

FY 2012 Japan Fair Trade Commission Performance Evaluation Report (Standard Format)

(The Japan Fair Trade Commission 24-(1))

Name of Activity	Measures against violations of the Antimonopoly Act, etc Prompt and appropriate merger reviews						
Outline of Activity	Preventing business combinations (stock acquisitions, mergers, company splits, joint share transfers, and business acquisitions) that will substantially restrain competition in any particular fields of trade by undertaking reviews promptly and appropriately based on notifications, through proper responses in cases where it is deemed that a business combination will violate the statutes of the Antimonopoly Act, and through publishing case examples of major business combinations.						
Goal	Maintaining and promoting fair and free competition by undertaking reviews of business combinations promptly (primary review: within 30 days from the date notification is accepted; secondary review: within 90 days from the date all additional reports and data are received) and appropriately, thereby preventing business combinations that will substantially restrain competition in any particular fields of trade (FY 2011).						
Budget-Related Activity	Breakdown of Budget		FY 2009	FY 2010	FY 2011	FY 2012	Amount requested for FY2013
	Amount Allocated (thousand yen)	Budget Supplemented (a)	11,027	7,531	8,910	8,274	7,854
		Budget Carried (b)	0	0	0	0	0
		Total (a + b)	11,027	7,531	8,910	8,274	7,854
	Executed amount (thousand yen) (c)		10,309	4,789	7,505		
Important Cabinet Policy Related to the Activity (Main Administrative Policy Speeches, etc.)	Name of the administrative policy speech, etc.			Date		Relevant part (excerpt)	
	New Growth Strategy (Cabinet decision)			June 18, 2010		Examination and necessary review of business combination regulations, etc. (review procedures and criteria, etc.) that also give consideration to the global market (to conclude and take the necessary measure within FY2011)	

Evaluation Index	Number of accepted notifications of business combinations [See Note 1]	Actual Results				
		FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
		1,284	1,008	985	265	275
	Percentage of notifications accepted business combinations processed within the legally designated period [See Note 2]	Actual Results				
		FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
		100	100	100	100	100
	Target Figures for Each Fiscal Year		100	100	100	100
	The number of results of reviews in the Major Business Combination Cases published on the JFTC website	Actual Results				
		FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
		11	7	8	12	9
	The average number of pages per case example published on the JFTC website	Actual Results				
		FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
		6.4	9.4	6.3	6.3	8.9
	Number of public accesses to the Major Business Combination Cases published on the JFTC website [See Note 3]	Actual Results				
		FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
		2,770	5,796	7,900	8,601	9,174
	Amount of consumer benefits protected by merger reviews (100 million yen)	Actual Results				
		FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
		Approx. 50	Approx. 37	Approx. 1,035	Approx. 70	Approx. 1,063

Note 1: The significant drop in accepted notifications in FY 2010 and FY 2011 from previous years can be attributed to the 2009 AMA Amendment, which reduced the range of business combinations subject to mandatory notification.

Note 2: The figure for FY 2011 reflects the processing status of 273 of the 275 notifications accepted in FY 2011. As regards remaining two notifications, one was omitted because its secondary review continued into FY 2012 due to demands for reports and other information, and the other was omitted because the notification of a business combination plan was withdrawn due to circumstances at the notifying corporation.

Note 3: With regard to the number of accesses, data prior to August 2007 are unavailable. The number of public accesses for each fiscal year applies to the Major Business Combination Cases published in the corresponding year.

Results of Evaluations of Activity	Status of Achievements	<p>Of the 275 notifications accepted in FY 2011, the 270 cases that underwent only a primary review were closed within 30 days and the three cases that involved a secondary review were closed within 90 days. Thus, in all cases reviews of business combinations were conducted promptly and appropriately.</p> <p>Note that the secondary review of one case continued into FY 2012 and that in another case the notification of a business combination plan was withdrawn due to circumstances at the notifying corporation.</p>
	Directions for Future Activity	<p>Evaluated based on the index as a whole, the activity can be assessed as being necessary and effective for maintaining and promoting fair and free competition and can be deemed to have been implemented efficiently. However, the activity involves the following issues.</p> <p>Prior to the review of the business combination regulations, the prior consultation system was often used to seek judgments under the Antimonopoly Act for cases concerning important, large-scale business combinations. With the review of the business combination regulations, however, the prior consultation system has been abolished. The abolishment of this system has necessitated that the JFTC judge promptly and appropriately whether a given business combination will substantially restrain competition in any particular fields of trade while collecting and analyzing required information, even for cases involving important, large-scale business combinations, within the statutory limited review period, which does not permit extensions of the review period. In addition, corporations expect reviews to be undertaken promptly and appropriately so that they do not miss the right timing and opportunities to implement their business combinations. The intent of the review of the business combination regulations is to improve the swiftness, transparency, and predictability of merger reviews. Based on this intent, then, and in line with statutory procedures, the JFTC must work further to conduct merger reviews promptly and appropriately and protect the interests of consumers for all accepted notifications, including those for important, large-scale business combinations.</p> <p>The JFTC must also continue to improve the quality of its merger reviews and to further reinforce the organizational structure of its Mergers and Acquisitions Division in order to better handle cases of international business combinations. This is necessary because (1) an increasing number of merger reviews require the exchange of information with foreign competition authorities; and because (2) it is necessary to handle appropriately important, large-scale business combinations that require the application of specialized legal knowledge and to handle accurately cases that require the placement of economists with relevant expertise and experience to the Mergers and Acquisitions Division to conduct objective and theoretical analyses.</p> <p>As a result of the review of merger regulations, the JFTC has decided to further enhance the contents it publishes. It has decided to publish all cases of merger reviews in which requests for reports, etc. were conducted and in which the JFTC gave notice that it would not issue a cease and desist order. In the interest of preventing corporations from planning business combinations that are problematic from the standpoint of the Antimonopoly Act, the JFTC needs to make further efforts to enhance the cases it publishes concerning the results of merger reviews, while giving consideration to corporate secrets.</p>

Use of Expert Knowledge	<ul style="list-style-type: none"> Regarding the evaluation index “Processing status of accepted business combination notifications processed within the statutory period,” shouldn’t the percentage of cases closed within the target processing period be listed as well? (Mr. Kakizaki) (We revised the details based on the above opinion.) The efficiency of the merger reviews is assessed by comparing the costs incurred by the reviews with the protected consumer benefits. There is nothing wrong with presenting this data per se, but as the two are not necessarily correlated, I feel it is somewhat misguided to list this data as a direct index that the reviews are efficient. (Mr. Konishi) (We revised the details based on the above opinion.)
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Materials and Other Information Used During Policy Evaluation	<p>“Major Business Combination Cases in FY 2011” Drafted by: The JFTC Published on: June 20, 2012. The above material is held by the General Affairs Division, Secretariat, General Secretariat, the JFTC.</p>
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Responsible Department	Mergers and Acquisitions Division, Economic Affairs Bureau	Responsible Person	Wataru Kobayashi, Director of Mergers and Acquisitions Division	Year/Month for Policy Evaluation	April – July, 2012
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