



公正取引委員会

Japan Fair Trade Commission

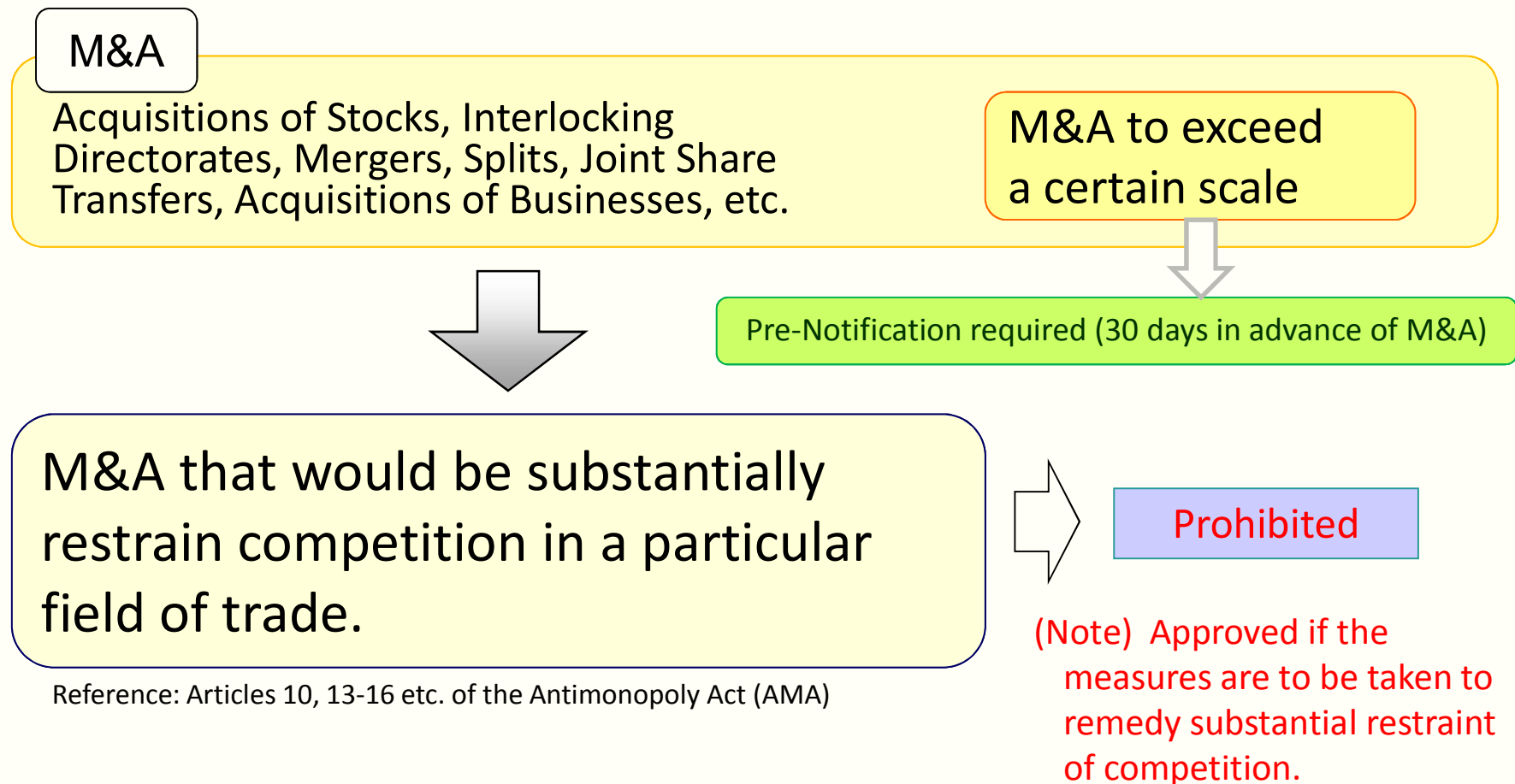
Recent Developments in M&A Review in Japan

November 9, 2018

Masanori Fukamachi

Japan Fair Trade Commission

The Basics of M&A Review in Japan



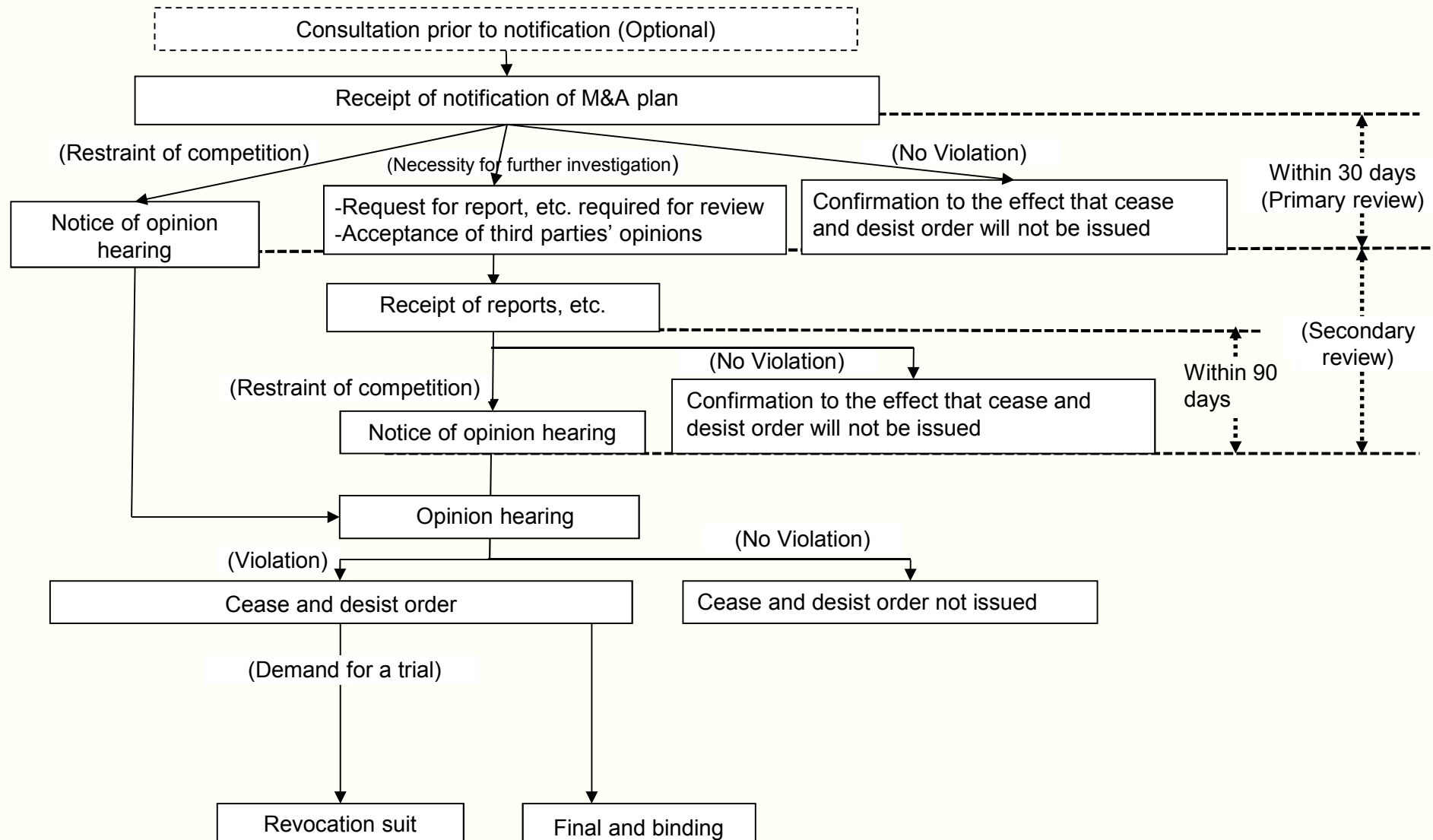
Current Thresholds for Notification

Types of AMA	Requirements of Notification
Acquisitions of Stocks (Article 10)	<ul style="list-style-type: none"> (1) When a company with its domestic sales (as a group) over ¥20 billion (2) acquires the stocks of another company with its domestic sales combined with its subsidiaries totaling over ¥5 billion (3) and the ratio of the voting rights concerning the stocks acquired exceeds 20% or 50% (4) it is required to notify a prior report (The said stocks should not be acquired for a period of 30 days from the day of report acceptance)
Merger (Article 15)	<ul style="list-style-type: none"> (1) When a company with its domestic sales (as a group) over ¥20 billion (2) merges with another company with its domestic sales (as a group) over ¥5 billion, (3) it is required to notify a prior report (The said merger should not be done for a period of 30 days from a day of report acceptance) <p>* A report under a similar standard shall be required, in principle, for the division, joint stock transfer, acceptance of business transfer etc.</p>
Split (Joint Incorporation-Type Split / Absorption-Type Split) (Article 15-2)	
Joint Share Transfer (Article 15-3)	
Acquisitions of Businesses (Article 16)	

Note 1 “Group”=Group composed of a notifying company’s ultimate parent company and its other subsidiaries

2 “Ratio of the voting rights” =Ratio of voting rights held by the group

Flowchart of M&A Review



Result of M&A Review

Table 1. Processing status of notifications received in the past three fiscal years

	FY2015	FY2016	FY2017
Cases closed at the preliminary investigation	281	308	299
Cases where the waiting period was shortened among above	(145)	(171)	(193)
Cases withdrawn prior to the conclusion of the preliminary investigation	8	8	6
Cases which were sent to the secondary investigation	6	3	1
Total	295	319	306

※ With regard to 6 cases(All cases were closed at the preliminary investigation.) of the cases closed in FY2017, the JFTC determined that there would be no issues in terms of the AMA, given the implementation of remedies proposed by the Parties.

Result of M&A Review

Table 2. Changes in the number of notifications in the past three years by type of M&A

	FY2015	FY2016	FY2017
Horizontal business combination	200 (68%)	197 (62%)	179 (58%)
Vertical business combination	91 (31%)	120 (38%)	121 (40%)
Conglomerate business combination	118 (40%)	167 (52%)	132 (43%)
Total	295 (100%)	319 (100%)	306 (100%)

(Note) Notifications involving multiple types of business combination are counted towards their respective type. Therefore, the sum of the number of notifications of each type does not always match the number of notifications in total.

Table 3. Changes in the number of notifications concerning M&A plans that include a foreign enterprise in the Parties

	FY2015	FY2016	FY2017
Integration plans between Japanese enterprises and foreign enterprises	8	12	12
Integration plans between foreign enterprises	45	47	31
Total	53	59	43

Recent cases with international cooperation

- Integration of the valve business by Emerson Electric Company and Pentair plc (FY2016)
Cooperated with US Federal Trade Commission (USFTC)
- The transaction of Lam Research Corporation and KLA-Tencor Corporation (FY2016)
Cooperated with U.S. Department of Justice
- Merger between Abbott Laboratories Group and St. Jude Medical Group (FY2016)
Cooperated with Korea Fair Trade Commission (KFTC)
- Acquisition of shares of NXP Semiconductors N.V. by Qualcomm River Holdings B.V (FY2017)
Cooperated with European Commission (EC) and KFTC
- Integration of Broadcom Ltd. and Brocade Communications Systems, Inc. (FY2017)
Cooperated with USFTC and EC
- Integration of the container shipping business of Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Nippon Yusen Kabushiki Kaisha (FY2017)
Cooperated with EC, Chile National Economic Prosecutor's Office etc.

Recent cases with Economic Analysis

- Acquisition of shares of C&H Co., Ltd. by DAIKEN Corporation (FY2012)
- Acquisition of shares of BEST DENKI CO., LTD. by YAMADA DENKI Co., Ltd. (FY2012)
- Acquisition of stock of Chuetsu Pulp & Paper Co., Ltd. by Oji Holdings Corporation (FY2014)
- Transaction of Zimmer, Inc. and Biomet, Inc. (FY2014)
- Integration of LP gas business by Cosmo Oil Co., Ltd., Showa Shell Sekiyu K.K., Sumitomo Corporation, TonenGeneral Sekiyu K.K., etc. (FY2014)
- Acquisition of Stock of Tokyo Kohtetsu Co., Ltd. shares by Osaka Steel Co., Ltd. (FY2015)
- M&A of Operations between FamilyMart Co., Ltd. and UNY Group Holdings Co., Ltd. (FY2015)
- Acquisition of shares of Showa Shell Sekiyu K.K. by Idemitsu Kosan Co., Ltd. and acquisition of shares of TonenGeneral Sekiyu K.K. by JX Holdings Inc. (FY2016)
- Acquisition of shares of Nisshin Steel Co., Ltd. by Nippon Steel & Sumitomo Metal Corporation (FY2016)
- Joint share transfer by The Daishi Bank, Ltd. and The Hokuetsu Bank, Ltd. (FY2017)

Recent major M&A cases in Japan

273 cases are published in total, since FY2011.

Rist of "Major Business Combination Cases in Fiscal Year 2017 " (1)

No	Name of Cases	Preliminary /Secondary Investigation	Horizontal	Vertical	Conglomerate	Remedies	Economic Analysis	International Cooperation
1	Acquisition of shares of JCR Pharmaceuticals Co., Ltd. by Medipal Holdings Corporation	1		○				
2	Acquisition of shares of Santoku Corporation by Hitachi Metals, Ltd.	1		○		○		
3	Acquisition of shares of NXP Semiconductors N.V. by Qualcomm River Holdings B.V	1			○	○		○
4	Integration of Broadcom Ltd. and Brocade Communications Systems, Inc.	1		○	○	○		○
5	Acquisition of shares of Fujitsu Client Computing Limited by Lenovo International Cooperatief U.A.	1	○					
6	Acquisition of shares of AH Brake Co., Ltd. by Hosei Brake Industry Co., Ltd.	1	○					

Recent major M&A cases in Japan

273 cases are published in total, since FY2011.

Rist of “Major Business Combination Cases in Fiscal Year 2017 “ (2)

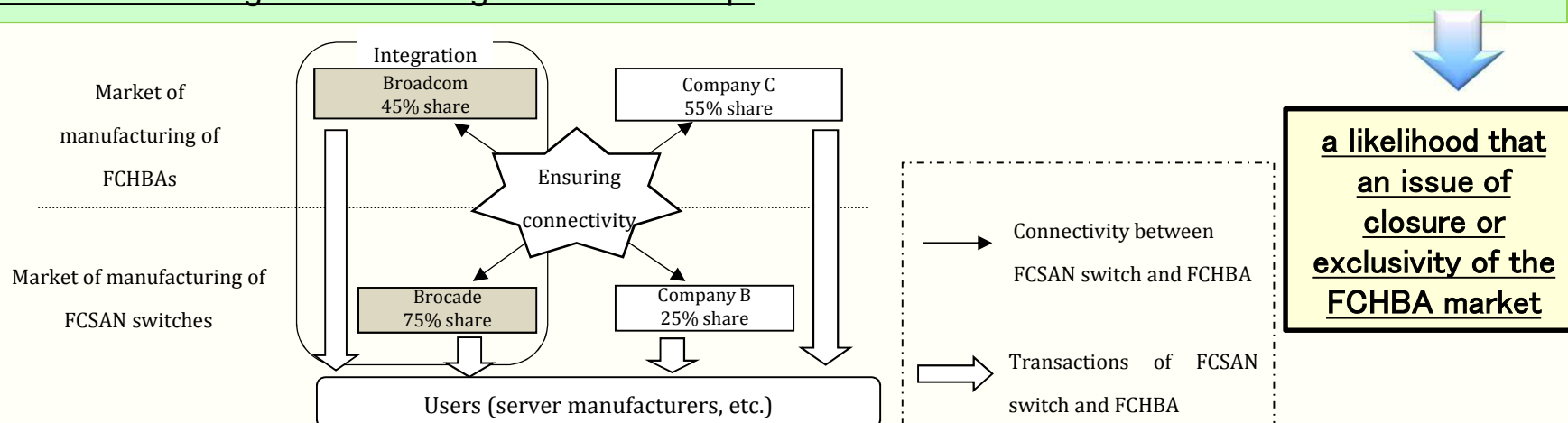
No	Name of Cases	Preliminary /Secondary Investigation	Horizontal	Vertical	Conglomerate	Remedies	Economic Analysis	International Cooperation
7	Acquisition of shares of Ring Techs Co., Ltd. by Topy Industries, Limited	1	○					
8	Acquisition of the marine deck machinery business of IHI Corporation by Iknow Machinery Co., Ltd.	1	○	○				
9	Absorption-type company split of Plus One Marketing Ltd.'s MVNO business by Rakuten, Inc.	1	○					
10	Integration of the container shipping business of Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Nippon Yusen Kabushiki Kaisha	1	○					○
11	Acquisition of shares of Beavertozan Co., Ltd. by Kohnan Shoji Co., Ltd.	1	○					
12	Joint share transfer by The Daishi Bank, Ltd. and The Hokuetsu Bank, Ltd.	2	○				○	

1. Outline of this case

- This case concerns a plan in which a subsidiary of Broadcom which manufactures and sells semiconductor equipment, and Brocade which manufactures and sells networking hardware and software would merge into a surviving company, Brocade, and then another subsidiary of Broadcom would acquire all shares of Brocade.
- JFTC reviewed this case while exchanging information with USFTC and EC.

2. Impact of the conduct of this case on competition

- Brocade Group is more advanced in development of FCSAN switches than Company B. Consequently, when a new-generation product is released, Brocade Group takes the lead in ensuring the connectivity with Brocade Group's FCSAN switches and with FCHBAs made by Broadcom Group and Company C. It is particularly true as users are unlikely to purchase Company C's FCHBAs unless their connectivity to Brocade Group's FCSAN switches are ensured.
- During conducting connection tests of new-generation product, Brocade Group mutually shares confidential information with Company C. For this reason, after the conduct of this case, Broadcom Group could gain an advantage over Company C in the competition in the FCHBA market by obtaining Company C's confidential information concerning FCHBA through Brocade Group.



3. Remedy

【Ensuring of the connectivity and prohibition of discrimination】

- The company group will ensure the connectivity between competitors' FCHBA and FCSAN switches of the company group, and will see to it that the ensured connectivity is at the same level as the connectivity between FCSAN switches and FCHBAs of the company group.
- At any stage of development, the company group will provide competitors in FCHBAs with support on a par with that provided to FCHBA business of the company group. In addition, the company group will not design, develop or modify its FCSAN switches for the purpose of placing the FCHBA business of competitors at a disadvantage.

【Protection of confidential information】

- The company group will keep competitors' confidential information concerning FCHBA under tight control as its own confidential information, and will not use it to the advantage of its FCHBA business, etc.

【Regular reporting】

- For a 10-year period starting from the day when the conduct of this case is approved by the JFTC, the company group will make a report to the JFTC every other year on the state of implementation of the remedy discussed in the above which will be monitored by an independent third party (monitoring trustee).



The JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade, provided that the company group implements the remedy of this case.

1. Outline of this case

○ This case concerns a plan in which The Daishi Bank, Ltd. and The Hokuetsu Bank, Ltd. would integrate with each other through joint share transfer. Each company has its head office in Niigata.

2. Reviewing Process

June 20th, 2017

- Receipt of the notification regarding the proposed transaction

the start of the
primary review

July 19th, 2017

- Request for reports, etc. by the JFTC
- The Parties submitted the requested reports, etc., sequentially.
- JFTC interviewed competing enterprises and conducted a questionnaire to users (valid response rate was about 50 %)
- JFTC had several meetings with the Parties, where the points of contention were explained and discussed

the start of the
secondary review

December 6th, 2017

- Receipt of all requested reports, etc.
(the due date for a prior notice was set on March 7th, 2018)

December 15th, 2017

- Clearance notification

3. Particular field of trade concerning business lending for small- and medium-sized enterprises

【Scope of competing enterprises】

Small- and medium-sized enterprises conduct relatively small businesses and their loans tend to be relatively small too. In this respect, as credit associations and credit unions in addition to banks can lend funds to small- and medium-sized enterprises, small- and medium-sized enterprises can view banks, credit associations, and credit unions as substitutable lenders.

JA, etc., on the other hand, is basically allowed to provide loans only to farmers, etc.. As government-run financial institutions, Shoko Chukin and JFC, following the principle of additionality to private businesses based on laws and regulations, lend funds to enterprises which have difficulties in borrowing from private financial institutions, and users borrow from private financial institutions or these government-run financial institutions according to the type of their financial need. For this reason, there are only limited cases where small- and medium-sized enterprises can consider JA, etc. Shoko Chukin or JFC as a substitutable lender.

⇒JFTC investigated the integration of this case based on the premise that competing loan providers for small- and medium-sized enterprises are banks, credit associations, and credit unions only, and that JA, etc. Shoko Chukin, and JFC would put competitive pressure from adjacent markets.

3. Particular field of trade concerning business lending for small- and medium-sized enterprises

【Geographic range】

Around 80% of small- and medium-sized enterprises in Niigata Prefecture said they would seek lenders at the farthest within the economic zones where they are based. As well, to save costs related to sales and credit management, banks, credit associations, and credit unions, the suppliers, focus their sales activities for small- and medium-sized enterprises which seek relatively small amounts of loans on the neighborhoods of their branches.

In the meantime, only around 10% of small- and medium-sized enterprises take out loans from branches of banks, credit associations, or credit unions located outside of their economic zones, and very few small- and medium-sized enterprises borrow funds from branches of those financial institutions located outside of Niigata Prefecture.

⇒Accordingly, the JFTC established a geographic range concerning lending for small- and medium-sized enterprises for each of the above 10 economic zones.

4. whether the integration would substantially restrain competition
(business lending for small- and medium-sized enterprises)

Competitive pressure from competing enterprises

○ each economic zone of “Murakami,” “Sanjo,” “Kashiwazaki,” “Tokamachi,” “Uonuma,” “Joetsu,” and “Itoigawa”

- The Parties together hold the largest market share, around 40 to 55%
- One or two competitors hold an equivalent or greater market share than at least one of the Parties before the integration
- Small- and medium-sized enterprises view these competitors as substitutable lenders which are equivalent or better than either of the Parties.
- Competitors are considered to have sufficient excess capacity in terms of funds and systems.

⇒ **A considerable degree of pressure from competitors is recognized.**

○ each economic zone of “Niigata,” “Nagaoka,” and “Sado”

- The Parties together hold the largest market share, around 55 to 60%
- No competitor holds an equivalent or greater market share than at least one of the Parties before the integration of this case. However, there are competitors which hold a certain market share respectively.
- Small- and medium-sized enterprises view these competitors as lenders which could substitute for the Parties, and some of them as substitutable lenders which are equivalent or better than either of the Parties.
- Competitors are considered to have sufficient excess capacity in terms of funds and systems.

⇒ **A certain degree of pressure from competitors is recognized.**

4. whether the integration would substantially restrain competition
(business lending for small- and medium-sized enterprises)

Competitive pressure from Shoko Chukin and JFC


○As government-run financial institutions, Shoko Chukin and JFC, following the principle of additionality to private businesses based on laws and regulations, lend funds to enterprises which have difficulties in borrowing from private financial institutions.

○JFTC used data of Daishi Bank and conducted an economic analysis to find out if there was a significant difference in interest rates offered by Daishi Bank to users between “cases where a user is borrowing funds from private institutions competing against Daishi Bank” and “cases where a user is borrowing funds from government-run financial institutions”, while making appropriate adjustments to eliminate effects of factors which could have an impact on interest rates such as users’ credit ratings.

⇒The result was that interest rates of the latter cases were statistically significantly high.

⇒ This indicates that the degree of competition between Daishi Bank and government-run financial institutions is smaller than that between Daishi Bank and private financial institutions.

⇒ Competitive pressure from Shoko Chukin and JFC is limited.



Pressure from competitors is recognized. Based on such conditions, the integration of this case would not substantially restrain competition.

Thank you for your kind attention !



Japan Fair Trade Commission
(<http://www.jftc.go.jp/en/index.html>)

(Any Views and opinions expressed in this presentation are solely those of the speaker and are not those of the Japan Fair Trade Commission.)