

Practices of the Japan Fair Trade Commission concerning the submission of internal documents in review of business combination  
(Tentative Translation)

In the review of whether or not a business combination would substantially restrain competition in a particular field of trade (hereinafter, this review is referred to as "**business combination review**"), in order to confirm the facts regarding the business combination, the Japan Fair Trade Commission (the "**JFTC**") may request the company to be combined and the companies having a combined relationship therewith (hereinafter collectively referred to as the "**parties group**") to submit their internal documents (materials and documents that were created and used for their internal purposes, such as materials for the board of directors, the management meeting, etc.)<sup>1</sup> (see Note 1 of attachment of "Policy on Procedures for Business Combination review (Procedural Policy)" (June 14, 2011 Fair Trade Commission)).

In order to carry out prompt and appropriate business combination review, it is extremely important to grasp the facts related to the business combination plan accurately, and the internal documents are one of the important materials for this purpose. Set out below shows practices of the JFTC when it requests the submission of internal documents.

1. Significance of submitting internal documents in business combination review

In the business combination review, in addition to the items described in the notification form and attachments, various materials are taken into consideration depending on the content of the business combination (see the attachment of Procedural Policy). This may include internal documents, in which case the JFTC may request the users of goods and services supplied by the parties group and/or competitors of the parties group (hereinafter referred to as "**third parties**"), as well as the parties group, to submit their internal documents as necessary.

By submitting internal documents of the parties group and third parties to the JFTC, the JFTC will be able to grasp in detail and accurately what the intention and purpose of the business combination is, how the parties group estimate impacts of the business combination on third parties, how the parties group predict the future of the market, etc., which is considered contributing to prompt and appropriate business combination review. These internal documents are often necessary to consider the impacts on competition especially for business combination plans involving a digital sector because, in this sector, the market situation changes rapidly and utilizing internal documents is a standard

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<sup>1</sup> When conducting economic analysis, we may request the submission of various data separately.

methodology for business combination review globally.

## 2. Scope of internal documents required to submit

If the JFTC considers that it is necessary to review internal documents in a specific case in light of the significance of internal documents in business combination review as described in the Section 1 above, the JFTC first requests, to the extent necessary for the business combination review, submission of necessary internal documents typically from the examples listed below, depending on the content of the business combination and the market conditions. Subsequently, the JFTC specifies the scope of internal documents to be submitted after consulting with the parties group, depending on how necessary it is to review internal documents in the case. In this relation, the JFTC may request to submit some internal documents first such as organizational charts and employee lists, and consider the scope of other internal documents to be submitted based on the contents of the preceding internal documents.

While the period covered by internal document requests vary depending on cases, in many cases the JFTC requests the submission of internal documents that were created or used no earlier than approximately two years before the date of the request. In addition, unless otherwise indicated regarding the timing of creation of the documents, the JFTC may request submission of not only internal documents created at and after the phase of the consideration of the business combination but also those created before such phase.

- Materials and minutes used at various meetings such as the board of directors of the parties group related to the business combination
- Materials used for consideration and analysis of the purpose and impacts of the business combination when the parties group considered and decided on the business combination, and materials showing the background of commencing the consideration of the business combination
- E-mails (that are related to the business combination) of board members or employees of the parties group involved in the consideration of the business combination
- Documents created regarding business plans, various business strategies or business reports formulated by the organizations and the departments related to the business covered in the business combination
- Documents created when the parties considered and analyzed the business plans, entry plans of competitors and new entrants related to the business covered in the business combination, and materials showing the views and assessment by the parties group regarding the scope, strength, and closeness of competitors
- Reports on price and quantity, or on marketing such as market study, market forecast,

market research, etc. of goods and services related to the business covered in the business combination (prepared by the parties or research companies)

- Organization charts of the parties group, materials describing business of each organization or department, and employee lists (of the entire company and of each organization or department engaged in the provision of goods or services, pricing or marketing in particular fields of trade related to the business combination)

If the parties group etc. wishes to carry out certain extraction and selection on the internal documents to be submitted, the JFTC requests explanations on the methodologies of such extraction and selection, etc. and discussions on how to proceed such process, prior to or over the course of consultation between the JFTC and the parties group on the scope of submission etc.. The following is typical examples on which the JFTC asks for explanations:

- Whether it is necessary or reasonable to carry out extraction and selection
- When carrying out extraction and selection, the scope (including the scope of the relevant departments and custodians, as well as the scope of objects such as e-mail server, local folder, shared folder, external memory, etc., and the scope of the period. ) and reason for defining such scope
- Search conditions and tools to be used (including the overview of the forensic company appointed by the parties group, if applicable) if the extraction and selection are carried out with search terms etc., and staff assignment, criteria, tools to be used etc. if the parties group further narrows down internal documents from those initially extracted and selected
- Status of preservation of internal documents that may fall within the scope of extraction and selection (to confirm that the relevant internal documents have not been destroyed)

In addition, when the JFTC conducts a business combination review and requests the submission of internal documents, the internal documents that may fall within the scope of extraction and selection process should not be destroyed from the time when the JFTC requests the submission of internal documents. The JFTC also requests the parties group to maintain and preserve the relevant internal documents until the business combination review is completed. Furthermore, as described in the Section 3 below, even in the case where the parties group explains the purpose of the business combination by showing its internal documents before the JFTC requests the submission, the JFTC requests to maintain and preserve the relevant internal documents from that moment the parties group submits such internal documents.

### 3. When to submit internal documents

The JFTC may request the submission of internal documents even for cases that are not subject to the phase 2 review. In addition, it may contribute to prompt and appropriate business combination review if the parties group explains the purpose of the business combination by showing internal documents before the JFTC makes requests.

### 4. How to submit internal documents

The JFTC and the parties group etc. discuss and consider the most suitable methodology of submission of internal documents. Specifically, in light of the system of the parties group, the types and amount of internal documents etc., the most appropriate methodology is selected, which typically includes:

- Attachment to e-mail (if the capacity exceeds 50 MB including the body of the e-mail, the internal documents need to be sent separately in multiple emails.),
- Submission of recording media such as HDDs and DVDs, and
- Submission by file transfer services designated by the JFTC.

In addition, upon the submission, the JFTC may request the following as necessary:

- Cancellation of security measures such as passwords
- Submission in a text-searchable format
- Submission of metadata
- Submission of related documents such as attached documents and cited documents
- Deletion of duplicated documents
- Communications on whether parties group etc. requests the return of submitted recording media
- Submission of Japanese translations or explanations in Japanese to the extent necessary
- Classification and organization of data at the time of submission