrial machinery manufacturers, etc. Based on the above, suppose that rejection of purchasing, etc., was conducted, other hobbing manufacturers can easily switch customers to other car manufacturers, etc. Thus, the parties group does not have ability to conduct customer closure.

Therefore, problems of closure or exclusivity of the market in the upstream market due to customer closure will not arise.

B. Vertical business combination with gear shapers in the upstream market and eAxle in the downstream market

(a) Input closure

Mitsubishi Heavy Industries Machine Tool group sells gear shapers to multiple eAxle manufacturers. In the upstream market, there is Company E as a competitor with market share of about 20% (the 2nd) and the competitor has an excess capacity.

Therefore, suppose that the parties group rejected supplying, etc., gear shapers to eAxle manufacturers outside the parties group in the downstream market, such eAxle manufacturers outside the parties group can easily switch the supplier to other gear

shaper manufacturers. Thus, the parties group does not have ability to conduct input closure.

Therefore, a problem of closure or exclusivity of the market in the downstream market will not occur by input closure.

(b) Customer closure

Currently, Nidec group is not purchasing gear shapers from gear shaper manufacturers other than Mitsubishi Heavy Industries Machine Tool group. Thus, problems of closure or exclusivity of the market will not arise in the upstream market.

C. Vertical business combination with gear grinders in the upstream market and eAxle in the downstream market

(a) Input closure

Mitsubishi Heavy Industries Machine Tool group is selling gear grinders to multiple eAxle manufacturers. There is a possibility that problems of closure or exclusivity of the market may arise in the downstream market, if Mitsubishi Heavy Industries Machine Tool group rejects supplying, etc., gear grinders to eAxle manufacturers other than Nidec group.

Although there are also manufacturers with small shares among domestic gear machine manufacturers, which are competitors in the upstream market, for gear machine manufacturers, it is easy to switch and produce different types of gear machines, if they already produce such types of gear machines, and when the production is focused on gear grinders, it is considered that a certain level of excess capacity will be generated.

Moreover, there are foreign gear machine manufacturers among competitors in the upstream market. Gear grinders produced by foreign manufacturers are relatively expensive to certain extent compared with the ones produced by domestic manufacturers. Thus, suppose that Mitsubishi Heavy Industries Machine Tool group rejects supplying, etc., it is considered that it is difficult for eAxle manufacturers to switch their suppliers to foreign manufacturers. However, lifespans of gear machines including gear grinders are long and about 10 years. Thus, taking into account that a gear grinder processes massive amount of gears, even if it is switched to a product made by foreign manufacturers, it is considered that the impact on the cost of gears produced during the lifespan is very little. Moreover, according to foreign gear machine manufacturers, they are immediately capable of increasing the production volume of each gear machine, and they have prepared systems to immediately respond to technical support and repair and maintenance services as well.

As shown above, concerning gear grinders, it is considered that competitors have excess capacity, and there is also pressure from competitors. Thus, even supposing that supply was rejected, etc., as eAxle manufacturers can easily switch their suppliers to other competitors of gear grinders, the parties group does not have ability to conduct input closure.

Therefore, it is considered that the problem of closure or exclusivity of the market will not arise in the downstream market due to input closure.

(b) Customer closure

Nidec group is currently purchasing gear grinders from Mitsubishi Heavy Industries Machine Tool group and foreign manufacturers. There are eAxle manufacturers which are considered to be powerful enterprises in the downstream market. Moreover, users of gear grinders are not limited to eAxle manufacturers, but also car manufacturers, car component manufacturers, industrial machinery manufactures, etc. Based on the above, suppose that Nidec group rejected purchasing, etc., of gear grinders, gear grinder competitors can easily switch customers to other car manufacturers, etc. Thus, the parties group does not have ability to conduct customer closure.

Therefore, problems of closure or exclusivity of the market in the upstream market due to customer closure will not arise.

(2) Way of thinking about concerns for obtaining confidential information

A. Concerns in newly purchasing gear machines

When eAxle manufactures adjust specification when they newly purchase gear machines, there is a possibility that Nidec group obtains techniques information, information on delivery dates, budgets, ordering process, etc., which are disclosed to Mitsubishi Heavy Industries Machine Tool group, and Nidec group uses such information to its advantage, and by that, competitors in the downstream market may be put in disadvantageous position for competition.

However, if competitors in the downstream market are concerned about Nidec group's obtaining confidential information, as stated in (1) above, as excess capacity of competitors and competitive pressure from competitors of each gear machine are recognized, they can change their suppliers to other gear machine competitors.

Therefore, it is not recognized that competitors will exit from the downstream market, or the restraining power of competitors will weaken, by Nidec group in the downstream market obtaining confidential information of competitors, and thus, problems of closure or exclusivity of the market will not arise in the downstream market.

B. Concerns in diversion of gear machines

When conducting diversion adjustment for diversion of gear machines of Mitsubishi Heavy Industries Machine Tool group, just like A. stated above, there is a possibility that competitors in the upstream market may be put in disadvantageous positions for competition.

However, depending on the contents of diversion adjustment, it is considered that other gear machine manufacturers can also handle them, and for eAxle manufacturers which are considering diversion of gear machines, instead of diversion of gear machines of Mitsubishi Heavy Industries Machine Tool group, they can newly purchase from other gear manufactures, as is the case with A. stated above.

In this respect, although procurement cost of gear machines for producing eAxle may increase by new purchase instead of diversion of gear machines, as stated in Part III. 1 (1) A. above, lifespans of gear machines are about 10 years and long, and considering that a gear machine processes massive amount of gears, it is considered that the impact of the price gap between diversion and new purchase on cost of gears produced during

the lifespan is insignificant. Moreover, considering the current situation of increasing demand for eAxle due to the recent increase of demand for EV, even if the cost for eAxle manufacturers increases tentatively due to the switch to new purchasing from the diversion of gear machines, it is hard to think that such eAxle manufactures will be forced to withdraw from eAxle market, or such burden will reduce the restraining power of the eAxle manufacturers.

Therefore, it is considered that problems of closure or exclusivity of the market will not arise in the downstream market.

(3) Substantial restraints on competition by coordinated conduct

Due to this acquisition of stocks, Mitsubishi Heavy Industries Machine Tool group in the upstream market, via Nidec group in the downstream market, may obtain information such as sales price of other gear machine manufacturers in the upstream market, and by that, there is a possibility that a problem of substantial restraints on competition by coordinated conduct in the upstream market may arise.

However, foreign gear machine manufacturers say that they can immediately increase import of each gear machine. Thus, it is considered that there is a competitive pressure from competitors against a coordinated conduct.

Therefore, it is considered that this acquisition of stocks will not substantially restrain competition in a particular field of trade by a coordinated conduct in the upstream market.

(4) Summary

Based on the above, it is considered that the conduct will not cause the problem of closure or exclusivity of the market in the production and sales business market of gear machines and eAxle, and will not substantially restrain competition in a particular field of trade, by the unilateral conduct of the parties group or the coordinated conduct with the competitors.

Part V. Conclusion

As shown above, it is judged that the conduct will not substantially restrain competition in a particular field of trade.

Case 5 Acquisition of stocks of Japan Renewable Energy Corporation by ENEOS Corporation

Part I. The parties

ENEOS Corporation (JCN 4010001133876) (hereinafter referred to as "ENEOS") is mainly operating oil refinery and sales business.

Japan Renewable Energy Corporation [1] (JCN 5010401101449) (hereinafter referred to as "JRE") is operating investment business to the silent partnership, etc.

Hereinafter, a group of firms which already has a joint relationship with ENEOS Holdings, Inc., which is an ultimate parent company of ENEOS, is referred to as "ENEOS group" and a group of firms which already has a joint relationship with JRE as an ultimate parent company is referred to as "JRE group," and ENEOS group and JRE group combined is referred to as "the parties group."

Part II. Outline of this case and applicable provisions

This case concerns a plan to acquire more than 50% of voting rights related to stocks of JRE by ENEOS (hereinafter referred to as "the conduct").

Applicable provision is Article 10 of the Antimonopoly Act.

Part III. Particular field of trade

1 Business overview of the parties group

(1) ENEOS group

ENEOS group consists of ENEOS Holdings, Inc. and affiliate companies. It has ENEOS as a main business company, and its main business (product and service) includes petroleum products, basic chemical products, electric power, lubricating oils, functional goods, gas, and renewable energy.

(2) JRE group

JRE group is mainly engaged in renewable energy power generation business, by indirectly holding power plants, via contribution to silent partnership of a limited liability company, which is a special purpose company (SPC) holding power plants, or holding equity of member of the limited liability company.

2 Overview of services

(1) Electric power business

Electric power is used as energy in various fields. Electric power is generated at power plants using thermal power, hydraulic power, etc., and its voltage is gradually decreased at each substation, and then, supplied to users via transmission and distribution cables, incoming lines, etc.

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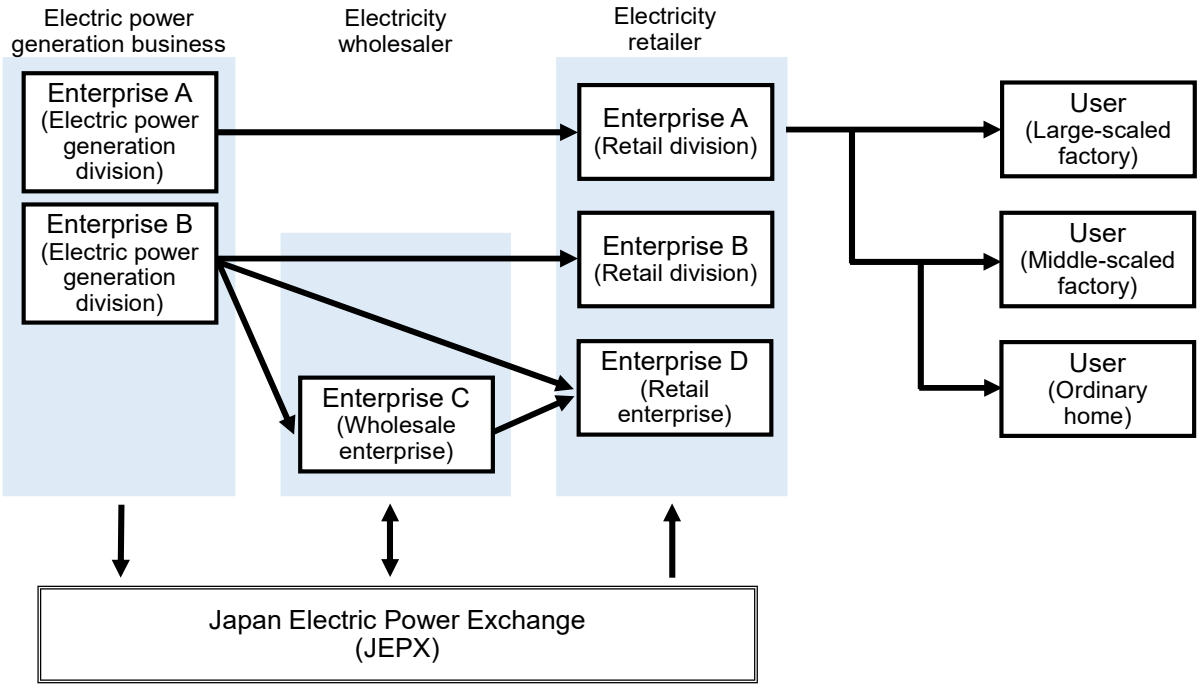
[1] JRE is a wholly owned subsidiary of
GS Renewable Holdings GK, in which the fund managed and operated by the Goldman Sachs Group, Inc. and GIC Private Limited hold voting rights of 75% and 25% respectively.

Distribution channels related to electric power supply are shown in Figure 1, and

(i) power generation enterprises supply electric power generated at the power plant to its own retail division (or wholesale division) or trade with Japan Electric Power eXchange and electricity retailers (electric power generation business),
(ii) electricity retailers (wholesalers) sell electric power procured from electric power generation enterprises or Japan Electric Power eXchange to other electricity retailers (electricity wholesale business),
(iii) electricity retailers sell electric power to ultimate users (electricity retail business),
(iv) electricity transmission and distribution (transportation service) enterprises transform, transmit and distribute electricity[2], and by that, electric power is supplied to users.

[Figure 1] Main distribution channels related to electric power supply



(2) Electric power generation business

Electric power generation business is a business to generate electric power using various electric sources such as thermal power, hydraulic power, nuclear power, photovoltaic power, and supply the generated electric power to electricity retailers, etc.

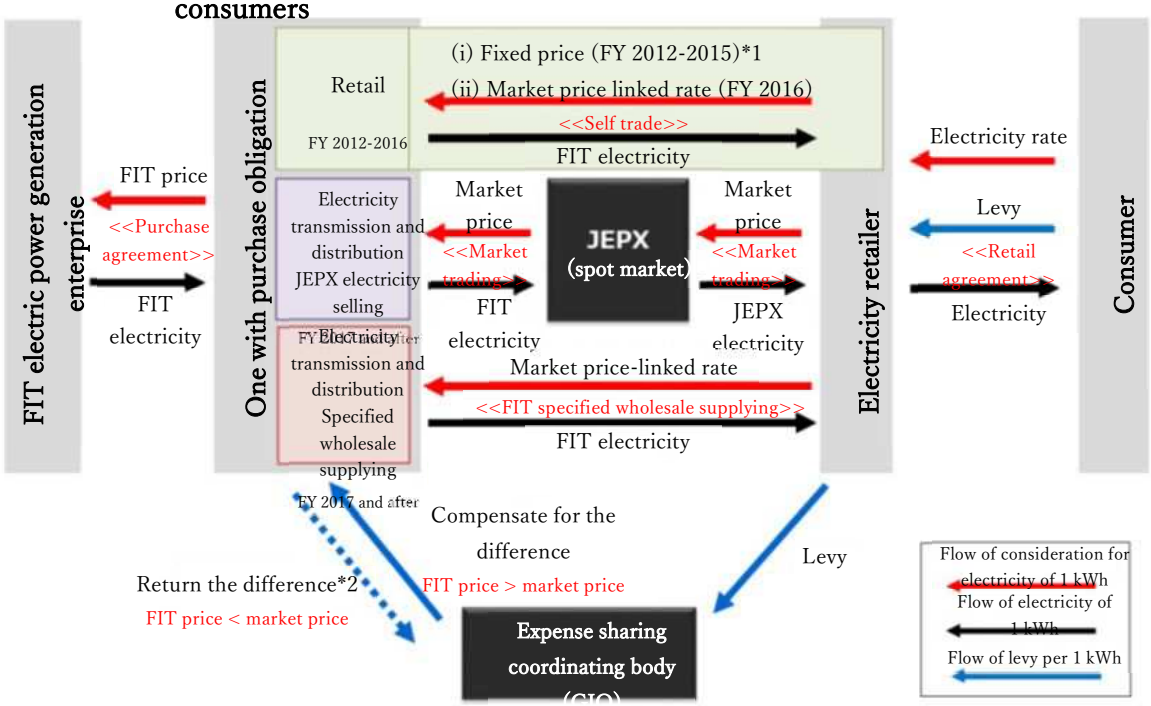
Moreover, among electric power generation business, business which is generating power using renewable energy such as photovoltaic power, wind power, geothermal power, hydraulic power, biomass, is called renewable energy electric power generation business. Feed-in tariff system[3] (hereinafter referred to as "FIT system") is used for some electric

[2] In this case, none of the parties group is operating such business (transmission and distribution divisions of the former General Electricity Utilities are allowed to operate business dominantly in their supply areas).
[3] Overview of the feed-in tariff system is stated on the website of the Agency for Natural Resources and Energy (https://www.enecho.meti.go.jp/category/saving_and_new/saiene/kaitori/surcharge.html) as follows.
"The feed-in tariff system is a system in which the state promises that an electric power company will purchase the electricity generated by renewable energy with a fixed price for a fixed period. Part of the cost

power generation enterprises in renewable energy electric power generation business. Electric power generation enterprises supply generated electric power mainly to the former General Electricity Utilities,[4] which are electricity transmission and distribution enterprises, or, in the exceptional cases, supply to electricity retailers based on specified wholesale supplying agreement[5] under the FIT system.

[Figure 2] Main distribution channels related to FIT system

(Reference) Flow of electricity and consideration until the FIT electricity reaches consumers



*1 From April 2021, (i) also became market price-linked rate.

*2 System to return the difference is scheduled to start from April 2022.

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3 Scope of services

(1) Electric power generation business

In the first place, generated electric power does not differ in quality, etc., by method of power generation, and at least for now, when procuring electric power, electricity wholesalers and electricity retailers, which are users, are considering electric power

for purchasing by the electric power company will be collected as a form of levy from electricity users, in order to support introduction of renewable energy, which is still costly. By this system, it will be easier to predict recovery of the expensive construction cost of electric power generation facilities, and it will be spread further."

[4] However, concerning the ones which their purchase agreement was concluded before April 1, 2017, electricity retailers have obligations to purchase.

[5] A specified wholesale supplying agreement is an agreement which is concluded after one with purchase obligation (transmission and distribution enterprise) and an electricity retailer gained an agreement with a renewable energy electric power generation enterprise. It is a system in which the electricity retailer can procure the electric power derived from renewable energy that was generated by the renewable energy electric power generation enterprise and purchased by the one with purchase obligation, directly between themselves, without going through JEPX.

generation enterprises as alternative options without distinguishing them, and it is considered that they are often procuring from the ones which offered the most advantageous trade conditions. Therefore, as demand substitutability is recognized between methods of power generation, it can be considered to define the scope of services in this case as entire "electric power generation business."[6] On the other hand, when recent change of users' attitudes toward renewable energy is taken into account, renewable energy electric power generation business can be considered to be defined as a single scope of services. Thus, this point is examined below.

(2) Renewable energy electric power generation business

So far, many users of electric power did not find any special value in electric power derived from renewable energy which does not have any difference in quality, etc. Recently, however, due to growing awareness of SDGs and decarbonization, ultimate users who ask especially for electric power generated using renewable energy, instead of electric power generated using fossil fuels focusing on thermal power, are emerging. Moreover, also among electricity retailers, who are direct users of electric power generation business, some are starting to sell electric power generated using renewable energy, targeting such ultimate users. Such enterprises are procuring with designation of renewable energy.

Although these movements are still incipient, to respond to international trend,[7] in October 2020, the government declared[8] "carbon neutral" to make greenhouse effect gas emission virtually to zero by 2050, and is setting out various policies toward realization of the declaration. Thus, it is expected that the ultimate users who ask specifically for electric power generated using renewable energy will increase toward the future. Also, for electricity retailers which are thinking of electric power supply targeting these ultimate users, it is considered that electric power generated using fossil fuels focusing on thermal power cannot substitute electric power generated using renewable energy.

Considering such change of attitude of users to renewable energy, etc., for users, demand substitutability between electric power generation business and renewable energy electric power generation business is becoming limited, and the trend is expected to become much stronger toward the future.[9]

Therefore, in this case, from the perspective of more careful examination, specifically

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[6] Furthermore, electricity wholesalers and electricity retailers can also procure electric power directly from other electricity wholesalers than electric power generation enterprises. Thus, it can be considered to include electricity wholesaler in the same business field as competitors against electric power generation enterprises. However, in this case, from the perspective of careful examination, their scope of services was defined as "electric power generation business" consisting of only electric power generation enterprises.

[7] The agreement (Paris Agreement) at the Conference of the Parties to the United Nations Framework Convention on Climate Change (commonly called as COP) held in 2015 at Paris, where international arrangement for the reduction of greenhouse effect gas is discussed.

[8] Furthermore, at the climate summit organized by the United States on April 22-23, 2021, (then) Prime Minister Suga declared that by FY 2030, Japan aims to reduce greenhouse effect gas by 46% from FY 2013, as well as clarifying the determination to keep trying to achieve as much as 50%, as an ambitious goal in consistent with the long-term carbon neutral goal of 2050.

[9] On the other hand, concerning substitutability between renewable energies (photovoltaic power, geothermal power, biomass, offshore wind power, etc.), even taking the changes of attitudes of users stated in this document into account, each does not have different demand, and it is considered that the substitutability is recognized. Thus, it is considered that subdivision of renewable energy is unnecessary.

renewable energy electric power generation business is distinguished among the electric power generation business, and scope of services is defined at multiple levels as "entire electric power generation business" and "renewable energy electric power generation business."

4 Geographic range

As stated above, while electric power is supplied from electric power plant via transmission and distribution cables, etc., it is also possible to supply electric power beyond supply areas of former General Electricity Utilities via inter-regional transmission lines, which are transmission cables connecting system equipment in different supply areas. Thus, it can also be considered that geographic range of "entire electric power generation business" and "renewable energy electric power generation business" can be defined wider than the supply areas of the former General Electricity Utilities. On the other hand, at this moment, great majority of the electric power generation in the supply areas of former General Electricity Utilities is conducted by the former General Electricity Utilities, and sometimes there are restraints of inter-regional transmission lines. Based on these, geographic range of "entire electric power generation business" and "renewable energy electric power generation business" was defined for each supply area of former General Electricity Utilities.

5 Summary

Based on the above, in this case, by each supply area of former General Electricity Utilities, electric power generation market and renewable energy electric power generation market are defined at multiple levels.

In this case, we shall examine the electric power generation market broadly, as well as examining the renewable energy electric power generation market in each area (hereinafter referred to as "examined area") of Tohoku area (former supply area of Tohoku Electric Power Company), Kanto area (former supply area of Tokyo Electric Power Company), Hokuriku area (former supply area of Hokuriku Electric Power Company), Chubu area (former supply area of Chubu Electric Power Company), Kansai area (former supply area of Kansai Electric Power Company), Shikoku area (former supply area of Shikoku Electric Power Company), and Kyushu area (former supply area of Kyushu Electric Power Company), where especially the impact on competition is expected to arise.

Part IV. Concerning the impact of the conduct on competition

Both of the parties groups are operating electric power generation business and renewable energy electric power generation business in the examined areas. Thus, this case falls under horizontal business combination related to electric power generation business and renewable energy electric power generation business in the examined areas.

Of them, as for the market of the entire electric power generation business, former General Electricity Utilities exist in the examined areas, and have high shares.

Moreover, as for the market of renewable energy electric power generation, all market shares of the parties group related to renewable energy electric power generation in the examined areas are less than 5%.

Therefore, it is recognized that it will not substantially restrain competition related to the

electric power generation business and the renewable energy electric power generation business in the examined areas.

Part V. Conclusion

As shown above, it is judged that the conduct will not substantially restrain competition in a particular field of trade.

CASE 6 the Integration of salesforce.com, inc. and Slack Technologies, Inc.

Part I. The Parties

salesforce.com, inc. is a company headquartered in the United States that mainly engages in the business of providing CRM (Customer Relationship Management) software. Slack Technologies, Inc. is a company headquartered in the United States that mainly engages in the business of providing business chat services. Hereinafter, the terms in the left column of the table below shall be described as shown in the right column.

Left column	Right column
salesforce.com, inc.	Salesforce
A group of companies that have already formed an integral relationship with Salesforce as the ultimate parent company	Salesforce Group
Slack Technologies, Inc.	Slack, Inc.
A group of companies that have already formed an integral relationship with Slack, Inc. as the ultimate parent company	Slack Group
A group of companies comprised of Salesforce. and Slack, Inc.	Parties
A group of companies comprised of Salesforce Group and Slack Group	Parties Group
Slack as a business chat service	Slack

Part II. Overview of the present case and relevant provisions of law

In the present case, the Parties Group plans to integrate Salesforce and Slack,Inc. by share acquisition and merger (hereinafter referred to as the "Transaction").

The relevant provisions are Articles 10 and 15 of the Antimonopoly Act.

Part III. Background of the JFTC Review, etc.

1. Background of the JFTC Review

On December 1, 2020, the Parties made public their plan for the Transaction, and on and after that day, they voluntarily submitted written opinions contending that they did not consider that the Transaction would substantially restrain competition and the relevant materials to the Japan Fair Trade Commission (“JFTC”). Upon the request of the Parties Group, the JFTC exchanged opinions with the Parties on several occasions.

The JFTC carefully examined the contents of the written opinions and materials, and conducted several interviews with competitors and customers. In addition, the JFTC carefully examined the set of materials that were actually used at various meetings such as board of directors meetings and minutes of such meetings whose submission was requested by the JFTC to the Parties Group, as well as the Parties Group’s internal materials pertaining to competition analysis regarding the Transaction.

Subsequently, on June 2, 2021, the Parties Group submitted notifications of the plan concerning the Transaction in accordance with the relevant provisions of the Antimonopoly Act. The JFTC accepted the notifications and commenced Phase 1

review. Based on the above-mentioned notifications of the plan and written opinions and materials submitted by the Parties Group, as well as the results of interviews with competitors and customers and economic analysis, the JFTC proceeded with the review of the competitive impact of the Transaction. In addition, the Transaction was also reviewed by overseas competition authorities and the JFTC exchanged information with the Australian Competition and Consumer Commission and the U.S. Department of Justice in the course of the review.

2. Viewpoint of Review of the Transaction and Summary of the Result of the Review

In the present case, Salesforce is mainly engaged in the business of providing CRM software, and Slack, Inc. is engaged in the business of providing business chat services. Since all of these products and services are used for the common purpose of improving the efficiency of operations and communications by companies as users, there is a certain complementarity between each other. In addition, both products and services provide a function of integrating the respective products and services with other applications (including business chat services for CRM software and CRM software for business chat services) through APIs[1]. By utilizing such integration functions, users of both products and services can build a more efficient business environment optimized to their own needs. In light of these circumstances, the Transaction may give rise to a problem of foreclosure of or exclusion from the market if the Parties Group does not provide such integration function to competitors of CRM software and business chat services, or excludes competitors by treating the Parties Group more favorably than competitors.

Due to the above, the JFTC, among the products and services offered by the Parties Group, conducted the review in relation to CRM software and business chat services from the viewpoint of review for conglomerate business combinations (i.e., refusal to provide APIs for integration, combined supply (bundling/tying), exchange of confidential information, etc.).

As a result of this review, the JFTC concluded that the Transaction would not substantially restrain competition, as will be explained in Sections IV. through VIII. below.

Part IV. Overview of Products and Services, etc.

1. Overview of CRM Software (Products and Services Provided by Salesforce), etc.

(1) Overview of CRM software

[1] API (Application Programming Interface) is a mechanism to enable use of functions and data of certain software from other software. The main users of APIs are developers of software such as applications and website operators. Since API users can use APIs by inputting the [programmed] function of the necessary functions in accordance with the relevant terms of use, they may create software such as applications using such functions without programming it themselves, and improvement of the efficiency of application development and reduction of development costs may be expected. In addition, API providers may expect to benefit from the effect of promoting open innovation and expanding existing business.

CRM software is a type of software for Customer Relationship Management which is a tool that centrally manages information related to all contact points with customers from marketing to sales and customer support (customer contact information, purchase history, business negotiation status, etc.), and enables all personnel of related departments to easily access such information through display on a user interface excellent in browsability. In addition, CRM software enables improvement of work efficiency through various functions such as a function to automate communication with customers, to propose the next steps to be carried out, to predict the probability of receiving orders, etc.

As described above, CRM software has various functions, and these functions are respectively implemented in CRM software that are provided in a package or individually (see Section (2) below for the specific types). The form of introduction of CRM software differs depending on the user. For example, for a relatively large enterprise where departments such as sales department, marketing department and a call center are separate, there are cases where a certain type of CRM software having a specific function is individually introduced to each of these departments. By contrast, for a relatively small or medium-sized enterprise whose departments are not clearly divided, there are cases where a package of CRM software having multiple functions from a single CRM software provider is introduced.

According to a private research company, the market size of CRM software in Japan keeps expanding, and it is predicted that such expansion will continue in the future.

Therefore, the market of CRM software is very vigorous, and is expected to greatly grow and evolve in the future.

(2) Types of CRM software

Different types of CRM software are offered according to the situations in which they are used, such as for sales, customer service, marketing, and e-commerce. Many leading CRM software suppliers offer various types of CRM software with these different functions in their lineups, while some suppliers offer only those types of CRM software with specific functions.

The outline of each type of CRM software and its main functions are described in detail below.

1. CRM software for sales

Sales activities are activities conducted toward prospective customers whose demand for purchase has been realized through marketing activities. In sales activities, it is common to follow the process of hearing requirements, etc., selecting appropriate products, presenting estimates, negotiating the terms of the contract, and finally entering into a contract.

Such a process usually involves more than one person, and due to circumstances, such as different persons being in charge of the same customer

depending on the product, it is common that the information on a customer has not been compiled or insufficiently compiled, and this often results in inefficiency of sales activities (i.e., uncertainty of who has what information, complexity of progress management due to the lack of visibility of progress of project, etc.).
CRM software for sales is a software to resolve such inefficiency of sales activities, and is also called sales force automation (SFA). The functions of CRM software for sales include the following:

(A) **Function to centrally manage customer information and sales information**
It can aggregate customer information and sales information into one platform, and easily call out such information from a user interface with high browsability. Information which used to be scattered in various forms such as in oral, e-mails, document files, spreadsheets, etc. is aggregated and shared within the department and hence Maldistribution of information is resolved.

(B) **Function to visualize project progress**
It enables users to visually confirm which phase in a sales process the negotiation with each customer is at (for example, first visit, hearing of requirements, selection of products, presentation of estimates, contract negotiations, signing, etc.). It also enables the superior to easily grasp the progress of each sales activity.

(C) **Function to provide customer-specific information exchange tools**
Tools which enable communication between the relevant persons in the company (SNS, chat, etc.) are prepared for each customer, thereby making it easier to exchange information and request necessary information within the company.

(D) **Function to propose next steps and prospect of contract**
AI analyzes past data and automatically proposes the next step to be taken and the prospect of reaching a contract.

2. **CRM software for customer service**
Customer service is a service which responds to query from customers on products and solves the problems, such as provision of support and handling of complaints after the products are sold. Formerly, when a business operator would sell a product to a customer and then the customer who purchased the product would contact the call center, the business operator did not always have a system to easily grasp information such as what kind of product the customer purchased, what kind of communication had taken place in the past, what kind of product the customer purchased in the past, and what kind of support the customer received[2].

[2] For example, the ticket system is the mainstream in the conventional customer support, and it is often managed focusing on the ticket allocated for every occurrence of incidents.

In addition, there are a variety of communication methods taken at present from the customer who purchased the products to communicate with the business operator who sold the products (in addition to the conventional methods such as e-mail and telephone, the number of customers who use message applications and direct messaging of various types of SNS are increasing), and the importance of the capability to support customers regardless of the tool used by customers (referred to as "omni-channel") is increasing.
CRM software for customer service is software used to respond to the needs in such customer service and to improve the efficiency of customer service. The functions of CRM software for customer service include the following:

(A) **Function to manage customer support on a customer-by-customer basis**
The purchase history, support history, etc. in the past are aggregated into one database centering on the customer, and users of CRM software for customer service can offer support while browsing the data on a unified user interface.

(B) **Function to automate and streamline customer responses**
It automatically responds to questions through chatbots[3], etc. and automatically generate suggested answers in accordance to the questions.

(C) **Function to provide omni-channel tools**
Allows business operator using the CRM software selling a product to a customer to uniformly deal with the customer regardless of the tools used by such customer.

3. **CRM software for marketing**

Marketing refers to general activities that publicize and promote company's products to potential customers, which lead to the purchase of the company's products. In order to conduct marketing activities effectively, it is necessary to understand the interest of prospective customers and to appropriately promote the purchase of the products at the time when they have an increased desire for purchase. Therefore, it is important to develop campaign activities such as continuous direct mail transmission and coupon distribution, and to continuously measure its effects and improve it.
Traditionally, such activities have been conducted manually by sales and marketing personnel. However, it becomes more difficult as the number of prospective customers increases to decide the content and timing of an effective campaign corresponding to each customer, and to ensure continuous contact within limited resources in a thorough manner.
CRM software for marketing is software which solves the foregoing issues through automating marketing activities, and it is also called marketing automation (MA). The functions of CRM software for marketing include the following:

[3] Products or services that helps automated real-time communication through chat.

(A) **Function to automatically generate campaign contents**
For each customer registered in the database, the activities (e.g., from which website has he/she jumped to the company's website, which pages of the company's website he/she has viewed, and what other websites he/she visits) are analyzed, and the appropriate contents of the campaign for each customer (e.g., selection of products to be included in the campaign, whether coupons are distributed, the contents of the coupons, etc.) are automatically generated and proposed.

(B) **Function to automatically determine the timing of transmission of campaign information**
It analyzes prospective customer data and automatically develops plans as to when to contact them.

(C) **Function to automatically and continuously transmit campaign information**
It automatically and continuously notifies prospective customers of the generated contents of a campaign at a proper timing.

(D) **Function to continuously measure and improve effects**
The effect measurement of the executed campaign is carried out, and the results of which will be automatically reflected and on the contents and notification timing of the following campaigns to be suggested.

4. **CRM software for e-commerce**
E-commerce (electronic commerce) is a service which sells products on the Internet, and delivers the products which a consumer ordered on the Internet using personal computers or smart phones to the designated place. At present, a wide variety of products such as food, daily goods, books, electronic devices, clothing, furniture, and medical suppliest are handled by e-commerce. The challenges of such e-commerce for distributors (suppliers) include the optimization of handling consumer orders and methods for attracting customers.
CRM software for e-commerce is software for solving the foregoing challenges and to improve work efficiency of e-commerce.

The functions of CRM software for e-commerce include the following:

(A) **Function to optimize the process from order acceptance to delivery**
It supports merchandising (when, where, and how to display products) by e-commerce distributors, and enables effective utilization of inventory and order processing at each base by enabling to check product inventory in real time. These functions enable optimization of the process from order acceptance to delivery.

(B) **Function to create campaigns and promotions**
It determines and proposes the timing and contents of effective

campaigns and promotions based on consumer behavior, distribution channels, sales regions, etc.

(C) **Function to personalize consumer**
It enables automatic suggestion of personalized recommendations based on the items consumers clicked.

(3) **Integration function of CRM software**

Major CRM software suppliers, including Salesforce, have a function to link and integrate CRM software with applications developed by third parties and systems developed by users themselves [4] (hereinafter referred to as "third-party applications") by opening related APIs to third-party developers of applications and users (hereinafter referred to as the "integration function"). For example, by integrating with applications which have video calling function, users (employees of a user) can use the video calling function and talk to the other party without leaving the screen of CRM software (in other words, on the interface of CRM software without launching the video calling application on a separate screen). Thus, by utilizing the integration functions, users can freely combine and integrate CRM software and third-party applications used by the users, and construct a more efficient business environment optimized to the needs of the users.The utilization of integration functions by each of third parties and users is described in detail below.

First, a third-party application developer can freely add an integration function with CRM software to its own application by using API made publicly available by the CRM software supplier. Applications with the integration function may be distributed in any way, for example, by the application developer through its website. In addition, some CRM software suppliers host an application market for their services so that third-party application developers can easily distribute applications with integration function and users can easily search for and introduce such third-party applications.

For example, Salesforce hosts "AppExchange", which is an application market for its services, and users of Salesforce's CRM software can select and introduce applications published on "AppExchange" that meet their needs and integrate them with Salesforce's CRM software[5].

Users can achieve integration functions by, for example, (i) using applications with integration functions created by third-party application developers, (ii) independently building programs with integration functions (hereinafter referred to as "Custom Codes"), and (iii) using applications that connect to and integrate

[4] As a means for users to develop the system independently, they may have their internal IT team to carry out the development, or an alternative means would be to retain outside operators called SIers (abbreviation of System Integrator).

[5] These application markets only provides access to applications having an integration function with the CRM software, and do not distribute other general applications. Therefore, the JFTC considered that these application markets is merely ancillary services of CRM software.

multiple services and applications[6] (generally referred to as iPaaS[7]). Among them, integration by the methods (ii) and (iii) can be carried out even if third-party application developers do not provide an application that deploys integration function with CRM software, as long as APIs are open to users.

(4) Deployment methods of CRM software

The deployment methods of CRM software mainly include on-premise (the user builds its own server environment and then operates and manages the system), SaaS (the system is operated and managed on a server environment [cloud] built by other companies, and users use the software by accessing the server), or a hybrid system combining both[8].

(5) CRM software provided by Salesforce, data it collects and stores, and its use of data by Salesforce

1. **CRM software offered by Salesforce**
   Salesforce mainly offers "Sales Cloud" as CRM software for sales, "Service Cloud" as CRM software for customer service, "Marketing Cloud" as CRM software for marketing, and "Commerce Cloud" as CRM software for e-commerce. All of this CRM software have integration functions with third-party applications, etc.
   In addition, all of Salesforce's CRM software are available as SaaS, not on-premise.

2. **Data collected and stored by Salesforce and their management methods**
   Salesforce collects and stores two types of data, "customer data" and "usage data".
   Customer data" refer to data entered by users in the process of using the Salesforce's CRM software. For example, if users use Sales Cloud, data entered by users regarding customers of users, prospective customers, and sales activities of users, and if users use Marketing Cloud, data regarding persons who have signed up (created an account) to receive e-mails from users,

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6 Regardless of whether they are on-premise or SaaS.

7 iPaaS (Integration Platform as a Service) is a service called "Connector" that provides programs for linking between clouds or between clouds and on-premise.

8 It is generally said that on-premise deployment requires in-house server construction, and therefore a large amount of cost is incurred at the time of initial introduction, but the running cost is only the relatively low maintenance costs (however, it will be required that the IT department of the company deals with software updates, etc.). It is also advantageous in that security, etc. can be decided in the discretion of the company according to the importance of data therein. On the other hand, SaaS deployment requires low initial costs because it does not require the construction of in-house servers, etc., and does not require in-house software updates, but it is necessary to continue to pay subscription fees as running costs. This subscription fee increases in price in proportion to the amount of data used, so the more users who use per subscription, the higher the subscription fee. In addition, since the security environment depends on providers of SaaS, it is often difficult to construct a flexible security environment to meet the requirement of the company in comparison with the case of on-premise. Thus, there are differences between on-premise and SaaS mainly in terms of price structure, maintenance management, and flexibility in security design.

and data regarding e-mail exchanges between users and customers of users, these data fall under this category. By contrast, "usage data" refers to data concerning the use of services of Salesforce by users. For example, data such as the number of e-mails sent in Marketing Cloud over a period of time, the number of errors that occurred on a particular web page or function, and which functions of Salesforce's services are most frequently used by users fall under this category.
Salesforce protects these two types of data and treats user-specific usage information as confidential information. In addition, among these data, the data of users is subject to access restrictions, and even employees of Salesforce are not allowed to access such data except for those who need to access the data of users.

3. **Use of data by Salesforce**
Salesforce is strictly restricted in its contracts with users to use customer data obtained from them. That is to say, Salesforce is not allowed to use the collected customer data for its business purposes without the consent of users, except as necessary to provide and ensure the proper operation of its services and related systems. In other words, customer data of a user will not be used to provide services to another user or to improve the overall products of Salesforce without the user's consent.
Salesforce may also use the users' data to train an AI algorithm with the purpose of designing new services and improving existing services, but this is also done with the consent of users.

(6) Network effects related to the CRM software market

As described in Section (3) above, many CRM software suppliers provide the integration functions with third-party applications. Therefore, in general, the more the users who use specific CRM software (business operators who are users of CRM software), the more incentives for third-party application developers to provide applications with integration functions with such CRM software. In addition, the more the applications that have the integration functions with CRM software are provided, the more attractive the CRM software becomes for users in turn, which is considered to be a market where so-called "two-way indirect network effect" works. In such a two-sided market, given that the marginal cost of supplying CRM software is low and the supply capacity of CRM software is unlikely to become an issue, there is a possibility that a specific business operator will rapidly increase its market share. As such, when assessing the effect on competition in the market of CRM software, it is necessary to also take such indirect network effects into account.

2. Overview of Business Chat Services (Products and Services Provided by Slack, Inc.), etc.

(1) Overview of business chat services

Business chat services are services for carrying out one-to-one, one-to-many, or

many-to-many text-based real-time communication mainly within a company[9] using the Internet, and there are also services with video- and voice-calling functions and services with integration function with third-party applications, etc. The introduction form of business chat services varies by the user, and in some cases, a single service is introduced in the whole company, and in other cases, different services are introduced in each department. In addition, there are many cases where both email and business chat services are used for different purposes, such as using email for external communication and using business chat services for internal communication, and there are also cases where multiple business chat services are introduced in the company in parallel.

According to the private research company, the market size of business chat services in Japan is expanding, and it has grown significantly in recent years.

In addition, according to Slack, Inc., the market of business chat services is immature, in which large innovation is continuously occurring, and this trend is becoming stronger as companies promote remote working in response to the COVID-19 pandemic, and this market is expected to grow and change significantly in the future.

(2) Characteristics of business chat services

Business chat services emerged as alternatives to email, which had been a popular means of communication for enterprises, and their use has been expanding. The main features of business chat services compared to email are as follows.

1. **Simplicity**
   Business chat services adopt the user interface as if users are talking to each other, and it is assumed that communication accumulates based on the previous communication. Therefore, unlike email, etc. which basically requires information to be completed in a single transmission, communication in chat tends to be in short sentences, and uncomfortableness in using casual expressions that are close to spoken language is relatively little, thereby providing the advantage of lowering the barrier to communication.

2. **Immediacy**
   As mentioned above, business chat services are characterized by the fact that it is easier to exchange instant messages than by email because they allow casual exchanges in short sentences like conversations. In addition, instant communication is emphasized in business chat services, and some of them have the function which is similar to such as the so-called "Like" function on SNS, which allows users to display various reactions to posts with *emoji* with a single click (in Slack, the equivalent is called "Reacji").

3. **Searchability**

[9] Traditionally, business chat services have been provided as a tool used for in-house communication of companies, but as described in Section (4)-A) below, there are signs that the use of business chat services is expanding for communication with outside companies, such as Slack, Inc's introduction of Slack Connect.

In many business chat services, all past exchanges are preserved, and it is possible to easily search the contents of chat using the search function. [10] The search function is also available for chat groups that the user is not a member to (see Section D below), although this depends on the setting by the administrator, and users may also search through messages of a chat group they belong to that was exchanged before they joined.
Therefore, for example, when a new member joined an existing project, previously it was necessary for the existing member to forward multiple related emails and for the new member to catch up and understand the status of the project; whereas in business chat services, by joining a chat group of the relevant project, the new member can check the past exchanges in chronological order and it is possible to easily understand the status of the project without the help of the existing member by searching back into the past exchanges for necessary information.

4. **Communication centered on chat groups**
In business chat services, a group of chat participants (each business chat service use various names such as chat room, channel, chat group, etc., hereinafter referred to as "chat group") can be easily created for each group having a certain common characteristic such as belonging to the same department, a business group, a job title, a project team, or sharing common topics of interest, and each user shall utilize this as a basic unit of communication. Users who join a particular chat group are free to post messages to the group and communicate with other participants. [11] In conventional email, it was possible to achieve the same purpose by sending to the necessary members, but it is difficult to realize the same usability as business chat services because it is necessary to search the relative mail chain again in order to contact the same members, delete the subject line of email and the past exchanges every time the topic changes, and it is difficult for the newly joined members to confirm the past exchanges as described in Section C) above.

5. **Integration with other applications**
As described in Section (3) below, most business chat services have the integration function with third-party applications, etc., and the function can be called up directly from the chat screen of the integrated third-party application, etc.

(3) Integration function of business chat services

Major business chat services implement integration function with third-party

[10] The user can select the scope of search it desires, such as within a single chat group or across all chat groups.

[11] There are cases where the users are free to join certain chat groups, or cases where they are required a permission from the administrator to join. In addition, although it is necessary to participate in a chat group in order to post a message, it may not be necessary to participate in a chat group in order to view exchanges within the chat group. Thus, the form of provision of a chat group varies depending on the setting of the supplier of the business chat service or the administrator.

applications, etc. by opening the related APIs to third-party application developers and users. For example, by integrating with file storage services and video-conferencing applications, users can invoke and use features of other services without having to leave the business chat service's screen (and without launching the integrated application on a separate screen).

Similarly, users of business chat services can create a chat group with an automatic notification function and an automatic response function by integrating chatbot and the like built by themselves.[12] In this way, users can build a more efficient business environment optimized for their needs by freely combining and integrating business chat services and third-party applications, etc. through the integration function.

As in Section IV-1-(3) above, third-party application developers can freely add the integration function with business chat services to their applications using APIs opened by business chat service providers and distribute the applications through the developers' websites, etc. Also, some business chat service providers offer an application market for their services, for example, Slack, Inc. operates "App Directory", which is an application market for their services. Users of Slack will be able to select and introduce applications that meet their needs from among those published on "App Directory," and integrate them with Slack.

Users can achieve the integration by (1) using applications with the integration functions created by third-party application developers as described above, (2) building custom codes on their own, and (3) using iPaaS.

(4) Business chat service provided by Slack, Inc., the data it collects and stores, and its use of data

1. **Slack, Inc.'s business chat service**
   Slack, Inc. offers Slack, a business chat service for internal communication. Each Slack user is assigned working space(s) called "Workspace". Customers can create any number of chat groups called channel in the Workspace, and can use chat function, video- and voice-calling functions, and the integration function with third-party applications, etc. and other functions based on channels. In June 2020, Slack, Inc. released a service called "Slack Connect" to use Slack for external communication, which enables Slack users to communicate with organizations outside the company (up to 20 companies) on Slack, as well as internal communication.[13]
2. **Data collected and stored by Slack, Inc. and method of data management**
   Slack, Inc. collects and stores two kinds of data, "customer data" and "other information", from users under its privacy policy.
   "Customer data" refers to all data provided by individuals belonging to the user. For example, messages on channels, direct messages, uploaded files,

[12] An example of utilizing the automatic notification function is the integration of a program that automatically notifies an input deadline for attendance and absence related matters in a human resource related chat group, and an example of utilizing the automatic response function is the integration of a program that automatically responds to questions from employees in an in-house support chat group.

[13] However, it is necessary that both communicating parties use Slack in order to utilize Slack Connect.

profile information and the like fall under this category.
"Other information" refers to data derived from the use, etc. of Slack. For example, Workspace and account information[14], service metadata[15], log data, device information, location information, information on third-party applications, etc. used via App Directory, contact information, third-parties data[16], and Cookie information fall under this category.
For handling situations of emergency, Slack, Inc. grants access to customer data only to a specific group of engineers, and all system commands executed by engineers to browse customer data are to be recorded in the log. In addition, an unauthorized operation (whether by insiders or otherwise) to browse customer data that is not required in relation to [the operator's] work shall be detected when such operation is done. Slack, Inc. also conducts a quarterly access review, in order to confirm on a regular basis that access is granted based on the work needs of its employees. Moreover, when an authorized employee leaves the company, Slack, Inc. typically revokes their authorization of access to all systems within 24 hours.

3. **Use of data by Slack, Inc.**
Under Slack, Inc.'s privacy policy and terms of service, Slack, Inc. may not use the collected and stored "customer data" unless it is necessary for the performance of services of Slack, or instructed by the customer.
As to the "other information" collected and stored, Slack, Inc. has stated that its main use is for purposes of legal compliance, notification to users, improvement of services (including automatic proposal of channel name and Reacji), clerical work, and potentially to prevent fraudulent acts.

(5) **Network effects in the market for business chat services**

Including Slack, Inc., some business chat service providers have started to provide business chat services that enable communication with parties outside the company. Such business chat services between external organizations are in the situation where a certain business chat service becomes more attractive to users as the number of users who use the business chat service (enterprise users of business chat services) increases, which is considered to be a market where so-called direct network effect works. In such market, given that the marginal cost of providing business chat services is low and the supply capacity of such services is unlikely to become an issue, there is a possibility that a particular business operator will increase its market share rapidly. Thus, in considering the competitive impact in the market for business chat services, it is necessary to take the existence of services that enable communication between external organizations and the direct network effects that occur in relation to such services into account.

In addition, as described in Section (3) above, many business chat services provide

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[14] This includes email addresses, phone numbers, passwords, credit card information, bank account information, billing information, etc.

[15] This includes information about the workspaces, channels, people, features, content and links exchanged by individuals, the types of files shared, and the third-party services used (if any).

[16] This includes data obtained from parent companies, affiliates, subsidiaries, Slack's partner, etc., relating to the organization, industry, website visitors, marketing campaigns and other Slack operations used to make Slack's own information more informative.

the integration function with third-party applications, etc. Therefore, in general, as the number of users using a specific business chat service increases, the incentive for third-party application developers to provide applications that have the integration function with the business chat service increases. In addition, the more the applications that have the integration function with the business chat service are provided, the more attractive the business chat service becomes for users in turn, which is considered to be a market where the so-called two-way indirect network effect works. In such market, given that the marginal cost of providing business chat services is low and the supply capacity of such services is unlikely to become an issue, there is a possibility that a particular business operator will increase its market share rapidly. Thus, in considering the competitive impact in the market for business chat services, such indirect network effect should also be taken into account as well as the above direct network effects.

Part V. Definition of a particular field of trade

1. CRM Software

(1) The scope of product and service

1. Substitutability between different types of CRM software

(A) Demand substitutability

CRM software users selectively introduce the type of CRM software with the function necessary for the business activities of their companies. For example, they may introduce CRM software with the function to centrally manage customer information and sales information in order to optimize their sales processes.

Moreover, as stated in Section IV-1-(2) above, because the main functions of CRM software differ for each type according to the purpose thereof, for example, it is not possible to use CRM software for marketing or CRM software for customer service to achieve the same purpose as that of CRM software for sales.

Therefore, there is no demand substitutability between different types of CRM software.

However, CRM software is also offered in the form of a package consisting of multiple types, and where such packaged CRM software is introduced, users may select the CRM software as a whole rather than by each type. For example, in certain cases such as where small- and medium-sized users whose business responsibility of each department is not clearly divided introduce CRM software with multiple functions, there is a demand for packaged CRM software. In defining the scope of product and service, it is necessary to consider such actual situation of the market.

(B) Supply substitutability

It is not necessarily easy to develop and offer different types of CRM software with different functions without incurring a large additional cost and risk, because there is little overlap in know-how between each type of CRM software, and there are business operators that only provide a specific type of CRM software.

Therefore, the supply substitutability among different types of CRM

software with different functions is limited.
However, major CRM software suppliers already offer multiple types of CRM software with different functions, and in some cases, they provide them in packages. Therefore, in defining the scope of product and service, it is necessary to consider such actual situation of the market.

2. **Substitutability between CRM software with and without integration function**

(A) **Demand substitutability**

Regardless of whether the integration function is implemented or not, the basic functions offered by the same type of CRM are the same, and users can alternatively select either CRM software with the integration function or CRM software without an integration function.
However, as mentioned in Section IV-1-(3) above, by utilizing the integration function of CRM software, CRM software users can freely combine and integrate CRM software with third-party applications and the like, thereby building a more efficient business environment.
In fact, over 85% of Salesforce's CRM software users have installed at least one third-party application through AppExchange, the app market of Salesforce, and according to the customer interviews, many users actually integrate and use CRM software with third-party applications and the like. Thus, whether or not CRM software has an integration function is believed to be important for users.
Therefore, demand substitutability is limited.

(B) **Supply substitutability**

CRM software suppliers place importance on the integration function because of the high needs of users, and in fact, many major suppliers offer CRM software with an integration function.
In addition, even if CRM software does not have an integration function, it is possible for the suppliers to deploy an integration function by opening their own API, and it is not likely that this will cause any incurrence of a large additional cost or risk.[17]
Therefore, supply substitutability is recognized.

3. **Substitutability between deployment methods (on-premise or SaaS)**

As mentioned in Section IV-1-(4) above, the deployment method of CRM software includes on-premise, SaaS or a hybrid format of the both. CRM software users choose between on-premise, SaaS or a hybrid format of the both, according to fees and the importance of data handled. On this point, regarding the differences in the fee structure based on the deployment method, according to competitor interviews, there was an opinion that the total amount of costs to be paid in the medium- and long-term for users of a certain size or more is not so different no matter which deployment method is chosen. However, especially for small and medium enterprises that do not have as the

[17] It is considered that even business operators who do not currently have an open API can newly open an API in a relatively short time by referencing the API of a competitor who already has an open API.

same level of financial resources as that of large enterprises, SaaS may virtually be the only option when a large initial cost upon on-premise introduction (including costs to purchase and install servers) is required.
On the other hand, according to the customer interviews, there is a tendency to choose on-premise software when a user already has certain data assets or when a user is handling such data that the user wants to avoid any risk of access failure due to server troubles even for a short period of time. However, in light of the increased use of SaaS and security improvements in the recent years, these needs are fluid, and the preference of users who initially preferred on-premise may not be sustained permanently.
As such, it is believed that the differences based on the deployment method of CRM software is becoming relative and fluid, and in fact, according to the internal documents submitted by the Parties, there have been several cases where the users compared SaaS-based CRM software provided by Salesforce with other on-premise CRM software.
Therefore, there is a certain degree of demand substitutability among CRM software with different deployment methods. In addition, in recent years, many major CRM software suppliers have been supplying CRM software both on-premise and on SaaS. Therefore, it is necessary to consider the actual situation of such market when defining the scope of product and service.

4. **Substitutability based on size and industry type of users**
CRM software has different types tailored for certain size and industry type of users, but the basic functions of each type of CRM software do not vary according to the size and industry type of users, and demand substitutability is recognized.

5. **Summary**
Based on the above, substitutability is recognized between CRM software with an integration function and without an integration function, and among the different size and industries of users. On the other hand, as mentioned in Section A)-(a) above, although substitutability among various types of CRM software are not, in principle, recognized, in certain cases, CRM software may be selected as a whole without considering the substitutability among the different types. In addition, as explained in Section A)-(b) above, the JFTC found the actual competition circumstances where major CRM software suppliers already offer a multitude of different types of CRM software, and provide them in packages. Therefore, it is considered appropriate to define the scope of product and service by the function of CRM software, namely, "CRM software for sales," "CRM software for customer service," "CRM software for marketing" and "CRM software for e-commerce, " and additionally define it by "CRM software as a whole" for packaged products.
CRM software with different deployment methods can be considered to be in the same scope of product and service because they have a certain level of substitutability with one another. However, as explained in Section VII-2 below, since Salesforce has a large market share in SaaS-based CRM software, it is believed that the above mentioned scope of product and service should be further segmented and defined by deployment method, namely, " on-premise-based" and " SaaS-based" from the viewpoint of careful examination.

Therefore, the scope of product and service in the present case should be defined as " SaaS-based CRM software as a whole," " SaaS-based CRM software for sales," " SaaS-based CRM software for customer service," " SaaS-based CRM software for marketing" and " SaaS-based CRM software for e-commerce."
As to on-premise-based CRM software as a whole and on-premise-based CRM software by different types (for sales, for customer service, for marketing and for e-commerce), it shall be assessed as competitive pressure from neighboring markets as discussed in Section VII below.

(2) **Geographic scope**

Since the functions of CRM software that are provided to users are common in many countries, it may be possible to define the geographic scope as "worldwide." However, when supplying CRM software, certain levels of localization in terms of languages and other factors are necessary for each country, and among CRM software suppliers, while some business operators operate globally, there are also many business operators that operate with a focus on specific countries and regions including Japan. Moreover, the business operators that operate globally have different market shares depending on the country and the region.

Therefore, from the viewpoint of assessing the effect on Japanese users in particular, the geographic scope has been defined as "Japan."

2. Business Chat Service

(1) The scope of product and service

1. Substitutability with communication services for consumers

Communication services for consumers, as represented by LINE, the messaging application, and business chat services have many common functions such as the chat function and the video/voice call function. The substitutability between the two services is discussed below.

(A) **Demand substitutability**

As mentioned above, communication services for consumers and business chat services share the same basic functions such as the chat function and the video/voice call function. However, while users of business chat services need, in light of security, functions that enable their IT management departments to perform system administration such as access control, data backup, tracking and integration with their own ID authentication infrastructure, communication services for consumers do not usually implement such functions. As such, users of business chat services cannot use communication services for consumers in compliance with their security policy (access control, usage policy settings, file upload control, etc.).
Also, it is usual in communication services for consumers that the chat contents and exchanged data are stored and managed in servers of service providers without necessarily being separated on a user-by-user basis.
In contrast, in business chat services, data is often stored and managed separately for each user in servers of service providers to ensure security.

In this way, there is a difference in security between the two services in terms of the form of data storage.
In fact, according to customer interviews, there are users who exclude communication services for consumers from their consideration because of the difference in data management methods as mentioned above.
Therefore, there is no demand substitutability.

(B) **Supply substitutability**

While business chat services have many functions in common with communication services for consumers, the two services also have many different functions, including in terms of security and management capabilities. If a provider of a communication service for consumers seeks to implement the same security and management capabilities as that of business chat services, the provider will incur significant additional costs and risks.
In addition, the business models of the two services are significantly different in that, among others, communication services for consumers usually earn revenues by having consumers view advertisements in return for free services, whereas business chat services are monetized by directly charging fees to customers. As such, the change from one business model to another would involve significant additional costs and risks.
Therefore, there is no supply substitutability.

2. **Substitutability with e-mail**

E-mail and business chat services are similar in that their users communicate through text information. Substitutability between the two services is discussed below.

(A) **Demand substitutability**

As described in Section IV-2-(2) above, business chat services have unique features different from e-mail, such as simplicity, immediacy and searchability of communications. In addition, users of business chat services use the two services selectively according to their needs. For example, they may generally use e-mail for external communications, and use business chat services for internal communications and communications with certain external parties with whom they need to communicate on an ongoing basis.
Therefore, demand substitutability is limited.

(B) **Supply substitutability**

User interface and user experience (utility) are greatly different between e-mail and business chat services, and certain know-how would be necessary for optimization as a chat tool.

In addition, while e-mail has a standardized protocol (SMTP, POP3, IMAP, etc.), providers of business chat services each use their own methods. Accordingly, if a business operator that provides an e-mail client, etc. intends to develop a new business chat service, this would involve significant costs and risks.

Therefore, supply substitutability is limited.

3. **Substitutability with voice communication and video conferencing services for enterprises**

(A) **Demand substitutability**

Some business chat services deploy voice communication and video conferencing as part of their functionality. However, user's main use of business chat services is as a communication tool using the chat function. In this regard, some voice communication and video conferencing services for enterprises deploy the chat function, but the function are limited and are not an alternative to business chat services. In fact, according to interviews with users, most of them are using other voice communication and video conferencing services even when they are using business chat services equipped with voice communication and video conferencing functions, including Slack. The JFTC therefore considered that users use business chat services and voice and video conferencing services selectively.

Thus, demand substitutability is limited.

(B) **Supply substitutability**

The voice communication and video conferencing functions in business chat services are only auxiliary functions accompanying the chat function, and are not its core functions. Likewise, voice communication and video conference services are not services that focuses on chat communications like business chat services. As such, although some of the functions of the two services overlap, there are major differences in the services and the function they focus on.

Therefore, it is difficult for a business operator providing voice communication and video conferencing services to provide a business chat service, which is characterized by simplicity, immediacy, and searchability, etc. as described in Section IV-2-(2) above, in a short period of time without significant additional costs or risks.

Further, it is also difficult for a business operator providing business chat services to provide voice communication and video conferencing services with a function which targets collaboration among many persons including outside participants, in a short period of time without significant additional costs or risks.

In addition, the internal documents of the Parties Group also indicate that the voice communication and video conferencing services are complementary to their own business chat services, suggesting that they are not in an alternative relationship.

Therefore, supply substitutability is limited.

4. **Substitutability between business chat services with and without integration function**
Some users are enthusiastic to coordinate the business chat service with third-party applications to customize them to suit their own business, while others are reluctant to integrate with third-party applications due to their low IT literacy, or not using the integration function due to internal security policies. However, many users using the paid plans of Slack use some kind of application employing the integration function, and some users wish to use the integration function in the future even if they are not using it at present. In view of these market conditions, the need itself for the integration function in the business chat service market is generally high. Therefore, users may choose the business chat service they adopt in accordance with their internal requests for needs for integration functions.
However, most of the currently-available business chat services have already opened up their APIs, allowing integration with third-party applications. Moreover, even if the integration function is not implemented in the business chat service of a certain business operator, the integration function can be implemented in a relatively short time period without incurring a large additional cost or risk if the integration function is created and published using the API of Slack as reference, for example.
Therefore, the necessity to subsegment the scope of product and service in accordance with the existence of the integration function is low.

5. **Substitutability among different deployment methods**
As for substitutability between deployment methods, all of the major business chat services are provided in SaaS format and several also provide on-premises services in addition, making SaaS the basic option for users.
In light of such actual market situation, the necessity to subsegment the scope of product and service by the deployment method is low.

6. **Substitutability among the size and the industry type of users**
Business chat services do not vary in function depending on the size of the users or the industry they are in. In addition, the basic functions required by users for business chat services do not differ depending on their size and industry type.

7. **Summary**

From the foregoing, no substitutability is recognized between [business chat services and] communication service for consumers, e-mail, and voice communication and video conferencing services for enterprises. On the other hand, the necessity to subsegment the scope product and service according to the existence or nonexistence of integration function, the deployment method, and the scale and industry of users is low.

Therefore, the scope of product and service in the present case is defined as "business chat service".

(2) **Geographic scope**

Since the functions of business chat services that are provided to users are common in many countries, it may be possible to define the geographic scope as "worldwide." However, when providing business chat services, localization in terms of languages and other factors are required for each country, and among business chat service suppliers, while some business operators operate globally, there are also many business operators that operate with a focus on specific countries and regions including Japan. Even the business operators that operate globally have different market shares depending on the country and the region.

Therefore, from the viewpoint of assessing the effect on Japanese users in particular, the geographic scope has been defined as "Japan."

Part VI. Applicability of safe-harbor criteria in a particular field of trade

CRM software provided by Salesforce and business chat services provided by Slack, Inc. are not in a competitive relationship, nor is there any vertical relationship of upstream and downstream between the services provided by the two companies. Therefore, the present case constitutes a conglomerate business combination.

The market share of CRM software is as shown in Table 1 of Section VII-2 below, and although it is difficult to obtain the exact figures of the market share of business chat services, figures for reference are shown in Table 2 of Section VII-2 below. On the other hand, there is active innovation in both markets and further growth and change are expected in the future.

Based on the above, in Section VII below, we examine whether the Transaction substantially restrains competition, assuming that the safe harbor criteria for conglomerate business combination[18] do not apply.

[18] The "Guidelines to Application of the Antimonopoly Act concerning Review of Business Combinations" (May 31, 2004, Japan Fair Trade Commission), Part VI-1(2) states that ordinarily it cannot be understood for a conglomerate combination of enterprises to substantially restrain competition in a particular field of trade if (i) the market share of the company group after the business combination is not more than 10% in all of the particular fields of trade relevant to the company group, or (ii) the Herfindahl-Herschmann Index (which is an index that represents market concentration and is the sum of the squared market share of each business operator in a particular field of trade; hereinafter the “HHI”) is not more than 2,500 and the market share of

Part VII. Assessment on substantial restraint on competition

1. Potential theories of harm in the present case

The main potential theories of harm in the present case are shown in the figure below. That is, with regard to the items (i) and (ii) in the following figure, if Salesforce (or Slack, Inc.) forecloses API access or reduces API interconnectivity (hereinafter referred to as "Foreclosure of API Access") for business chat service suppliers other than Slack, Inc. (or a CRM software supplier other than Salesforce), or supplies Slack (or Salesforce's CRM software) to users in combination with Salesforce's CRM software (or Slack), there is a possibility of causing a foreclosure of or exclusion from the market in the business chat service market (or the CRM software market) (as mentioned below in Sections 3 and 4).[19] In addition, with regard to the item (iii) in the figure below, if confidential information of a competitor is shared among the Parties Group and used by the Parties Group to their own benefit, such competitors may be placed at a competitive disadvantage, which may lead to problems of foreclosure of or exclusion from the market (as mentioned below in Section 5). In addition, there is a possibility that the accumulation of data after the Transaction may cause adverse effects, such as the Parties Group obtaining a competitive advantageous position (as mentioned below in Section 6).

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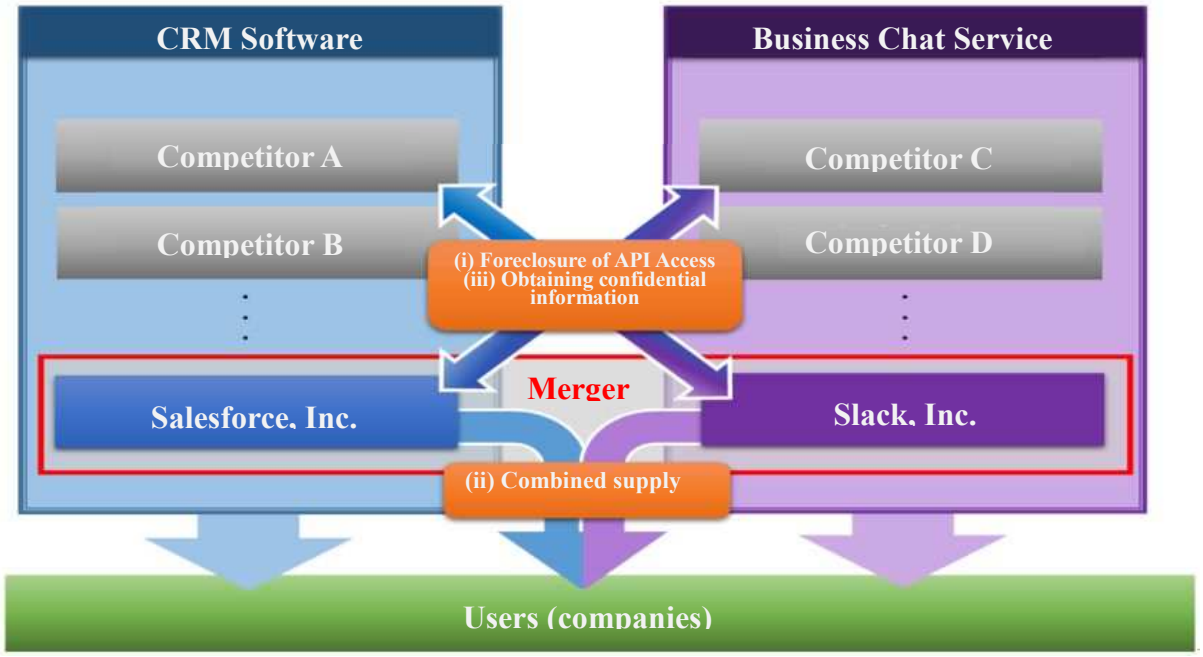
the company group after the business combination is not more than 25% in all of the particular fields of trade relevant to the company group (such criteria are called "safe harbor criteria").

[19] As described in Section 3-(1)-A)-(c) below, among users of Salesforce's CRM software, only a small number of Salesforce users have integrated business chat services via AppExchange. In addition, as described in Section 4-(1)-A)-(b) below, only a small number of Slack users integrate CRM software via App Directory. At present, as the number of users who integrate CRM software and business chat services is small, there is no room, in the first place, to raise competitive concerns due to Foreclosure of API Access or combined supply. However, some users who have not yet integrated two services due to reasons such as inconsistencies with their security policies wishes to overcome these problems and promote integration in the future. Therefore, the number of users who wishes to integrate two services may increase further in the future and the complementarity of the two services may possibly be increased. Thus, in the present case, the examination was carefully conducted as described below.

Figure: Outline of potential theories of harm in the present case



2. Position of the Parties Group and the status of competitors

Table 1 below shows the market share of SaaS-based CRM software (overall and by type) in Japan.

Table 1: SaaS-based CRM Software market share in Japan[20, 21] (revenue basis)

Name of business operator	SaaS-based CRM software market share in Japan (January to December 2020)									
	Overall		Sales		Customer service		Marketing		E-Commerce	
	Value	Rank	Value	Rank	Value	Rank	Value	Rank	Value	Rank
Salesforce	About 30%	1st	About 75%	1st	About 55%	1st	About 35%	1st	About 45%	1st
Company A	About 15%	2nd								
Company B	About 5%	3rd					About 25%	2nd		
Company C	About 5%	3rd	About 10%	2nd			About 15%	3rd		
Company D	About 5%	3rd	About 0 to 5%	4th	About 15%	2nd	About 5%	5th	About 10%	2nd

[20] Market share is shown in increments of 5%. For example, a market share of 47.5% or more and less than 52.5% is shown as "About 50%". Therefore, the total of such values does not always add up to 100. The same shall apply hereinafter.

[21] Prepared by JFTC.

Company E			About 5%	3rd						
Company F			About 0 to 5%	4th						
Company G					About 10%	3rd				
Company H					About 10%	3rd				
Company I					About 5%	5th				
Company J							About 10%	4th		
Company K									About 5%	3rd
Company L									About 5%	3rd
Company M									About 5%	3rd
Others	About 35%		About 5%		About 5%		About 10%		About 30%	
Total	100%		100%		100%		100%		100%	
HHI	1,525		5,698		3,680		2,156		2,677	

Although it is difficult to accurately determine the domestic market shares for business chat services, we provide the Table 2 below for reference purpose. However, it should be noted that the table may not necessarily reflect the accurate market shares, including because it does not include business chat services provided free of charge.

Table 2: (For reference) Market share of business chat services in Japan[22]

(revenue basis)

Name of business operator	Market share of business chat services in Japan (fiscal 2019)	
	Value	Rank
Company A	About 25%	1st
Slack, Inc.	About 15%	2nd
Company B	About 10%	3rd
Company C	About 10%	3rd
Company D	About 5%	5th
Others	About 35%	
Total	100%	
HHI	About 1,148	

3. Assessment of market foreclosure or exclusion in the business chat service market

As mentioned in Section IV-1-(5)-A) above, CRM software provided by Salesforce is equipped with an integration function with third-party applications. Therefore, the JFTC examines the possibility that Salesforce may cause foreclosure of or exclusion from the market in the business chat service market through Foreclosure of API Access against business chat service suppliers other than Slack, Inc., or by supplying its CRM software in combination with Slack (hereinafter referred to as "Combined Supply of Slack").

(1) **Ability**

1. **Competition status and impact of indirect network effects (Foreclosure of API Access and Combined Supply of Slack)**

(A) **Market share**

Table 1 in Section 2. above shows Salesforce's market share in Japan for the overall SaaS-based CRM software and SaaS-based CRM software by types. Although Salesforce is the number one company in the market for the overall SaaS-based CRM software and the SaaS-based CRM software for marketing, its respective market share remains below approximately 35%, and there are several leading competitors in the both markets.

On the other hand, in Japan, Salesforce has a high share of about 75% in the market of the SaaS-based CRM software for sales, about 55% in the market of the SaaS-based CRM software for customer service, and about 45% in the market of the SaaS-based CRM software for e-commerce. In this regard, in light of indirect network effects that work in the CRM

[22] Prepared by JFTC.

software market as described in Section IV-1-(6) above, such high market share generally gives third-party application developers a strong incentive to integrate Salesforce's CRM software with their own applications, and accordingly, the impact of the Foreclosure of API Access may become large if a third-party application cannot be integrated with Salesforce's CRM software. In the same way, given Salesforce's high market share, the impact of the Combined Supply of Slack by Salesforce, if ever made, on the markets would be generally considered to be large.

(B) **Competitive pressures from competitors and neighboring markets**

As described in Section (a) above, judging from the market share, it is generally considered that the Foreclosure of API Access may have a large impact on third-party application developers, and the Combined Supply of Slack by Salesforce is also considered to have a large impact on the markets. However, there is a competitor with about 10% of market share in the CRM software market for SaaS-based CRM Software for sales. Moreover, in the market of on-premise-based CRM software for sales, which is a neighboring market, there are several predominant business operators, and they are competing with Salesforce in certain actual business negotiations. Thus, neighboring markets are exerting competitive pressure.

Salesforce has competitors with about 15% or 10% of market share in the market of SaaS-based CRM software for customer services as well. Moreover, in the market of on-premise CRM software for customer services, which is a neighboring market, there are predominant business operators and they are competing with Salesforce in certain actual business negotiations. Thus, neighboring markets are exerting competitive pressure.

Furthermore, there is a competitor with about 10% market share in the market of SaaS-based CRM software for e-commerce. Moreover, in the market of on-premise-based CRM software for e-commerce, which is a neighboring market, there are predominant business operators, and they are competing with Salesforce in certain actual business negotiations. Thus, neighboring markets are exerting competitive pressure.[23]

(C) **State of integration of CRM software and business chat services, and degree of importance of integration functions**

CRM software and the business chat services do not provide indispensable functions to each other, but can be used on a standalone

[23] The Parties submitted an economic analysis report using Salesforce's Win/Loss data (which generally means "data entered by sales representatives, describing information such as the customer name, amounts, competitor names, results of sales such as orders received/orders lost for each business case" and is often used in the economic analysis in the business combination examination mainly for the purpose of understanding the degree of competition between the parties and the degree of competition between the parties and competitors in a horizontal business combination, but is sometimes also an useful source of information for non-horizontal business combination like the present case). The JFTC conducted an evaluation of this report. The result of such analysis suggested that there is a certain degree of competitive pressure. This is an element to reinforce the decision described in the main text of this document.

basis without integrating with each other. Only a small number of users of CRM software offered by Salesforce have actually integrated business chat services such as Slack through AppExchange. Thus, in view of little progress in the use of business chat services with integration functions, there is no strong motivation for business chat service providers to provide applications with the integration functions with CRM software. Then, the impact of Salesforce's position in the CRM software market on competition in the business chat service market is considered to be limited because the integration function between CRM software and business chat services is not so important at least at the present time, whereas indirect network effects may be found between Salesforce's CRM software and applications developed by third parties in general, as mentioned in Section IV-1-(6) above.

2. **Extent of the foreclosure effects caused by Foreclosure of API Access**

Examining the scope of foreclosure effects caused by the Foreclosure of API Access, the use of specific types of CRM software is limited to sales departments, customer centers, and some other departments of the user companies. However, as described in Section VI-2-(1) above, several or different business chat services may be adopted by each department (That is to say, a company-wide use of a business chat service is not necessarily required and some departments may use their own business chat services that are different from the one used in the whole company.).

Then, even if Salesforce engages in the Foreclosure of API Access with respect to business chat services other than Slack in relation to a specific type of CRM software, only certain specific departments of each user will be affected. Accordingly, a user company will not be required to switch all business chat services it uses (that may have a more company-wide impact) to Slack in response to the Foreclosure of API Access.

Moreover, even if there is a possibility that the relevant department may switch the business chat service it uses to Slack, it is unlikely that competing business chat services will be excluded because many other departments, such as accounting, general affairs, and legal, will continue to use business chat services other than Slack.

Similarly, given that only a small number of users of CRM software offered by Salesforce actually integrate business chat services such as Slack via AppExchange, as mentioned in Section A)-(c) above, the users who will consider switching of business chat services upon the Foreclosure of API Access by Salesforce will be limited to a small number of users who have integrated CRM software with business chat services (In other words, for the majority of users that have not integrated the two services, existence or non-existence of Foreclosure of API Access has no significant impact on the selection of the business chat service that they use.).

Therefore, the JFTC considered that the extent of the foreclosure effects that the Foreclosure of API Access by Salesforce would have on business chat service providers other than Slack would be very limited.

3. **Methods for users to integrate CRM software and business chat services in the event of the Foreclosure of API Access**

As mentioned in Section IV-1-(3) above, users can integrate CRM software

with third-party applications by building Custom Codes or using integration apps such as iPaaS as long as Salesforce opens its APIs to users, in addition to the method of introducing it through AppExchange. In this regard, Salesforce cannot and does not know what kind of third-party applications users integrate with Salesforce's CRM software using Custom Codes or integration applications. Therefore, even if Salesforce engages in the Foreclosure of API Access for business chat services other than Slack, users still can continue to integrate with business chat services other than Slack by other means such as building Custom Codes on their own or using an integration application, and Salesforce cannot grasp and block such integration.

4. **Summary**

Based on the above, the JFTC considered that Salesforce does not have the ability to cause issues of market foreclosure or exclusion by engaging in the Foreclosure of API Access or making the Combined Supply of Slack.[24] That said, in view of the fact that Salesforce has particularly high market share in the markets of SaaS-based CRM software for sales, customer service, and e-commerce, as shown in Table 1 in Section 2. above, and that further growth of and changes in those markets are expected in the future by virtue of active innovation, the JFTC will also examine incentives for foreclosure in Section (2) below out of an abundance of caution.

(2) **Incentives**

As described in Section (1) above, only a part of the departments of user companies uses each type of CRM software, and the number of users who actually integrate CRM software with business chat services is small. In such a situation, even if the Foreclosure of API Access is implemented, very few users of the business chat services will be affected.

However, the JFTC's interviews with competitors and customers have revealed that users of CRM software recognize that one of the central values of Salesforce's business is that high convenience can be realized by enabling integration with as many third-party applications as possible (which is called "Best of Breed"), and if Salesforce engages in the Foreclosure of API Access or the Combined Supply of Slack, the foundation of Salesforce's business would be damaged. Based on such opinion, it is considered that the Foreclosure of API Access and the Combined Supply of Slack by Salesforce would not only have a very limited foreclosure

[24] In the JFTC's interviews with users, some users stated that there are certain hurdles to switching from Salesforce's CRM software to another company's software because the functions provided and the data storage format may differ from supplier to supplier. Meanwhile, other users say that the hurdle of switching is not necessarily high depending on the introduction situation, for example, where CRM software is introduced only in a specific department. Thus, there are different opinions on the ease of switching CRM software. However, regarding Salesforce's CRM software, data stored in CRM software of Salesforce can be migrated to other companies' CRM software by virtue of a function implemented in it which enables users to export their own data in a lump in a general data format called CSV file. From this fact, it seems difficult to say that it is generally difficult for users to switch from Salesforce's CRM software to those offered by other companies.

effect, but would also cause users to doubt the concept of "Best of Breed," which is the basis of Salesforce's business, and would also result in the loss of indirect network effects that it has enjoyed by enabling the integration with numerous third-party applications. Thus, the JFTC considered that the Foreclosure of API Access and the Combined Supply of CRM software would pose a great risk in terms of business continuity and reputation.

Therefore, Salesforce does not have any incentive to cause issues of market foreclosure or exclusion by engaging in the Foreclosure of API Access and the Combined Supply of Slack.

(3) **Conclusion on market foreclosure or exclusion in the business chat market**

Based on the above, the JFTC found no possibility that Salesforce's attempt on the Foreclosure of API Access and the Combined Supply of Slack by Salesforce after the Transaction would give rise to the issue of market foreclosure and exclusion in the business chat service market[25].

4. Assessment of market foreclosure or exclusion in the CRM software market

As mentioned in Section IV-2-(3) above, Slack is also equipped with the integration function. Therefore, the JFTC examines the possibility that market foreclosure or exclusion may occur in the CRM software market if Slack, Inc. engages in the Foreclosure of API Access for CRM software suppliers other than Salesforce or if Slack, Inc. supplies its business chat service combined with Salesforce's CRM software (the "Combined Supply of CRM Software").

[25] In respect of whether there are any incentives for Salesforce to foreclose APIs and provide business chat services as part of the combined supply, the JFTC considered conducting an economic analysis using a method of vertical calculation, which evaluates whether or not the Parties have incentives for foreclosure by calculating "profit from foreclosure" and "profit to be lost from foreclosure" respectively and comparing them using profit rates of the Parties based on internal data submitted by the Parties and public information, but did not conduct such analysis due to some reasons including limitations on the available data.

(1) **Ability**

1. **Competition status and impact of indirect network effects (Foreclosure of API Access and Combined Supply of CRM Software)**

(A) **Market share and competition status**

While the exact market share of Slack, Inc. in the business chat service market is unknown, it cannot be said that Slack, Inc. has a high market share, given that its market share is approximately 15% at a maximum, as shown in Table 2 in Section 2 above. Since there are some competitors that are not included in the table, the actual market share of Slack, Inc. is considered to be lower than the figure shown in the table[26, 27].

In addition, there are many users that have introduced business chat services not at a company-wide level but at each department level. Moreover, users can use multiple business chat services in parallel according to the purpose and contacts (multi-homing), and there are users that are actually using them in parallel.

(B) **Status of integration of business chat services and CRM software, and degree of importance of integration function, etc.**

The business chat services and CRM software do not provide indispensable functions to each other, and can be used on a standalone basis without integrating with each other. Only a small number of users of Slack have actually integrated with CRM software via App Directory. Thus, in view of little progress in the use of CRM software with integration functions, there is no strong motivation for CRM software suppliers to provide applications with integration functions with the business chat services. Then, even if Slack has a high market share in the market of business chat services for users, the impact of its position on competition in the CRM software market is considered to be limited because the integration function between business chat services and CRM software is not so important at least the present time, whereas indirect network effects may be found between Slack and applications developed by third parties in general, as mentioned in Section IV-2-(5) above.

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[26] As mentioned in Section IV-2-(4)-A) above, in June 2020, Slack, Inc. released Slack Connect, which enables communication with external organizations. If the service becomes widespread, its market share may increase rapidly by virtue of direct network effects (See Section IV-2-(5) above.). However, at present, the direct network effect of Slack Connect, which was released only less than one year ago, cannot be said to be conspicuous. In addition, competition may be intensified by possible releases of similar services by competitors in the future. Therefore, at least at the present time, such direct network effects should not be overestimated.

[27] The JFTC conducted an evaluation of an economic analysis report using Slack Inc.'s Win/Loss data submitted by the Parties. The result of such analysis suggested that there was a certain degree of competitive pressure. This is an element reinforcing the decision described in the text of this document.

2. **Extent of foreclosure effects caused by Foreclosure of API Access**
In the situation described in Section A) above, many of the business chat service users that do not use any CRM software would not be affected by the Foreclosure of API Access by Slack, Inc. In addition, in the case of a user which uses CRM software offered by a supplier other than Salesforce and also uses a multitude of business chat services including Slack in combination, considering that switching of CRM software requires a certain amount of cost, it is more likely that in the event of the Foreclosure of API Access, the user would choose to discontinue the use of Slack and switch to a service other than Slack that has been already used rather than to switch to CRM software offered by Salesforce. Furthermore, even with respect to users that are using CRM software and a single business chat service, it would be only a limited number of users who have actually integrated the business chat service with CRM software that would consider switching their CRM software in the event of the Foreclosure of API Access by Slack.
Therefore, the JFTC considered the extent of the foreclosure effects that the Foreclosure of API Access by Slack would have on CRM software suppliers other than Salesforce would be very limited.

3. **Methods for users to integrate business chat services and CRM software in the event of the Foreclosure of API Access**
As mentioned in Section IV-2-(3) above, users can integrate business chat services with third-party applications by building Custom Codes or using integration applications such as iPaaS as long as Slack, Inc. opens its API to users, in addition to by the method of introducing it through App Directory. In this regard, Slack Inc. cannot and does not know what kind of third-party applications users integrate with Slack using Custom Codes or integration applications. Therefore, even if Slack, Inc. engages in the Foreclosure of API Access for CRM software other than those offered by Salesforce, users still can continue to integrate with CRM software other than those offered by Salesforce by other means such as building Custom Codes on their own or using an integration application, and Slack, Inc. cannot grasp and block such integration.

4. **Summary**
Based on the above, the JFTC considered that Slack, Inc. does not have the ability to cause issues of market foreclosure or exclusion by engaging in the Foreclose of API Access or making the Combined Supply of CRM Software[28].

[28] In the JFTC's interviews with users, some users state that switching of the business chat service in use is not easy, because the cost of changing the means of daily communications is large. In addition, although there is an option of returning to e-mail which has the same basic function and is already widely used (because the business chat service is not a "must have" software for doing business), some users question this option by saying, "Once you use the business chat service, you can't expect to return to an email-only environment." On the other hand, there are different opinions on the ease of switching the business chat service, such as that switching from Slack to another business chat service is relatively easy because there is no high need for the business chat service to take over all the conversations in the past (The lack of this need is similar to the fact that many companies only store e-mails for the past few years.), and that the files or data exchanged in the business chat are generally considered to be stored in areas other than Slack, including integrated third-

That said, in view of the fact that it is difficult to understand the exact market share of Slack in the business chat service market, as shown in Table 2 in Section 2 above, and that further growth of and changes in the market are expected in the future by virtue of active innovation, the JFTC will also examine incentives for foreclosure in Section (2) below out of an abundance of caution.

(2) **Incentives**

As shown in Table 2 in Section 2. above, there are several other major competitors on the business chat service market other than Slack, Inc., and users may be using multiple business chat services in parallel. Therefore, if Slack, Inc. engages in the Foreclosure of API Access or the Combined Supply of CRM Software, it is considered quite likely that users of CRM software other than those offered by Salesforce will switch to business chat services other than Slack.

In addition, business chat services may be introduced by user companies not on a company level but on a department level, and only a small number of Slack users actually integrate CRM software through App Directory. In such a situation, even in the event of the Foreclosure of API Access, only a small number of CRM software users would be affected.

On the other hand, the JFTC's interviews with competitors and customers have revealed that users of business chat services recognize that "Best of Breed" is one of the core values of Slack, Inc.'s business, as in the case of Salesforce and if Slack, Inc. were to engage in the Foreclosure of API Access or the Combined Supply of CRM software, the foundation of its business would be damaged. Based on such opinion, it is considered that the Foreclosure of API Access and the Combined Supply of CRM Software by Slack, Inc. would not only have a very limited foreclosure effects, but would also cause users to doubt the concept of "Best of Breed," which is the basis of Slack, Inc.'s business, and would result in the loss of indirect network effects that it has enjoyed by enabling the integration of numerous third-party applications. Thus, the JFTC considered that the Foreclosure of API Access and the Combined Supply of CRM software would pose a great risk in terms of business continuity and reputation.

Therefore, Slack, Inc. does not have any incentive to cause issues of market foreclosure or exclusion by engaging in the Foreclosure of API Access and the Combined Supply of CRM Software.

party apps. However, regarding Slack, users can migrate data stored on Slack to other companies' business chat services by virtue of a function implemented in it which enables users to export their own data in a lump in a general data format called JSON file (which stands for JavaScript Object Notation, a general file format with human-readable text that can be easily analyzed and imported by other business chat services). From this fact, it seems difficult to say that it is generally difficult for users to switch from Slack to services offered by other companies.

(3) **Conclusion on market foreclosure and exclusion in the CRM software market**

Based on the above, the JFTC found no possibility that the Foreclosure of API Access and the Combined Supply of CRM Software by Slack, Inc. after the Transaction would give rise to the issue of market foreclosure and exclusion in the business chat service market[29].

5. Possibility that confidential information of competitors is shared within the Parties Group

As discussed so far, CRM software and business chat services provided by each company of the Parties Group can be integrated with each other. Since such integration is possible by simply opening the parties' respective APIs, it is difficult to imagine that competitively important confidential information would be exchanged in the process. Therefore, it is unlikely that Salesforce will acquire confidential information on a business chat service other than Slack as a matter of course when integrating its CRM software with such business chat service. Similarly, it is unlikely that Slack, Inc. will acquire confidential information on CRM software other than Salesforce as a matter of course when integrating its business chat service with such CRM software.

Therefore, the JFTC considered that confidential information of the competitors will not be shared within the Parties Group.

6. Possibility of the use of collected and stored data

As stated in Sections B) and C) of IV-1-(5) and Sections B) and C) of IV-2-(4) above, each of the Parties collects and stores data of certain users, and uses them for education of AI algorithms, among others, in order to design new services and improve existing services. Since such information may include unique and large amounts of sensitive data that contribute to AI algorithm education, such as users' sales data, chat conversation data, and files attached in the process, it becomes an issue if the accumulation of such data causes adverse effects in that it gives a competitive advantage to the Parties Group.

In this regard, as mentioned in Sections B) and C) of IV-1-(5) and Sections B) and C) of IV-2-(4) above, each of the Parties is required under its contract or terms of use to obtain the relevant users' consent or instruction to use the data called "customer data" that contain particularly sensitive contents. In addition, certain measures, such as encryption and access restrictions, are taken to prevent arbitrary use of such data. Moreover, it is difficult to anticipate at this point that the combination of data collected and stored through CRM software and business chat services will create any great business value.

Thus, it is unlikely that the accumulation of data after the Transaction would result in

[29] Regarding the presence or absence of incentives for Slack of Foreclosure of API Access and combined supply of CRM software, the JFTC considered conducting an economic analysis using a method of vertical calculation, which evaluates whether or not the Parties have incentives for foreclosure by calculating "profit from foreclosure" and "profit to be lost from foreclosure" respectively and comparing them using profit rates of the Parties based on internal data submitted by the Parties and public information, but did not conduct such analysis due to limitations of the data.

adverse effects in that it gives a competitive advantage to the Parties Group.

Part VIII. Conclusion

The JFTC decided that the Transaction would not substantially restrain competition in any particular fields of trade.

Case 7 Acquisition of stocks of Saison Information Systems Co., Ltd. by MELCO HOLDINGS INC.

Part I. The parties

MELCO HOLDINGS INC. (JCN 6180001048602) (hereinafter referred to as "MELCO HOLDINGS," and a group of firms which already have a joint relationship with Makis Holding B.V. (head office in the Netherland), which is the ultimate parent company of MELCO HOLDINGS, is referred to as "Makis group") is a pure holding company, and Makis group is operating production and sales business of digital home electrical appliances and PC peripheral devices such as NAS products.

Saison Information Systems Co., Ltd. (JCN 7013301005882) (hereinafter referred to as "Saison Information Systems," and a group of firms already having a joint relationship with Saison Information Systems is referred to as "Saison Information group." Furthermore, Makis group and Saison Information group combined is referred to as "the parties group.") is operating a business providing file transfer tools between systems.

Part II. Outline of this case and applicable provisions

This case concerns a plan of MELCO HOLDINGS to acquire more than 20% of voting rights related to stocks of Saison Information Systems (hereinafter referred to as "the conduct").

Applicable provision is Article 10 of the Antimonopoly Act.

Part III. Particular field of trade

6 Overview of goods

(1) NAS products

A NAS (Network Attached Storage) product is an HDD which can be directly connected to a network, which is usually called "network compatible hard disc drive[1] (HDD)." While an external HDD is normally used with devices such as PC on a one-on-one basis, a NAS product, by connecting to a network, can be used with multiple people via multiple devices at the same time.

Although various products are developed among NAS products in regards to capacity and processing speed, their basic functions of HDD that are connectable to networks are common between them. Users are selecting NAS products with capacities and processing speeds that are suitable for their usage. For example, NAS products for corporations are often designed to have high functionality in data recovery by loading high-performance RAID[2] besides control function to restrict access to folders, compared with NAS products for individuals and ordinary homes.

Moreover, NAS products have capacities and functions supposing that they can be used

[1] It refers to a memory device which data, programs, etc., can be electromagnetically written on or read out from.

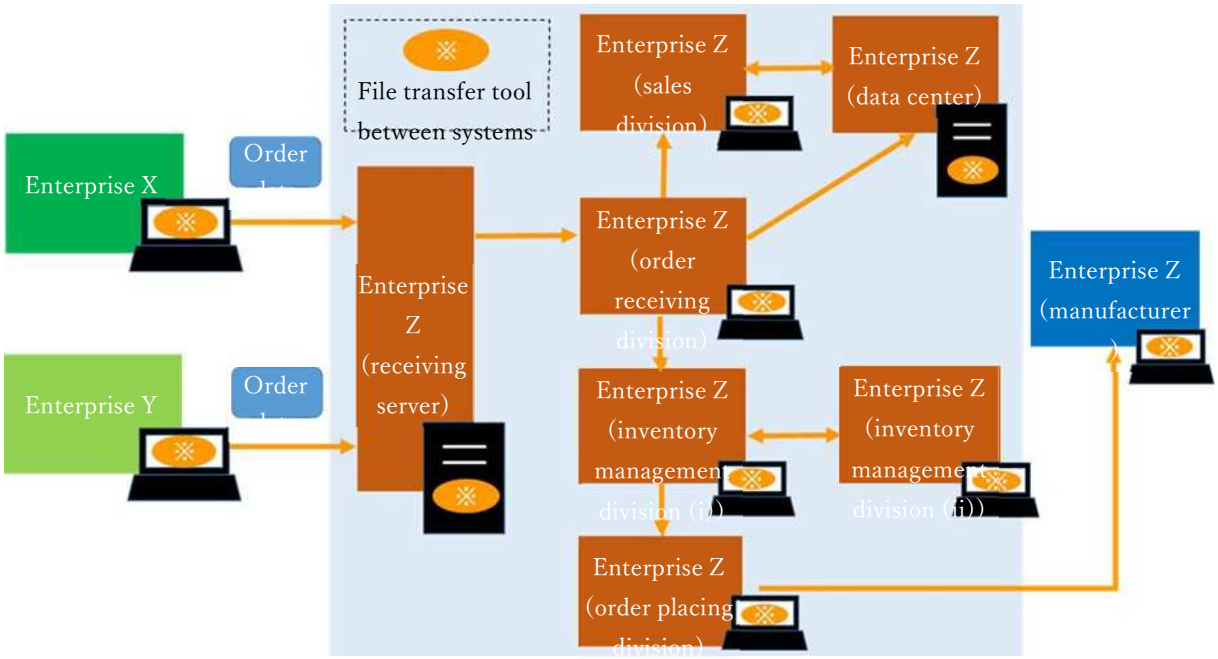
[2] RAID (Redundant Arrays of Inexpensive Disks) is a technology to make multiple HDDs to be recognized and displayed as one drive, and it can improve safety to enable data recovery and access in case of HDD damage, and increase speed in saving data by distributed writing on multiple HDDs.

by up to around 100 people at the same time. Thus, they are used in middle and small-scale enterprises with less than 100 employees, and also used in departments of large-scale enterprises for backing up shared storages or servers for core systems.

(2) File transfer tool between systems

A file transfer tool is a software to transfer and manage high volume or large files safely and rapidly between users or systems. Characteristics of a file transfer tool can include safe file transfer by encryption, standard features of processing such as character code conversion and verification of data consistency, intuitive operability for anyone, etc. There are 2 kinds of file transfer tools. One is a file transfer tool between systems to transfer files between systems, and another is a file transfer tool between users to transfer files between users. However, there is no tool which can do both. Of these, file transfer tools that are sold by Saison Information Systems fall under file transfer tools between systems.

[Figure] Image of a file transfer tool between systems



7 Scope of goods

(1) NAS products

A. Substitutability between NAS products and file servers

(a) Demand substitutability

A so-called file server exists as something which connects to multiple devices and manages and provides data as is the case with a NAS product. While a NAS product can be used by up to about 100 people at the same time as stated in 1(1) above, a file server can be used by a large number of people of 100 or more at the same time. Thus, as users of NAS products are supposed to be middle and small-scale enterprises with less than 100 employees or departments in large-scale enterprises, they can be distinguished from file servers in terms of scale of number of people who use them.

Moreover, while a file server can add storage if a file volume increases, when it is introduced, costs such as purchasing of a dedicated software and OS license, personnel expenses for maintenance and management of the file server will become necessary. A NAS product cannot add storage, but it does not need additional costs for purchasing and managing a dedicated software and OS license, and it can be introduced at lower price and more easily than a file server.

Thus, users are using NAS products and file servers differently to a certain extent, based on their difference. Therefore, demand substitutability between NAS product production and sales business and file server production and sales business is limited.

(b) Supply substitutability

While a NAS product is specialized in saving and sharing files as an external HDD, a file server is equipped with expandability to customize according to user's preference such as addition of storage, detailed setting in authorization of viewing and editing, advanced management function to check access logs, besides file saving and sharing function.

While know-how gained in developing file servers can be utilized in producing NAS products, in order for a NAS product production and sales enterprise to develop file servers, it is considered that it will need new techniques and know-how to build expandability of file servers and advanced management functions. Therefore, supply substitutability between NAS product production and sales business and file server production and sales business is considered to be limited.

B. Substitutability between NAS product and cloud storage

(a) Demand substitutability

A cloud storage exists as a similar method of data management and provision to a NAS product and a file server. A NAS product is a hardware, and by owning and managing the hardware, a customer connects it to devices using a local area network, without going through internet. On the other hand, a customer who uses a cloud storage does not own a hardware at hand, and instead of hardware, he/she will use a storage that is allocated at a data center[3] provided by the cloud storage provider, etc.,

[3] It refers to a facility which accommodates file server equipment, etc., on behalf of customers, and manages

via internet.

NAS products and cloud storage have different way of thinking concerning the structure of security systems. That is, while the scope of possibility of risk management by users is broad for NAS products, such as limited use within the local area network, and security level control according to the confidentiality and importance of data that are handled, users need to build security systems with their own cost and responsibility. On the contrary, cloud storage depends on cloud storage providers regarding security measures as well, and the scope of possibility for users to control security level is limited. Thus, while it is difficult for users who handle information with high confidentiality to select it, users do not have to build security systems from scratch.

Moreover, although there are no significant difference between long-term cost in the case of using NAS products and cloud storage, while NAS product introduction often entails only purchasing cost of hardware, cloud storage use entails need for continuous payment of cost in the form of monthly subscription fee, and besides, the price changes according to the amount of data usage, etc., and thus the forms of cost burden are significantly different. Therefore, it is considered that users are using NAS products and cloud storages differently to a certain extent, based on these differences, and thus, demand substitutability between NAS product production and sales business and cloud storage provision business is limited.

(b) Supply substitutability

In order to produce and sell NAS products, techniques to design and facilities to produce NAS products, and places, etc., related to store the stock will be necessary. On the other hand, in order to provide cloud storage, in addition to techniques to build large-scale data center and connect servers of users and suppliers via internet, as cloud storage is provided using internet connection, know-how, etc., of building high-level security environment and access management supposing external access will be necessary.

Therefore, as facilities, techniques, and know-how that will be necessary for NAS product production and sales business and cloud storage provision business are different, supply substitutability between NAS product production and sales business and cloud storage provision business is not recognized.

C. Substitutability between NAS product for corporations and NAS product for individuals and ordinary homes

(a) Demand substitutability

As stated in Part III.1 (1) above, NAS products for corporations are required to have no delay in data transfer even if there is a massive access from large number of people at the same time, as well as offering safety in saving data, compared with NAS products for individuals and ordinary homes. Therefore, NAS products for corporations have high processing capability, and higher functionalities in terms of management functions for restricting access to folders and data recovery, as well as high capacity.

On the other hand, NAS products for individuals and ordinary homes are typically

cloud storage so that it can be stably operated.

used to share videos and musics recorded at home, or enjoy videos saved on NAS via internet on the go, and thus, functionalities and capacities as high as NAS products for corporations are not required. Therefore, NAS products for individuals and ordinary homes do not have functionalities as advanced as NAS products for corporations, and their capacity is also small. Moreover, while NAS products for corporations are expensive, corresponding to their high functionalities, NAS products for individuals and ordinary homes are relatively inexpensive.

Thus, it is difficult to think that enterprises which require high level of safety, etc., will choose NAS products for individuals and ordinary homes, while it is also difficult to think that individuals will choose NAS products for corporations to use at home. Therefore, demand substitutability between NAS product for corporations production and sales business and NAS product for individuals and ordinary homes production and sales business is limited.

(b) Supply substitutability

Difference in performance of NAS products depends on performance of equipped CPU, RAID, etc. Thus, there is no considerable difference in structures of NAS products for corporations and NAS products for individuals and ordinary homes. Therefore, as for NAS product for corporations production and sales business and NAS product for individuals and ordinary homes production and sales business, techniques and know-how are common. In fact, many NAS product production and sales enterprises, including Makis group, are producing and selling both NAS products for corporations and NAS products for individuals and ordinary homes.

Therefore, supply substitutability between NAS product for corporations production and sales business and NAS product for individuals and ordinary homes production and sales business is recognized.

D. Summary

Based on the above, NAS product production and sales business is defined as different scope of goods from file server production and sales business and cloud storage provision business.

Moreover, as supply substitutability is recognized between NAS products for corporations and NAS products for individuals and ordinary homes, in general terms, it is appropriate to define "NAS product production and sales business" as scope of goods and services. However, as stated in Part IV.2 (1) A. below, considering that the realistic possibility of the problem of combined supply with file transfer tools between systems in this case is limited to NAS products for corporations,[4][5] from the perspective of conducting more careful examination regarding the impact of the conduct on competition, we shall only examine "NAS product for corporations production and sales business."

(2) File transfer tool between systems

A. Substitutability between file transfer tool between systems and file transfer tool between users

(a) Demand substitutability

A file transfer tool between systems is a software to realize connection between systems by creating a file by extracting specific records from database and consolidating them, and automatically synchronizing the file between systems, etc. For example, large-scale enterprises are using them to improve efficiency of tasks by automating data connection between departments within the company or business partners. A feature of a file transfer tool between systems, such as intra system to external system, is that the agent which sends files, and the agent which receives and uses files are the systems (that is, users do not interfere with sequential operations).

On the other hand, a file transfer tool between users is a tool that is used when a user sends files from his/her own operating environment to the third party such as business partners, etc. A file transfer tool between users is used for transferring files safely, avoiding the size restriction or wrong transmission risk of e-mail attachments, and risk of losing record media by handing them over. For example, instead of attaching files to e-mails, URL link is attached and from the URL link the stored files can be downloaded. It is mainly used as a substitution for files attached to e-mails, or posting or handing over of external media such as USB memory and CD-ROM. A file transfer tool between users is different from a file transfer tool between systems, in a sense that for the former, the agent of sending files and the agent of receiving and using files are users, while for the latter, the agents are systems.

Thus, it is considered that a file transfer tool between systems and a file transfer tool between users have different usage, and cannot be used alternatively. Therefore, it is considered that there is no demand substitutability between the file transfer tool between systems provision business and the file transfer tool between users provision

[4] The parties group announced that it would jointly develop goods combining "TeraStation (TS 6000 series)," a NAS product for corporations sold by Makis group, and "HULFT Iot," a file transfer tool between systems sold by Saison Information group, in the press release dated September 15, 2021.

[5] A file transfer tool between systems provides a function to connect multiple core systems owned by relatively large-scaled enterprises (see Part IV.2 (1) A. below). Thus, it is considered that there is no demand for sales of combined NAS product for individuals and ordinary homes and file transfer tool between systems.

business.

(b) Supply substitutability

A file transfer tool between systems has a function to automate connection of data generated between systems within a firm or between firms as stated in (3) above, and it is required to build a system to connect different systems, and to safely and rapidly process large volume of data. On the other hand, a file transfer tool between users has a function to send files safely by operation of users, and it is required to build a system to manage authority per user in detail, and prevent wrong transmission. It is considered that facilities, techniques, and know-how that will be necessary for a file transfer tool between systems provision business and a file transfer tools between users provision business are different. In fact, different suppliers are seen in the group of file transfer tool between systems provision business and the group of file transfer tools between users provision business.

Therefore, it is considered that supply substitutability between file transfer tools between systems provision business and file transfer tools between users provision business is not recognized.

B. Substitutability between implementation methods (on-premises and SaaS)

The method of providing software can be done on-premises[6] and by SaaS (cloud).[7] However, a file transfer tool between systems can only be provided by on-premises format, because data connection is conducted by a method to send a specific file stored in a file server.[8]

Therefore, the market for file transfer tools between systems does not have to be subdivided by implementation methods.

[6] A method to operate by installing on file servers, etc., where users' data are stored.
[7] A method to operate by connecting file servers, etc., where users' data are stored, to suppliers' file servers, etc.
[8] A file server mentioned here may be a server managed and operated in-house, or may be a file server that is allocated by a cloud provider.

C. Summary

Based on the above, "file transfer tool between systems provision business" is defined as the scope of goods.

8 Geographic range

NAS products for corporations' production and sales business can sell users in all regions of Japan, without any geographic constraints. Moreover, file transfer tools between systems provision businesses can also operate business by being entrusted by users from all regions of Japan, without any geographic constraints. Furthermore, neither of them have situations, such as difference in the price of goods and services by business areas, including the difference in sales cost. Therefore, for goods and services defined in 2 above, "all regions of Japan" is defined as a geographic range.[9]

Part IV. The impact of the conduct on competition

The type of business combination in this case does not fall under horizontal business combination, because NAS products for corporations' production and sales business which is operated by Makis group, and file transfer tool between systems which is operated by Saison Information group have different scopes of goods and services. Moreover, as NAS products for corporations and file transfer tools between systems do not have goods and services with different trade phases, it does not fall under vertical business combination either. Therefore, this case falls under conglomerate business combination (goods expansion) related to NAS products for corporations' production and sales business, and file transfer tool between systems provision business.

1 Position of the parties and conditions of competing enterprises

The accurate share of NAS products for corporations' production and sales business is unknown. Moreover, as for the market share related to file transfer tools between systems provision businesses, the market share of Saison Information group is about 60%, as shown in the table below. Therefore, we consider that it does not fall under the safe-harbor criteria of the conglomerate business combination, and we will examine it in 2 below.

Furthermore, for reference, the market share of NAS product production and sales business in all regions of Japan is shown in the table below.

[9] As a file transfer tool between systems provision business is about selling software, and trade can be done from anywhere in the world. However, as a continuous management system such as after-sales support is necessary, geographic range in this case is defined as all regions of Japan, instead of worldwide.

[(Reference) Market share of NAS product production and sales business in FY 2020]

Ranking	Company name	Market share
1	Makis group	About 60%
2	Company A	About 40%
3	Company B	0-5%
	Others	0-5%
Total		100%

[Market share of file transfer tool between systems provision business in FY 2020]

Ranking	Company name	Market share
1	Saison Information group	About 60%
2	Company C	About 20%
3	Company D	0-5%
	Others	About 20%
Total		100%

2 Examination related to substantial restraints on competition

As stated in the footnote 4 above, the parties group has already announced that it would jointly develop goods combining "TeraStation (TS 6000 series)," a NAS product for corporations sold by Makis group, and "HULFT Iot," a file transfer tool between systems sold by Saison Information group. Concerning the parties group, it is considered that Makis group has a certain level of share in NAS product for corporations production and sales business, and Saison Information group has about 60% of the market share in file transfer tools between systems provision business in all regions of Japan. Thus, after the conduct, it can be considered that the parties group may be superior in the competition related to NAS products for corporations' production and sales business or file transfer tools between systems provision business in all regions of Japan, as a group of enterprises with joint relationship, by the combined supply of the above, etc., and a problem of closure and exclusivity in the relevant market may arise.

Therefore, we will examine the factors for judgement related to conglomerate business combination (goods expansion) of NAS products for corporations' production and sales business and file transfer tools between systems provision business in all regions of Japan.

(1) Whether ability to cause closure or exclusivity of the market exists or not

A. Level of complementarity

Users of NAS products for corporations are (i) middle or small-scale enterprises with less than 100 employees and (ii) large-scale enterprises with 100 or more employees, which use them for backing up servers for core systems or shared storage for each department. On the other hand, users of file transfer tools between systems are large-scale enterprises with 100 or more employees, which need data connection between

multiple departments and devices.[10] Therefore, it is considered that, at least for the middle and small-scale enterprises, the level of complementarity is low between NAS products for corporations and file transfer tools between systems.

Moreover, for large-scale enterprises, although it is considered that there is a complementarity between NAS products for corporations and file transfer tools between systems to a certain extent, the cases when the complementarity arises are limited to the ones when NAS products are used for backups, and as stated in C. below, considering that alternative goods such as file servers and cloud storages exist besides NAS products to be used in a relevant way, complementarity between NAS products for corporations and file transfer tools between systems arises only in the limited situation.

B. Competition status

As shown in the reference above, as for NAS product production and sales business in all regions of Japan, Company A exists as a powerful competitor with the market share of about 40%.

Moreover, as shown in the table above, as for file transfer tools between systems provision businesses in all regions of Japan, Company C exists as a powerful competitor with the market share of about 20%.

C. Competitive pressure from adjacent markets

In the case when large-scale enterprises use NAS products for corporations for backing up servers for core systems or shared storage for each department, it can be considered that they may use added file servers or cloud storages instead of NAS products for corporations. Thus, competitive pressure from adjacent markets is recognized to a certain extent.

D. Impact of direct network effects

File transfer tools between systems can transfer and manage files between different systems by installing them on both the transferring and receiving sides of users.[11] Therefore, the more users (enterprises) there are the more destinations for users to transfer files to, and the more attractive the file transfer tool between systems would be. Thus, this is considered to be a market where so-called direct network effects function. When there are direct network effects, the effect of closure or exclusivity of the market by combined supply could be significant.

However, as file transfer tools between systems are mainly used for connecting systems within a company, the relevant direct network effects only function in limited occasions of using file transfer tools between systems, such as in the case of making external connections. Moreover, some users are introducing file transfer tools

[10] Share of sales amount by the scale of employee number of users in the market of file transfer tool between systems in FY 2019, is 0% for less than 100 employees, 8.4% for 100 or more and less than 300 employees, 18.1% for 300 or more and less than 1,000 employees, 32.7% for 1,000 or more and less than 5,000 employees, 26.3% for 5,000 or more and less than 10,000 employees, and 14.5% for 10,000 or more employees.

[11] In order to transfer and manage files between different systems using file transfer tools between systems, users on the transferring side and users on the receiving side need to use the file transfer tools between systems that are offered by the same enterprise.

between systems not at the entire company level, but only to limited systems such as production management system or stock management systems, and users can also make combined use of multiple file transfer tools between systems (multihoming), in accordance with the usage and the other side of the connection. Furthermore, in general, the cost for newly introducing file transfer tools between systems is relatively low, and switching or additional introduction is also not so difficult.

Therefore, it is considered that even if direct network effects are recognized for file transfer tools between systems, their impact is limited.

E. Summary

As shown above, complementarity between NAS products for corporations and file transfer tools between systems is only recognized in limited cases, competitive pressure from competitors is recognized, and competitive pressure from adjacent markets is recognized to a certain extent, and moreover, direct network effects recognized in file transfer tools between systems are also limited. Thus, it is recognized that the parties group does not have the ability to cause a problem of closure or exclusivity of the market, by combined supply of NAS products for corporations and file transfer tools between systems, after the conduct.

(2) Impact on market due to sharing of confidential information of competitors among the parties group

If Makis group is supplying its own NAS products for corporations in combination with file transfer tools between systems not from Saison Information group, Saison Information group, via Makis group, may be able to obtain confidential information for the competition, such as price and technology information regarding file transfer tools between systems supplied by competitors. Moreover, a similar possibility may arise, if Saison Information group is providing its own file transfer tools between systems in combination with NAS products for corporations not from Makis group. Therefore, after the conduct, a problem of whether the problem of closure or exclusivity of the market for NAS products for corporations or file transfer tools between systems in all regions of Japan may arise, if the parties group uses the relevant information to its advantage, and put competitors in disadvantageous positions. However, since the parties group is the first one in the Japanese market to provide NAS products for corporations in combination with file transfer tools between systems, we cannot say that after the conduct, the parties group will be in the situation in which it can obtain confidential information of competitors for the competition.

Moreover, NAS products for corporations' production and sales enterprises, after selling their own goods to users, cannot know the contents of data saved in the NAS products, and file transfer tool between systems production and sales enterprises also cannot know the contents of data exchanged via the file transfer tools between systems, after embedding their own goods to users' systems. Therefore, we cannot say that after the conduct, the parties group will be in the situation in which it can obtain confidential information of competitors for the competition.

Based on the above, we cannot say that the problem of closure or exclusivity of the market will arise due to the sharing of confidential information of competitors among the parties group.

(3) Summary

Therefore, it is considered that the conduct, by unilateral conduct of the parties group or coordinated conduct with competitors, will not cause a problem of closure or exclusivity of the market of NAS products for corporations' production and sales business or file transfer tool between systems provision business, and will not substantially restrain competition in a particular field of trade.

Part V. Conclusion

As shown above, it is judged that the conduct will not substantially restrain competition in a particular field of trade.

Case 8 Acquisition of stocks of Toichi Kanda Seika Co., Ltd. by Tokyo Seika Co., Ltd.

Part I. The parties group

Tokyo Seika Co., Ltd. (JCN 2010801007777) (hereinafter referred to as "Tokyo Seika") and Toichi Kanda Seika Co., Ltd.[1] (JCN 4010801007759) (hereinafter referred to as "Kanda Seika") both operate wholesale business at the fruits and vegetables market of Ota Market, Tokyo Metropolitan Government Central Wholesale Market (hereinafter referred to as "Ota Market").

Hereinafter, a group of firms already forming a joint relationship with Tokyo Seika is referred to as "Tokyo Seika group" and Tokyo Seika group and Kanda Seika combined is referred to as "the parties group."

Part II. Outline of this case and applicable provisions

This case concerns a plan of acquisition of more than 50% of voting rights related to stocks of Kanda Seika by Tokyo Seika (hereinafter referred to as "the conduct").

Applicable provision is Article 10 of the Antimonopoly Act.

Furthermore, among the business operated by the parties group, multiple businesses are in competitive relationship. Among these examined, the following gives a detailed account of horizontal business combination of wholesale business in the market of fruits and vegetables for small-scaled users and collection business of fruits and vegetables, which are considered to have relatively large impact on competition.

Part III. Particular field of trade

1 Overview of the wholesale market

A wholesale market is a market opened for wholesale of perishable food, etc., and is continuously kept open with wholesale space, car parking space, and other necessary facilities for trading perishable food, etc., and cargo handling (Article 2, paragraph 2 of the Wholesale Market Act).

Among them, wholesale markets that are authorized by the Minister of Agriculture, Forestry and Fisheries, are called central wholesale markets, and wholesale markets that are authorized by the governors of prefectures are called local wholesale markets. Ota Market is one of these central wholesale markets.

Agents of trades in wholesale markets related to the examination of the conduct are as follows.

(i) A wholesaler in the market is the one who operates wholesale business at the wholesale market for perishable food, etc., shipped to the wholesale market, by being commissioned to sell them by the shipper, or by purchasing them (Article 2, paragraph 4 of the Act). There are 3 wholesalers in the market of fruits and vegetables of Ota Market, including the parties group.

[1] Toichi Kanda Seika Co., Ltd. had a trade name of Tokyo Kanda Seika Market Co., Ltd. when it initially notified, but it changed its trade name to Toichi Kanda Seika Co., Ltd on January 26, 2022.

(ii) An intermediate wholesaler is the one who sells wholesaled perishable food, etc., at a wholesale market, at stores in the wholesale market (Article 2, paragraph 5 of the Act). There are more than 100 intermediate wholesalers in Ota Market.

(iii) An authorized buyer, in the case of Tokyo Metropolitan Government Central Wholesale Market including Ota Market, is the one who buys goods directly from wholesalers in the market, by negotiated transactions or auctions, as is the case with intermediate wholesalers, with the approval of the Governor of Tokyo, obtaining qualification to participate in auctions (see below for details) and bidding. There are more than 1,000 authorized buyers of fruits and vegetables in Ota Market.

2 Method of trading of fruits and vegetables in Ota Market

A wholesaler in the market collects fruits and vegetables from shippers and sells them by the method of (i) consigned sale (wholesalers in the market are consigned by shippers such as agricultural cooperative (hereinafter referred to as "JA") and sell fruits and vegetables to obtain sale commission income) or (ii) purchase and sale (wholesalers in the market buy fruits and vegetables from shippers and sell them). According to the Wholesale Market Act, wholesalers in the market of the Central Wholesale Market including Ota Market, if a shipper (i) requested a consigned sale, unless there is a justified reason, they cannot refuse to accept the request (Article 4, paragraph 5, item (v) of the Wholesale Market Act).

The parties group is selling collected fruits and vegetables to intermediate wholesalers, authorized buyers, etc., by negotiated transactions or auctions.

3 Scope of services

The parties group collects fruits and vegetables that are sold in Ota Market by receiving consigned sale from shippers, etc., and conducting wholesale in Ota Market to intermediate wholesalers, authorized buyers, etc., and it is competing with other wholesalers in the market with respect to both collection and sales.

Ota Market is a wholesale market with the highest trade volume[2] of fruits and vegetables among central wholesale markets and local wholesale markets, and Tokyo Seika's trade volume is outstanding among them. Due to the expansion of the scale of the parties group caused by the conduct, the impact on shippers, who are users, and competitors is concerned, not only regarding the sale aspect of fruits and vegetables, but also regarding the collection aspect of fruits and vegetables. Therefore, in addition to the sales field in the market of fruits and vegetables, concerning the collection field of fruits and vegetables, particular fields of trade are defined as follows.

(1) Wholesale business in the market of fruits and vegetables for small-scaled users

As customers of wholesale business in the market of fruits and vegetables, there are large-scaled users such as intermediate wholesalers and supermarkets, and small-scaled users such as greengrocers and restaurants. However, as an actual situation of wholesale business in the market of fruits and vegetables, there are no clear difference between businesses for them. Nevertheless, as a result of interviews with users, it was found out that the scope of shopping is different between large-scaled users and small-scaled users. Thus, concerning the wholesale business in the market of fruits and vegetables, we separately defined large-scaled users and small-scaled users.

[2] Trading volume is total of sales amount to users for both consigned sale and purchase and sale.

Moreover, if we define the geographic range as shown in 4(1) below, there is only one competitor against the parties group. Thus, in the following, we examine "wholesale business in the market of fruits and vegetables for small-scaled users," which is considered to have relatively large impact on competition due to the conduct.

(2) Collection business of fruits and vegetables

Wholesalers in the market of fruits and vegetables are collecting fruits and vegetables by being consigned to sell them from shippers, etc., such as JA or individual farmers, or by purchasing them. Thus, "collection business of fruits and vegetables" is defined as scope of services.

4 Geographic range

(1) Wholesale business in the market of fruits and vegetables for small-scaled users

Many small-scaled users trading with the parties group are located in Tokyo, but not necessarily in Ota City, where Ota Market is located, and more are located in 23 wards of Tokyo other than Ota City. There are multiple wholesale markets in 23 wards of Tokyo besides Ota City and adjacent prefectures. However, small-scaled users which were interviewed in this case, although they were located outside Ota City, procured fruits and vegetables only from Ota Market. Moreover, in the interview with wholesalers in the market of other markets, some responded that it is difficult to shop around in other markets because of aging, etc., of the small-scaled users. In fact, very few wholesalers in the market of other markets responded that they are competing with the parties group in the business for small-scaled users.

Based on the above, geographic range was defined as "Ota Market."

(2) Collection business of fruits and vegetables

Shippers of fruits and vegetables, which are customers of collection business, are shipping fruits and vegetables to wholesale markets in all regions of Japan. Thus, geographic range is defined as "all regions of Japan."

5 Eligibility for the safe-harbor criteria of horizontal business combination

(1) Wholesale business in the market of fruits and vegetables for small-scaled users

As we cannot grasp the market scale related to wholesale business in the market of fruits and vegetables for small-scaled users, accurate share of the parties group in the wholesale business in the market of fruits and vegetables for small-scales users is unknown. However, as the share of the parties group calculated by combining the business for large-scales users and small-scaled users is very large, it is considered that Tokyo Seika has considerable share, even if it is limited to the one for small-scaled users, and there is only one competitor in Ota Market. Based on these, we examine whether the conduct will substantially restrain competition in Part IV. below, considering that it is not eligible for the safe-harbor criteria.

(2) Collection business of fruits and vegetables

As is the case with wholesale business in the market of fruits and vegetables for small-scaled users, we cannot grasp the market scale of the fruits and vegetables collection business, and thus the share of the parties group in the fruits and vegetables collection

business is unknown. Therefore, we examine whether the conduct will substantially restrain competition in Part IV. below, considering that it is not eligible for the safe-harbor criteria.

Part IV. The impact of the conduct on competition

1 Wholesale business in the market of fruits and vegetables for small-scaled users

(1) Substantial restraints on competition by unilateral conduct

A. Position of the parties group and conditions of competing enterprises

While Tokyo Seika mainly handles fruits and vegetables shipped by JA and National Federation of Agricultural Cooperative Associations (so-called "system goods"), Kanda Seika mainly handles fruits and vegetables shipped by shippers with relatively small load such as agricultural corporations and individual farmers (so-called "non-system goods").

On the other hand, in Ota Market, one competitor besides the parties group is engaged in wholesale business in the market of fruits and vegetables for small-scaled users, and the competitor has higher trading volume than Kanda Seika.

When we consider the excess capacity of the competitor, in the interview with wholesalers in the market of other markets, they explained that it is possible to increase the supply volume in accordance with the demand increase, because they negotiate with suppliers based on the demand volume, and competitors also explained to that effect. On the other hand, from the perspective of storing fruits and vegetables, the space that wholesalers in the market can use in Ota Market is limited. However, competitors explained that if they needed external warehouses due to increase of demand volume, etc., they would consider them. Considering that Tokyo Seika and multiple wholesalers are already responding by borrowing external warehouses, it can be considered that the competitors have excess capacity.

Based on the above, suppose that the parties group increased price of fruits and vegetables after the conduct, it is considered that small-scaled users can easily change their business partner to competitors. Therefore, competitive pressure from competitors is recognized.

B. Entry

Before the amendment of the Wholesale Market Act, someone who wanted to engage in wholesale business in the central wholesale market needed to gain approval from the Minister of Agriculture, Forestry and Fisheries. By the amendment of the Wholesale Market Act, this article was deleted, and currently, the establisher determines the wholesalers.[3]

The establisher of Ota Market is the Tokyo Metropolitan Government, but the Tokyo Metropolitan Government does not have any plan to add wholesalers in the market at

[3] Based on Article 4 of the Wholesale Market Act, an establisher who wants to be certified as a central wholesale market by the Minister of Agriculture, Forestry and Fisheries, needs to apply for the certification by submitting an application document to the Minister of Agriculture, Forestry and Fisheries. In this application document, an item called "matters related to wholesalers" is included, and this should be stated by the establisher. Thus, the right to make decision on wholesalers shifted to the establisher.

this moment. Therefore, entry pressure is not recognized.

C. Competitive pressure from adjacent markets

(a) Competitive pressure form intermediate wholesalers of fruits and vegetables in Ota Market

There are more than 100 intermediate wholesalers in Ota Market. Intermediate wholesalers are convenient for small-scaled users because they sell fruits and vegetables in small portions. Therefore, small-scaled users are trading with intermediate wholesalers in addition to the parties group, which is a wholesaler in the market.

According to the interview, etc., with intermediate wholesalers, intermediate wholesalers in Ota Market are mainly procuring from wholesalers in the market of Ota Market, as well as procuring fruits and vegetables via various routes such as (i) wholesalers in the market and intermediate wholesalers of other markets, (ii) distributors,[4] (iii) producers, (iv) distribution companies outside the market (import trading companies, etc.).

Concerning procurement ability and price competitiveness of intermediate wholesalers, wholesalers and distributors of other markets are regularly travelling back and forth by trucks between Ota Market and other markets. Thus, intermediate wholesalers can procure various fruits and vegetables without covering additional transportation cost for themselves. Moreover, intermediate wholesalers can also borrow external warehouses and expand their spaces as is the case with wholesalers in the market of fruits and vegetables, and it is recognized that they have excess capacity.

As stated above, as there are more than 100 intermediate wholesalers of fruits and vegetables in Ota Market, suppose that the parties group increased price of fruits and vegetables after the conduct, it is considered that small-scaled users can easily change their business partner to intermediate wholesalers in Ota Market.

Based on the above, competitive pressure from intermediate wholesalers in Ota Market is recognized.

(b) Competitive pressure from geographic adjacent markets

Even within Tokyo, where Ota Market is located, there are many wholesale markets, including 9 central wholesale markets related to fruits and vegetables. As most of the small-scaled users trading with the parties group are located outside Ota City of Tokyo, it is considered that there are small-scaled users which have other central wholesale markets in the vicinity than Ota Market to some extent.

For example, in the case of Tokyo Metropolitan Government Central Wholesale Market, in order to be qualified as an authorized buyer, they need to be approved by the Governor of Tokyo. However, in reality, in any market, as long as they satisfy the requirements related to a certain business experience and financial capability, they can gain approval within about a month after application. Thus, it is not recognized that there is a considerable obstacle for small-scaled users to be approved as authorized

[4] Distributors are approved as authorized buyers in many wholesale markets, and they are engaged in trades such as purchasing fruits and vegetables from the market at low price at that time and reselling them at the market where they can sell at higher price.

buyers in the central wholesale market other than Ota Market. Therefore, for small-scaled users, who have central wholesale market of fruits and vegetables in the vicinity other than Ota Market, it is considered that they can switch their procurements to these other adjacent central markets.

Moreover, there are multiple local wholesale markets around Ota Market.

Based on the above, competitive pressure from geographic adjacent markets is recognized to a certain extent.

D. Other particular conditions of wholesale markets

(a) Existence of auctions

Wholesalers in the market of fruits and vegetables of Ota Market are conducting auctions, which is a way to sell goods to the one who put the highest price by letting intermediate wholesalers and authorized buyers to compete with the price at the cargo storage place of fruits and vegetables of Ota Market. In fact, small-scaled users are also procuring fruits and vegetables by auctions, and according to the interview, some small-scaled users are procuring the majority by auctions.

Auctions are broadly divided into fixed auctions and moving auctions. Auctions conducted at the fixed auction board located at the sales counter of wholesalers in the market is called fixed auctions and auctions conducted at the cargo storage place of fruits and vegetables are called moving auctions.

Concerning the items and volumes of fruits and vegetables that are sold in fixed auctions, plans are proposed by the wholesalers in the market for the items and volumes that will be auctioned in the following month, so that there will be full lineup of fruits and vegetables that are considered to be necessary for small-scaled users, and they are determined by the Governor of Tokyo (article 11, paragraph 2 of the enforcement regulations on the Tokyo Metropolitan Central Wholesale Market Ordinance) after being discussed at the trade commission by product line (consisting of the Tokyo Metropolitan Government, 3 wholesalers in the market, commercial cooperative associations of both intermediate wholesalers and authorized buyers). Therefore, the parties group does not have authority to decide this.

On the other hand, moving auctions do not have any particular rules for items and volumes. Items for moving auctions are mostly non-system goods shipped by individual selections, and unlike fixed auctions, which treat system goods selected in accordance with a certain standard, qualities differ by producers. For the parties group, with these fruits and vegetables with different qualities, rather than calling for candidates of purchasers by negotiated transactions, which they cannot check the actual goods, and determine customers and sales price by negotiations with each of them, it is more efficient to use moving auctions, which they can check the actual goods, and it is considered that the parties group has no incentive to switch to negotiated transactions instead of moving auctions.

As items and volumes of fruits and vegetables sold by auctions are limited than negotiated transactions, it is difficult to switch procurement of all fruits and vegetables that are required by small-scaled users from negotiated transactions with the parties group to procurement only by auctions.

On the other hand, in auctions, the parties group cannot decide sales prices, and there is no fact that the parties group is deciding the starting price at auctions on its own

initiative. Moreover, the parties group has no ability or incentive to specify the items and volumes of fruits and vegetables to be auctioned. Furthermore, in fact, in auctions, sometimes it is possible to procure at a lower price than negotiated tradings.

Based on the above, for small-scaled users, auctions can be an alternative for negotiated tradings with the parties group.

(b) Prohibition of unfair discriminatory treatment, etc.

Article 4 of the Wholesale Market Act provides that when the Minister of Agriculture, Forestry and Fisheries certifies a central wholesale market, one of the requirements is that its work rules regarding the market should stipulate that wholesalers in the market should not unfairly and discriminatorily treat shippers or intermediate wholesalers and other buyers. Moreover, Article 24 of the Tokyo Metropolitan Central Wholesale Market Ordinance prohibits unfair and discriminatory treatment by wholesalers in the market against shippers or intermediate wholesalers and authorized buyers, and other buyers.

According to the interview with large-scaled users, unlike small-scaled users, large-scaled users procure fruits and vegetables also from wholesalers in the market of other central and local wholesale markets in the vicinity of Ota Market. In fact, in the interview with competitors, there was a wholesaler in the market of other market which claims to be in competition with Ota Market for large-scaled users. Moreover, large-scaled users can procure from other categories of enterprises such as producers and sales companies of National Federation of Agricultural Cooperative Associations. Thus, as various competitive pressures exist as stated above regarding the relation between the parties group and large-scaled users, it is considered difficult for the parties group to raise the price of fruits and vegetables for large-scaled users.

On the other hand, regarding the relation between the parties group and small-scaled users, although pressures to the extent of the above-mentioned one for large-scaled users are not recognized, in light of the above-mentioned provisions prohibiting unfair and discriminatory treatment, it is considered difficult for the parties group to discriminate large-scaled users and small-scaled users and raise the price of fruits and vegetables only for small-scaled users.

(c) The parties group in principle sells the same fruits and vegetables at the same price regardless of the size of purchase volume

The parties group is in principle selling fruits and vegetables with the same production area, class, and brand, at the same price, regardless of the size of purchase volume, in light of the intent of the provision stated in (b) above.[5]

(d) Existence of deterrence to discriminatory considerations by daily publication of price, etc.

As wholesalers in the market have obligation to publish conditions and results of sales transactions (Article 4, paragraph 5 of the Wholesale Market Act), the parties group is

[5] However, in exceptional cases, there were price differences, e.g., when a trade was conducted in a way that the sales price was determined for a certain period in advance by an agreement with large-scaled users, and as a result, the sales price became lower than the market rate, or when there was an oversupply, and goods were sold at a low price to large-scaled users which bought them in bulk.

publishing sales price of fruits and vegetables at Ota Market on the same day via internet. Suppose that the parties group sold at a higher price to small-scaled users than large-scaled users, small-scaled users would immediately be able to know this, and as stated in A. and C. above, small-scaled users have alternatives such as other wholesalers in the market or intermediate wholesalers in Ota Market. Thus, the structure makes it difficult for the parties group, which has obligation to publish the price daily, to set discriminatory considerations.

(e) A possibility for the adjustment by intermediate wholesalers at Ota Market to function

Suppose that the parties group sold at a higher price to small-scaled users than large-scaled users, which are intermediate wholesalers, it can be considered that intermediate wholesalers can sell to small-scaled users by purchasing at lower price than small-scaled users from the parties group (or other markets), and also such incentive exists. Therefore, the existence of intermediate wholesalers at Ota Market can be considered to have restraining power against setting discriminatory considerations for small-scaled users of the parties group.

(f) Limited incentive for discriminatory consideration

The parties group in principle sells out fruits and vegetables on the same day it collected them, for the reasons such as maintenance of freshness of fruits and vegetables, prompt payment to shippers. Therefore, the parties group needs to organize tradings with several hundreds of business partners including large-scaled users, every day, during the afternoon of the preceding day of the delivery date of fruits and vegetables, which is the operating hours of negotiated trading.

Although small-scaled users account for about 40-50% of the business partners of the parties group, the small-scaled users' transaction value accounts for less than 10%. That is to say, the incentive of the parties group to raise the sales price for small-scaled users, which represent small percentage of the sales amount of the parties group, by taking the trouble to negotiate with many small-scaled users, is considered to be limited.

E. Summary

As shown above, competitive pressure from competitors is recognized, competitive pressure from adjacent markets is recognized, and there is a particular situation of the wholesale market. Thus, it is recognized that the conduct will not trigger to substantially restrain competition at the wholesale business in the market of fruits and vegetables for small-scaled users, by unilateral conduct of the parties group.

(2) Substantial restraints on competition by coordinated conduct

A. Coordinated conduct with competitors

As stated in (1) C.(a) above, there are more than 100 intermediate wholesalers in Ota Market, as suppliers of small-scaled users. As these intermediate wholesalers can procure fruits and vegetables from markets other than Ota Market, etc., competitive pressure from intermediate wholesalers (other adjacent business categories) is recognized.

Moreover, as stated in (1)D.(c) above, the parties group is selling fruits and vegetables

with the same production area, class, and brand, in principle, at the same price, regardless of the size of purchase volume. That is, as it is applying sales price for large-scaled users also to small-scaled users, it is considered that competitive pressure from many competitors in other markets, which are competitive pressure for the business for large-scaled users, is indirectly functioning for the one for small-scaled users as well.

B. Coordinated conduct with shippers

In consigned sale of fruits and vegetables, in general, sales consignors, who are the shippers of fruits and vegetables, aspire to sell fruits and vegetables at high price, and sales consignees, who are wholesalers in the market, also aspire to sell fruits and vegetables at high price, and gain high sales commission income[6]. In that respect, they match up. Ota Market is a wholesale market with the largest trade volume of fruits and vegetables, and the trade volume of Tokyo Seika is outstanding in the market. Thus, it can be expected that after the conduct, the parties group and shippers will coordinate and raise sales price for users in consigned sale. However, given the following situation, it is considered that the conduct will not trigger coordinated conduct between the parties group and shippers.

(i) Fruits and vegetables have multiple production areas in all regions of Japan, and there are many shippers. Moreover, as stated in (1)A. above, there is one competitor in Ota Market, and as stated in (1)C.(a) above, there are more than 100 intermediate wholesalers in Ota Market, and intermediate wholesalers have various suppliers of fruits and vegetables other than Ota Market. Thus, competitive pressure from these is recognized.

(ii) The parties group explains that what the wholesalers in the market expect is an appropriate formation of prices based on demand and supply balance, and a conduct to raise wholesale price intentionally, ignoring the demand and supply balance, will lose trusts from shippers and users, and as a result, trading volume of the parties group is predicted to decrease, and therefore, they cannot do something like that.

C. Summary

Based on the above, it is recognized that the conduct will not substantially restrain competition for wholesale business in the market of fruits and vegetables for small-scaled users in Ota Market, by coordinated conduct between the parties group and its competitors and shippers.

2 Collection business of fruits and vegetables

There are many wholesalers in the market, which are competitors of the parties group in all regions of Japan. In the interview with competitors, there was a concern that after the conduct, the shipping of especially the system goods would be concentrated on the parties group, and other wholesalers of fruits and vegetables could not collect them. However, based on the following points, as it is considered that such concern will not be materialized, competitive pressure from competitors is recognized.

[6] As the parties group receives the amount of sales price multiplied by a certain rate as sales commission from shippers, sales commission income is proportional to the sales amount.

(i) Between Tokyo Seika, which mainly handles system goods, and Kanda Seika, which mainly handles non-system goods, overlap of shippers is limited, and the level of competition is limited. Therefore, the conduct will not trigger considerable change in the trading volume of system goods by the parties group.

(ii) According to the interview with the shippers of system goods, they are deciding shipping load to markets based on the demand of the markets and the market rate, etc. of the day, and they value continued trading with wholesalers from the perspective of stabilizing the trading volume. Therefore, they say that they do not plan to change the business partner and shipping volume after the conduct.

In such situation, if the parties group raises the sales commission rate, etc., it is considered that shippers will increase the shipping volume to competitors of the parties group, and the sales commission income of the parties group will decrease, etc. Therefore, it is considered to be difficult for the parties group to freely control trade conditions against shippers, such as unilaterally raising sales commission rate.

Moreover, as stated above, as long as there are many competitors, it is considered that the concern for the coordinated conduct will not arise.

Based on the above, it is recognized that the conduct will not substantially restrain competition for collection business of fruits and vegetables, by the parties group's unilateral conduct or coordinated conduct with competitors.

Part V. Conclusion

It is judged that the conduct will not substantially restrain competition in a particular field of trade.

Case 9 Acquisition of stocks of FUJI CO., LTD. by AEON Co., Ltd.

Part I. The parties

AEON Co., Ltd. (JCN 6040001003380) (hereinafter referred to as "AEON") is an ultimate parent company of a company which operates supermarket business, etc.

FUJI CO., LTD. (JCN 9500001003505) (hereinafter referred to as "FUJI") is a company which operates supermarket business, etc.

Hereinafter, a group of firms already forming a joint relationship with AEON is referred to as "AEON group" and a group of firms already forming a joint relationship with FUJI is referred to as "FUJI group." Moreover, AEON group and FUJI group combined is referred to as "the parties group."

Part II. Outline of this case and applicable provisions

This case concerns a plan to acquire more than 50% of voting rights related to stocks of FUJI by AEON (hereinafter referred to as "the conduct").[1]

Applicable provision is Article 10 of the Antimonopoly Act.

Furthermore, multiple businesses that are operated by the parties group are in competing relations or business relationships. Among these that were examined, the following gives a detailed account of horizontal business combination of supermarket business and drugstore business, which is considered to have relatively large impact on competition.

Part III. Scope of joint relationships subject to examination in this case

FUJI holds 49.0% of voting rights (the 2nd largest holder of voting rights) related to stocks of Lady Drug Store Co., Ltd. (hereinafter referred to as "Lady Drug Store"), which operates drugstore business in Chugoku and Shikoku regions. Thus, whether there is a joint relationship between FUJI and Lady Drug Store will become an issue.

The largest shareholder of voting rights related to stocks of Lady Drug Store is Tsuruha Holdings Inc. (51.0%) (hereinafter referred to as "Tsuruha") and FUJI group's substantial involvement in Lady Drug Store business is considered to be limited. However, besides FUJI, Tsuruha, and Lady Drug Store concluding a capital alliance agreement, given the business relationships such as FUJI group leasing real estate to Lady Drug Store, situations of directors, Lady Drug Store was included in the review of FUJI group, considering that it had a joint relationship with FUJI.

[1] As FUJI planned to acquire more than 50% of voting rights related to stocks of MAXVALU NISHINIHON CO., LTD. (JCN 3140001057907), which is a subsidiary of AEON and a company operating supermarket business, at the same time of the conduct, we examined this together with the conduct.

Part IV. Particular field of trade

1 Supermarket business

(1) Scope of services

Supermarkets include general merchandise stores (hereinafter referred to as "GMS") which handle broad range of goods such as food, daily goods, clothing, and food supermarkets which mainly handle food. The parties group offers both GMS and food supermarkets. Both GMS and food supermarkets run business by enhancing lineup of food centering around perishable food, and mainly targeting consumers who buy food in bulk. It is recognized that consumers are actually selecting stores without distinguishing GMS and food supermarkets, when they purchase food. Moreover, enterprises that are operating GMS and food supermarkets are not competing only between a GMS and a GMS, or between a food supermarket and a food supermarket. It is recognized that they are competing regardless of types such as GMS or food supermarket.

Drugstores and discount stores are business categories that are handling similar products as supermarkets. In recent years, these business categories are also increasing the handling of food, and distinction between the categories is becoming less. However, these business categories do not yet have as rich lineup of perishable food as supermarkets, which have them as their advantage. Moreover, it is recognized that consumers use supermarkets and these business categories separately according to their purposes. For example, they only use supermarkets when they buy various daily foods in bulk, and they use drugstores, when they purchase food besides purchasing daily goods.

Based on the above, in this case, "supermarket business" which combines GMS and food supermarket together is defined as scope of services.

(2) Geographic range

Competition between enterprises operating supermarket business is recognized by each store. Based on each store type, scale, location, such as cars being the main transportation method, and trading area which is actually set by the parties group, "2-7 km radius from the store" was defined as the geographic range.

2 Drugstore business

(1) Scope of services

A. Substitutability between drugstore and dispensing pharmacy

A drugstore is a type of store which sells household supplies, foods and drinks, etc. besides OTC pharmaceuticals and pharmaceuticals requiring guidance (hereinafter referred to as "OTC pharmaceuticals, etc." all together) and cosmetics to consumers. Although both drugstore and dispensing pharmacy handle OTC pharmaceuticals, etc., while a dispensing pharmacy mainly handles prescription pharmaceuticals requiring prescriptions issued by physicians, a drugstore, according to regulations, cannot handle prescription pharmaceuticals, and mainly handles OTC pharmaceuticals, etc., as well as various categories of goods such as cosmetics, household supplies, foods and drinks. Therefore, demand substitutability between them is limited.

Moreover, with respect to supply side, dispensing of prescription pharmaceuticals can only be done by pharmacists in principle, and the place where dispensing can be done is limited to dispensing pharmacies in principle. Thus, drugstores cannot sell

prescription pharmaceuticals, while it is difficult for dispensing pharmacies to secure store space to display various goods such as cosmetics, foods and drinks, and know-how regarding display, etc. Therefore, supply substitutability between the two is limited.

B. Substitutability between drugstore and other categories of retail store

OTC pharmaceuticals, etc. and cosmetics, which are categories of goods mainly handled in drugstores, are both handled in dispensing pharmacies and cosmetic stores. However, dispensing pharmacies and cosmetic stores specialize in medicine and cosmetics respectively, and handling of goods in other categories which are usually sold in drugstores, such as household supplies, is limited. On the other hand, while supermarkets and discount stores, etc., handle broad categories of goods, the proportion of OTC pharmaceuticals, etc., and cosmetics to the entire goods is limited. Based on these, consumers are using drugstores and other types of stores separately according to their purposes, and demand substitutability between them is limited.

Moreover, with respect to supply side, in order to handle OTC pharmaceuticals, etc., which is a main category of goods handled by drugstores, it is necessary to secure qualified persons such as pharmacists. This is a significant difference with other business categories, and thus, supply substitutability between them is limited.

C. Summary

Based on the above, in this case, “drugstore business” is defined as scope of services.

(2) Geographic range

It is recognized that the competition between enterprises which are operating drugstore business is seen by each store. If the stores, etc., are expected to have visitors by foot, narrower geographic range can be defined. However, in this case, given that many areas where competing stores of the parties group are located in the areas where visits are mainly expected by car, “2 km radius from the store” was defined as geographic range.

Part V. The impact of the conduct on competition

As the parties group operates both supermarket business and drugstore business, the conduct falls under horizontal business combination in supermarket business and drugstore business.

1 Supermarket business

(1) Conditions of competing enterprises

There are 84 areas where both supermarkets of the parties group exist in the geographic range defined in Part IV.1(2) above.

Due to the conduct, each of the above-mentioned 84 areas will lose one supermarket enterprise in competitive relations.

Of these, in 78 areas which will still have 3 or more supermarket enterprises after the conduct, it is recognized that active competition will continue.

On the other hand, the remaining 6 areas include 5 areas which the number of supermarket

enterprises will decrease from 3 to 2, and 1 area which the number will decrease from 2 to 1. Therefore, in these areas, the impact of the conduct on competition is considered to be relatively large. Thus, in the following, concerning these 6 areas (hereinafter the relevant 6 areas are simply referred to as "the 6 areas"), whether the conduct will substantially restrain competition in a particular field of trade or not will be stated in detail.

(2) Examination related to substantial restraints on competition in the 6 areas

A. Existing conditions of the competition between stores of the parties group

One area was recognized to have traditionally low level of competition between stores of the parties group, based on the location of stores of the parties group, such as one store being located in the residential area, while the other being located in the commercial facility, difference in scale and customers, such as one store being large-scaled and attracting customers from the wide area, while the other store being small-scaled and attracting customers from the small area in the vicinity, and the parties group's perception that they have weak level of mutual competition.

B. Competitive pressure from competitors in the same market

Competitive pressure from the store of competitor against the store of the parties group was recognized in 5 areas, based on the location of competitor's store, such as no geographic obstacles for travelling between the stores, and shopping around being easy, visiting customer survey results submitted by the parties group showing that the visiting customers of the parties group' shop responding that they also use the competitor's store, perceptions of the parties group and the competitor that there are mutual competition between stores of the parties group and the competitor, etc.

C. Competitive pressure from adjacent markets

Visitors to the supermarket in fact sometimes use a supermarket located in the adjacent area outside the geographic range defined in Part IV.1(2) above, depending on the traffic situation, etc. Based on the location of such a supermarket located in the adjacent area, where it is easy to shop around by car from the parties group's store and having parking space, having no obstacles to travel between the parties group's store and it is easy to shop around, the visiting customer survey results showing that the visitors of the parties group's store saying that they also visit the store located in the adjacent market, and the perception, etc., of the parties group recognizing that the store located in the adjacent area is a competing store in the relevant area, it is recognized that there is a competition between the parties group's store and the store located in the adjacent area, and competitive pressure from the geographically adjacent market is recognized in 2 areas.

D. Summary

Concerning the evaluation related to competition in the 6 areas is as follows, given the examination of A. to C. above. Therefore, the impact of the conduct on competition is recognized as limited.

	Status of each area	Number of trading areas

1	Area recognized to have low level of competition between stores of the parties group (A. stated above)	1 area (the area is an area where the number of supermarket enterprises will decrease from 2 to 1.)
2	Area with competitive pressure from competitors located in the same trading area (B. stated above)	3 areas (all areas are areas where the number of supermarket enterprises will decrease from 3 to 2.)
3	Area with competitive pressure from stores located in the same trading area (B. stated above) and geographically adjacent market (C. stated above)	2 areas (same as above)
	Total	6 areas

2 Drugstore business

(1) Conditions of competing enterprises

There are 75 areas where both drugstores of the parties group exist in the geographic range defined in Part IV.2(2).[2]

Of these, in 66 areas which will still have 3 or more drugstore enterprises after the conduct, it is recognized that active competition will continue.

On the other hand, the remaining 9 areas include 7 areas which the number of drugstore enterprises will decrease from 3 to 2, and 2 areas which the number will decrease from 2 to 1. Therefore, in these areas, the impact of the conduct on competition is considered to be relatively large. Thus, in the following, concerning these 9 areas (hereinafter the relevant 9 areas are simply referred to as “the 9 areas”), whether the conduct will substantially restrain competition in a particular field of trade or not will be stated in detail.

(2) Examination related to substantial restraints on competition in the 9 areas

A. Existing conditions of the competition between stores of the parties group

There was one area which was assumed to be traditionally inactive in competition between the stores of the parties group, with low level of competition between one store and the other store. This is based on the location of the store of the parties group, which is considered that shopping around by visiting customers is limited because there is a traffic congestion spot between the stores, and perceptions of the parties group such as the stores not recognizing each other as mutual competitors.

B. Competitive pressure from competitors in the same market

There were 6 areas where it was recognized that competitive pressure from the stores of competitors was functioning, based on the location of the stores of the competitors, such as no geographic obstacles to travel between the stores and easy to shop around, and perceptions of the parties group and the competitors such as recognizing that they are mutual competitors in the area.

[2] Including stores planned to open at the time of the review.

C. Competitive pressure from adjacent markets

(a) Competitive pressure from other business categories

There was one area which was recognized that competitive pressure from a discount store, which is another business category handling categories of goods common with drugstores, such as OTC pharmaceuticals, cosmetics, and daily goods, was functioning.

(b) Competitive pressure from geographically adjacent markets

In fact, visitors to drugstores sometimes use drugstores located in the adjacent area outside the geographic range defined in Part IV.2(2) above, due to traffic situation, etc. Concerning such a drugstore located in the adjacent area, based on the location where it is easy to shop around by car from the parties group's store and having a parking space, located along the same national highway and considered to be easy to shop around, overlapping visiting customers such as the store located in the adjacent area being located in the urban district where residents around the store of the parties group mainly commute to, and the perceptions of the parties group and the drugstore enterprise located in the adjacent area, such as the store of the parties group and the store of the drugstore enterprise located in the adjacent area recognizing that they are mutual competitors, it is recognized that there is a competition between the parties group's store and the stores located in the adjacent areas, and competitive pressure from the geographically adjacent market is recognized in one area, and is recognized to some extent in one area.

D. Summary

Concerning the evaluation related to competition in the 9 areas is as follows, given the examination above. Therefore, the impact of the conduct on competition is recognized as limited.

	Status of each area	Number of trading areas
1	Area where the level of competition between stores of the parties group is recognized as low (stated in A. above), and there is competitive pressure from competitors in the same trading area (stated in B. above) and stores of other categories (stated in C.(a) above).	1 area (this is an area where number of drugstore enterprises will decrease from 3 to 2.)
2	Area with competitive pressure from the store of the competitor located in the same trading area (stated in B. above)	6 areas (in all these areas the number of drugstore enterprises will decrease from 3 to 2.)

3	Area recognized to have competitive pressure from the store of other business categories (stated in C.(a) above), and competitive pressure from the store located in the geographically adjacent market (stated in C.(b) above) to some extent	1 area (this is an area where number of drugstore enterprises will decrease from 2 to 1.)
4	Area where competitive pressure from the store located in the geographically adjacent market (stated in C.(b) above)	1 area (this is an area where number of drugstore enterprises will decrease from 2 to 1.)
	Total	9 areas

3 Summary

Based on the above-mentioned judging factors in business areas defined in Part IV. above, it was judged that the conduct would not substantially restrain competition in a particular field of trade, due to unilateral conduct of the parties group or coordinated conduct of the parties group and other competitors.

Part VI. Conclusion

As shown above, it was judged that the conduct would not substantially restrain competition in a particular field of trade.

Case 10 Acquisition of stocks of YJFX, Inc. by GMO Financial Holdings, Inc.

Part I. The parties

GMO Financial Holdings, Inc. (JCN 9011001072077) (hereinafter referred to as "GMOFH") is a holding company with multiple business companies operating financial product trading business under its umbrella.

YJFX, Inc.[92] (JCN 1011001041056) (hereinafter referred to as "YJFX") is a company operating foreign exchange margin transactions (hereinafter referred to as "FX") business, currency binary option (hereinafter referred to as "currency BO") business, investment trust sales business, etc.

Hereinafter, a group of firms already forming a joint relationship with GMOFH is referred to as "GMOFH group" and YJFX and its subsidiaries combined is referred to as "YJFX group." Moreover, GMOFH group and YJFX group combined is referred to as "the parties group."

Part II. Outline of this case and applicable provisions

This case concerns a plan by GMOFH to acquire all the voting rights related to stocks of YJFX operating FX business, currency BO business, investment trust sales business, etc.

[92] On September 27, 2021, it changed its trade name to "Gaika ex byGMO, Inc."

(hereinafter referred to as “the conduct”).

Applicable provision is Article 10 of the Antimonopoly Act.

Part III. Scope of GMOFH group

1 Identification of problems

GMOFH, which is a company acquiring stocks in this case, already holds voting rights of another company called GMO Aozora Net Bank, Ltd. (JCN 9010001025425, hereinafter referred to as “GMO Aozora Net Bank”), which is a company operating FX business, etc., which competes with YJFX. Therefore, when examining this case, whether GMOFH and GMO Aozora Net Bank have a joint relationship or not will become a problem.

According to Part I.1(1) A. of the Business Combination Guidelines,

(a) when the ratio of the total voting rights held by companies, etc., that belong to the group of combined companies (the group of combined companies prescribed in paragraph (2), Article 10 of the Antimonopoly Act, the same shall apply hereinafter) to which the stockholding corporation belongs exceeds 50%, or

(b) when the ratio of the total voting rights held by companies, etc., that belong to the group of combined companies to which the stockholding corporation belongs to exceeds 20%, and the said ratio stands alone as the top-ranked,

it is recognized to have a joint relationship between the stockholding corporation and the share issuing company.

Composition of stockholders of GMO Aozora Net Bank is shown in the following table. Total ratio of voting rights held by GMOFH and its parent company GMO Internet Group, Inc. (JCN 6011001029526) (hereinafter referred to as “GMO Internet”) is about 15%, and does not go over 50%, nor does it even go over 20%. Moreover, ranking of the ratio of the voting rights of GMOFH and GMO Internet is the 2nd, both individually and as total.

[Composition of stockholders of GMO Aozora Net Bank]

Name of stockholder	The ratio of the voting rights
Aozora Bank, Ltd.	About 85%
GMO Internet	About 7.5%
GMOFH	About 7.5%

According to Part I.1(1)B. of the Business Combination Guidelines, if (a) or (b) above does not apply, matters such as the extent of the ratio of the voting rights, the ranking of the ratio of the voting rights, the relation whether a director or an employee of one of the parties is also a director of another one of the parties, are considered, and the existence of a joint relationship is judged.

2 Situation of interlocking directors or employees

4 out of 8 directors (of which 4 are outside directors) of GMO Aozora Net Bank are also

directors of the company which belongs to the GMOFH group. The status of the relevant 4 interlocking directors is shown in the table below.

Director or employee	Position at GMO Aozora Net Bank	Position at GMOFH group
A	Representative director and chairperson	Director of GMO Internet Director of GMO Payment Gateway, Inc.[93] Director of GMOFH
B	Outside director	Director and representative executive officer and chairperson of GMOFH
C	Outside director	Director and executive vice president of GMO Internet Director of GMOFH
D	Outside director	Outside director of GMO Payment Gateway, Inc.

Moreover, 2 out of 4 auditors (of which 3 are outside auditors) of GMO Aozora Net Bank are director or employee of the company which belongs to the GMOFH group. The status of the relevant 2 serving concurrently is shown in the table below.

Director or employee	Position at GMO Aozora Net Bank	Position at GMOFH group
E	Outside auditor	Director and executive officer of GMOFH
F	Outside auditor	Employee of GMO Internet

3 Examination related to the joint relationships

As stated in 1 above, GMO Internet and GMOFH hold about 7.5% of voting rights of GMO Aozora Net Bank respectively, and the ratio of the voting rights is the same and 2nd-ranked for both, and the total ratio of the voting rights is about 15%.

In addition, as stated in 2 above, 4 or half of the 8 directors of GMO Aozora Net Bank also have positions of director of the company belonging to the GMOFH group, and one of the relevant 4 has an authority of representation of GMO Aozora Net Bank, and another one has an authority of representation of GMOFH. Moreover, half of the auditors of GMO Aozora Net Bank are director or employee of the company belonging to the GMOFH group.

Based on the above, it can be said that GMO Aozora Net Bank already has a joint relationship with GMO Internet and GMOFH, and it is recognized that GMO Aozora Net Bank belongs to GMOFH group.

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[93] As GMO Internet holds about 40% of voting rights, and the ratio of the voting rights is top by itself, it is recognized to be a company which has a joint relationship with GMOFH (one belonging to GMOFH group).

Therefore, in the following, we examine the conduct, presupposing that GMO Aozora Net Bank is included in the GMOFH group.

Part IV. Particular field of trade

In the following, among the services offered by the parties group, FX business and currency BO business, which are considered to have relatively large impact on competition, are addressed.

1 Overview of services

(1) Overview of FX

FX is a forex derivative trading, in which users deposit margin money to FX enterprises, and buy and sell currency by settlement on balance (settlement only for the profit and loss generated by trading[94]). While users can buy and sell foreign currency of maximum 25 times as much as the margin money, there is a possibility that they suffer a loss beyond the amount of the margin money.

Users deposit margin money to a trading account of each FX enterprise, predict the advance-decline of currency rate such as currency pair of USD/JPY, EUR/JPY, etc., and order exchange transactions.

In order to operate an FX business, registration of Type I Financial Instruments Business is required.

(2) Overview of currency BO

Currency BO is an exchange derivative trading in which a right to receive a certain amount of payment can be purchased, by predicting whether an exchange rate will reach the established target rate or not for a specific currency pair after a certain period of time, and if the exchange rate reached the target rate or more, or became lower than the rate.[95]

In order to operate a currency BO business, registration of Type I Financial Instruments Business is required.

2 Scope of services

(1) Relation between FX and currency BO

Both FX and currency BO are types of exchange derivative trading, and from the users'

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[94] For example, if a US dollar is bought at the rate of 1 USD = 100 JPY, and was sold at the rate of 1 USD = 110 JPY, foreign exchange gain of 10 yen is generated. On the other hand, if a US dollar is bought at the rate of 1 USD = 100 JPY, and was sold at the rate of 1 USD = 90 JPY, foreign exchange loss of 10 yen is generated. Settling this 10 yen of foreign exchange gain or loss alone is called settlement on balance.

[95] For example, if the currency pair is "USD/JPY" and the target rate is 1 USD = 110 JPY, users select one of the following and conduct trading (the following amount is an example).

(i) Purchase a right to be paid 1,000 yen, if 1 USD becomes 110 JPY or more, for the price of 900 yen.

(ii) Purchase a right to be paid 1,000 yen, if 1 USD becomes less than 110 JPY, for the price of 900 yen.

perspective, they are common in the sense that trading is conducted by predicting the advance-decline of the relevant currency pair. Thus, demand substitutability to a certain extent is recognized between them.

Necessary information and know-how for price setting, operation flow arrangement, users' contract management, fund management, settlement management system arrangement, application software arrangement, etc., which are used for currency BO business are similar to the ones used in FX business. Thus, FX enterprises can start a currency BO business easily and in a short period of time. Therefore, supply substitutability is recognized between FX and currency BO.

Based on the above, FX and currency BO have the same scope of services.

(2) Relation between FX and currency BO and other goods and services

Among goods and services other than FX and currency BO, contract for difference[96] (hereinafter referred to as "CFD." FX is a CFD for foreign exchange, and there are other CFDs including those for commodity futures and share price index) and crypto-assets are similar to FX and currency BO, from users' perspective, in the sense that there is a possibility to gain large amount of profit in a short period of time. Thus, there is a demand substitutability to a certain extent. Therefore, they may consist the same scope of services as FX and currency BO.

However, in this case, in order to review carefully, CFD other than FX and crypto-assets are classified as different scope of services than FX and currency BO.

(3) Summary

Based on the above, FX and currency BO are defined as a scope of services.

3 Geographic range

As FX and currency BO are offered in all regions of Japan via internet, geographic range is defined as all regions of Japan.

Part V. The impact of the conduct on competition

As both GMOFH group and YJFX are handling FX and currency BO, the conduct falls under horizontal business combination regarding FX and currency BO.

1 Position of the parties group and conditions of competing enterprises

Status of market share related to services in this case is shown in the table below. As HHI is about 1,700 and HHI increment is about 400 after the conduct, it is not eligible for the safe-harbor criteria for horizontal business combination.

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[96] Contract for difference refers to a trade in which only the amount corresponding to the price difference in purchase and sales is settled, without delivery and receipt of the goods that were traded.

[Market share of FX and currency BO in 2020]

Ranking	Company name	Share (%)
1	**GMOFH group**	About 25%
2	Company A	About 20%
3	Company B	About 15%
4	YJFX	About 10%
5	Company C	About 5%
6	Company D	About 5%
7	Company E	About 5%
8	Company F	0-5%
	Others	About 15%
Combined market share and ranking: about 30% and top		

Although market share of the parties group after the conduct will become about 30% (top-ranked), Company A with market share of about 20% and Company B with market share of about 15% exist as powerful competitors.

2 Excess capacity of competitors

Competitors are in the situation that they can increase their excess capacities of FX and currency BO, without especially requiring expensive cost, in a short period of time and easily, by enhancing their information system. Therefore, they are recognized to have sufficient excess capacity.

3 Competitive pressure from adjacent markets

As stated in Part IV.2(2) above, there are CFD other than FX and crypto-assets, as goods and services which have commonality with FX and currency BO, from the users' perspectives. These have many competitors respectively, and users can easily switch their tradings from FX and currency BO. Therefore, competitive pressure from adjacent markets is recognized to a certain extent.

4 Competition status in the past

As users can also easily change their suppliers related to FX and currency BO, competitors are in the situation that they are proactively competing with each other to gain business, by reducing considerations for service provision, etc., and changes are seen in market share and ranking in the past 2 years or so. Therefore, it is recognized that competitors have been taking competitive actions concerning FX and currency BO.

5 Summary

As there are multiple powerful competitors, competitors have sufficient excess capacity, and competitive pressure from adjacent markets is functioning to a certain extent, it is recognized that the conduct will not substantially restrain competition in the business field related to FX and currency BO, by the parties group's unilateral conduct or coordinated conduct with competitors.

Part VI. Conclusion

It is judged that the conduct will not substantially restrain competition in a particular field of trade.