

Amendments of business combination guidelines for the digital market

December 12, 2019

Director
Mergers and Acquisitions Division Economic Affairs Bureau
Japan Fair Trade Commission

FUKAMACHI Masanori

Background and Purpose

Due to increased necessity of properly dealing with business combinations in the digital market in recent years and other reasons, based on Action Plan of the Growth Strategy (June 21 2019 Cabinet Decision) , etc., Guidelines on Business Combination and Policies concerning Procedures of Business Combination will be amended.

After discussing the processes during the review of business combination, considering an accumulation of data, etc. in the digital market, the Guideline on it shall be amended in 2019 and the challenges of current notification threshold based on turnover shall be discussed in FY2019.

Growth Strategy(Released on June 2019)

Overview of Amendments to Business Combination Guidelines

1 Particular Field of Trade

- To stipulate way of considering the definition of a particular field of trade of a business combination in a multi-sided market which is characteristic of digital service
- To stipulate way of considering the definition of a particular field of trade where competition occurs through quality, etc., not price
- To stipulate considerations in defining a particular field of trade of a business combination related to digital service, etc.

2 Substantial Restraint of Competition

- To stipulate considerations of competition analysis, based on characteristics of digital service such as multi-sided markets, network effects and switching costs
- To stipulate way of considering when companies doing research and development conduct a business combination
- To stipulate, in vertical and conglomerate business combinations, details based on recent review results and way of considering when a digital platform operator acquires a start-up, etc. having important data, etc., for instance,
 - Refusal to supply data when such data are traded in the market
 - Elimination of the possibility of new entrant by an acquired start-up, etc. and others
- To stipulate way of considering when it is difficult for several companies to keep competing in the market

Overview of Amendments to Business Combination Procedures Policies

- To stipulate that even if a business combination plan that only the amount related to domestic sales, etc. does not meet notification standards (“Notification-free business combination plan”), when the total consideration for the acquisition is large, and the business combination plan is expected to affect domestic consumers, the JFTC requests the parties to submit documents, etc. and conduct a business combination review.
- To stipulate regarding notification-free business combination plan, when the total consideration for the acquisition exceeds 40 billion yen, and the notification-free business combination plan is expected to affect domestic consumers such as satisfying one of the following ① to ③, it is recommended that the parties having the notification-free business combination plan consult the JFTC
 - ① When the business base or research and development base of the acquired company is located in Japan
 - ② When the acquired company conducts sales activities targeting domestic consumers, such as opening a Japanese website or using a Japanese pamphlet
 - ③ When the total domestic sales of the acquired company exceed 100 million yen(To stipulate that if there is no consultation from the parties, the JFTC requests the parties to submit the documents, etc. and reviews the business combination plan)