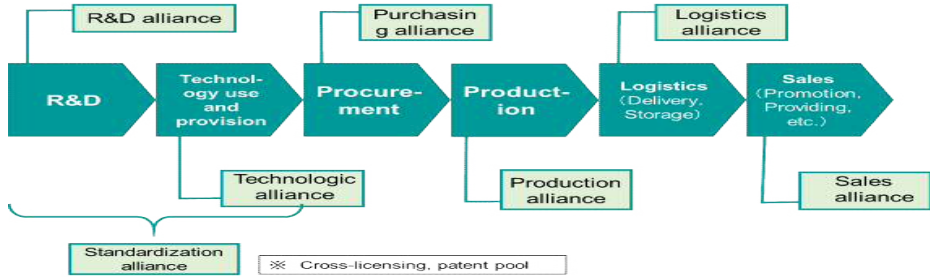


Purpose of the study, etc. [Part I]

- "Business alliances" have widely employed as one to deal with recent major changes in the social and economic environment (the digital economy, IoT, population aging, population and labor decline, market shrink, etc.), and have come to play an important role in business activities.
- ⇒ Traditionally, business alliances have been employed mainly among businesses in the same line of business in order to improve business efficiency.
- ⇒ In recent years, business alliances across sectors or industries have been going and have also been established with the aim of solving social agendas and creating new businesses.
- Business alliances are often expected to have a pro-competitive effect, but when business is conducted jointly, business alliances may have the aspect of having an anti-competitive effect depending on the mode.
- The consideration in terms of the Antimonopoly Act relating to business alliances are loosely organized divided into situations or issues of respective types of business alliances based on various guidelines and past consultation cases.
- This Study Group organizes the systematic consideration and specific consideration according to individual types while reflecting recent operational practices.
- ⇒ The main subjects of the discussions were to clarify the basic framework for evaluating the impact on competition, and the mechanism and process of the impact of competition in the factors of each judgment.



Study Group on Business Alliances

- Tsuyoshi Ikeda, Attorney, at Law, IKEDA & SOMEYA
- Hiroaki Ishigaki, Managing Director, NERA Economic Consulting
- Takahiro Saito, Professor, Faculty of Law, Nanzan University (Chief Researcher, Competition Policy Research Center)
- Toshiaki Tada, Attorney, at Hibiya Sogo Law Offices
- [Chair] Akira Negishi, Project Professor, Social System Innovation Center, Kobe University
- Masaaki Miyai, Professor, College of Law, Ritsumeikan University (Chief Researcher, Competition Policy Research Center)
- Eiji Yamada, Executive principal, The Japan Research Institute, Limited

[As arranged according to the Japanese syllabary, with titles omitted; Official position are as of June 14, 2019]

(Observers)

- Yosuke Okada, Professor, Faculty of Economics, Hitotsubashi University (Director, Competition Policy Research Center)
 - Hiroshi Ohashi, Professor, Graduate School of Economics, University of Tokyo (Chief Researcher, Competition Policy Research Center)
 - Jun Nakabayashi, Associate Professor, Department of Economics, Kinki University (Chief Researcher, Competition Policy Research Center)
- [Titles omitted; Official position are as of June 14, 2019]

(Secretariat)

Economic Research Office, Economic Affairs Bureau, Japan Fair Trade Commission

Examination of differences between business alliances and business combinations (from the perspective of the integration of business activities) [Part III]

- When business activities are carried out together by enterprises, there are various forms of partnerships such as when business is completely integrated in the form of a merger or where the business activities are limited to a specific business such as in a business alliance and are relatively easily dissolved through the expiry of the contract, etc.
- Of these, regarding business combinations, the "Business Combination Guidelines" present a systematic approach to evaluating the impact on competition.
- ⇒ The differences between business alliances and business combinations were reviewed from the perspective of the integration of business activities, and the consideration on evaluating the impact on competition relating to business alliances was organized.

(i) Similarities between business alliances and business combinations

- Business alliances **integrate the decision-making and actions of the business operators to a certain degree** although not as much as business combinations (mergers and acquisition of all stocks)
- Even with regard to the establishment of a joint investment company and the acquisition of minority shares which are a midway measure between a merger and a business alliance, the Business Combination Guidelines, etc. consider room for the companies to continue acting independently

(ii) Characteristics unique of business alliances differing from business combinations

[Not a combination of companies but a specific action]

- Unlike the business combination regulations which analyze and evaluate the possible effects of restrictions on competition in the future, **judgments are made on illegality based on current or retrospective actions** (subject to regulation of conduct under Article 3 of the Antimonopoly Act)

[Room left for alliance partners to continue acting independently]

- A major point is to evaluate the **extent of progress of the integration of business activities** between the alliance partners.
- ⇒ The degree of integration of decision-making relating to important modes of competition and the possibility of facilitating coordinated action
- It is also necessary to evaluate **incidental arrangements that restrict or restrain the business activities** of each alliance partner **unilaterally or mutually**.

⇒ With regard to the framework for evaluating the impact on competition related to the business alliance, due to the similarities with business combinations in terms of the integration of business activities, it is suitable to take into account the consideration of the business combination guidelines as a large framework and to build a framework incorporating the abovementioned unique nature of business alliances.

	(i) Information exchange and sharing associated with business alliances	(ii) Common cost structure
Previously presented practical consideration	<ul style="list-style-type: none"> - May be indispensable for the implementation of the business alliance, but there is also a risk of restricting competition. ⇒ In past consultation cases (production alliances, etc.), frequent occurrence as one of the judgment factors (whether independent activities in the sales field are ensured such as not exchanging information on sales prices, sales quantities, etc.) ⇒ If there is an effect that makes it possible for competitors to make predictions about the specific content of important modes of competition such as prices relating to current or future business activities, there is a risk of violation of the Antimonopoly Act (Guidelines Concerning the Activities of Trade Associations under the Antimonopoly Act). 	<ul style="list-style-type: none"> - While it is expected that efficiency will be improved due to economies of scale through the production alliance, etc., in past consultation cases, etc., there was repeated reference to the point that the structure of manufacturing costs, etc. would be shared to a certain extent between the alliance partners as an important judgment factor when considering the degree of integration of the business activities (for example, if there is room for price competition even if the cost structure is shared to some extent).
Compilation of the mechanisms and processes that have an impact on competition	<ul style="list-style-type: none"> - When information exchange / sharing increases market transparency and makes it easier for partners to predict each other's actions ... <div style="border: 1px solid blue; padding: 5px; margin: 10px 0;"> (i) Possibility of having a common understanding of the conditions based on which coordinated action can be taken (ii) Monitoring of deviation from coordinated action and possibility of timely retaliation in cases of acts of deviation </div> <ul style="list-style-type: none"> - When securing profits from a long-term perspective, it is usually easier to promote coordinated action among the alliance partners because it is more profitable for them to cooperate with one other (especially in cases of information which is important in terms of competition such as price, quantity, cost, etc. or cases of high transparency, an oligopoly, small fluctuations in supply and demand, and a homogeneous cost structure). <div style="border: 1px solid blue; padding: 5px; margin: 10px 0;"> It is important to limit information exchange and sharing to the extent necessary so as not to solicit cartels, etc., and to establish information blocking measures (for example, firewall access restrictions between departments, setting up information managers, personnel measures such as not assigning people to the related departments for a certain period of time). </div>	<ul style="list-style-type: none"> - When the cost structure is shared... <div style="border: 1px solid blue; padding: 5px; margin: 10px 0;"> (i) By sharing cost information with each other, predictability among the alliance partners increases, and coordinated action is facilitated. (ii) The decision making concerning important modes of competition to reduce costs is integrated through partial assimilation of costs. </div> <ul style="list-style-type: none"> ⇒ On the other hand, (i) the possibility of coordinated action also relates to the market situation, and (ii) the degree to which the problem of cost structure is related to important modes of competition may vary depending on the case (also in cases where modes of non-competition are emphasized such as quality and design). <div style="border: 1px solid green; border-radius: 15px; padding: 10px; margin: 10px 0; background-color: #e0f0e0;"> Rather than just determining whether the cost sharing ratio is high or low, comprehensive consideration should be given to other factors (market conditions, forms of information exchange or sharing such as the frequency of the information exchange or sharing, etc.) </div>

(iii) Impact on innovation

<ul style="list-style-type: none"> - Joint R&D generally, through the alliance, makes R&D activities proactive and efficient and promotes innovation, but depending on individual circumstances, innovation by alliance partners or other companies may be inhibited. <div style="border: 1px solid blue; padding: 5px; margin: 10px 0;"> The existing consideration under the Antimonopoly Act is that if business combination cases* 1 or even Guidelines Concerning Joint Research and Development under the Antimonopoly Act * 2 reduce motivation to conduct R&D, this may be a problem under the Antimonopoly Act. * 1 Major Business Combination Case / Case No. 8 in 2016 (combination of Lam Research Corporation and KLA Tencor Corporation) * 2 Imposing the obligation to transfer improved inventions, etc., which are the results of joint research and development, to other participants, etc., reduces R&D motivation to improve the results, and has a strong possibility of impeding fair competition. </div> <ul style="list-style-type: none"> - The review of substantial restrictions on competition in certain transactional fields requires identification of the market where the impact will occur but "because the R&D activities themselves cannot envisage the transactions and markets, the impact on competition in technological development is to be evaluated by the impact on competition in the trade of future technology or products that use the technology which is an outcome of the R&D activities" (Guidelines for the Use of Intellectual Property under the Antimonopoly Act). 	Future technologies and products subject to adverse effects ...
<div style="border: 1px solid blue; padding: 5px; margin: 10px 0;"> Cases that can be predicted concretely to a considerable extent Possible to evaluate that competition in the market will be restricted Envisaged judgment factors High barriers to entry, number of competitors, existing situation of competition, ability of competitors to generate innovation, etc. </div> <div style="border: 1px solid blue; padding: 5px; margin: 10px 0;"> Cases where it cannot be said that it can be concretely predicted Considering the importance in the current economic activities of revitalizing innovation, if it has a negative impact on innovation, it should be considered a problem under the Antimonopoly Act. ⇒ In this case, it is necessary to organize the conventional interpretation in terms of the Antimonopoly Act which is to evaluate the effect on current transactions and competition in the market Envisaged judgment factors Extent of need, status of accumulation, availability of other business operators, etc. for inputs (funds, data, technology, human resources, etc.) required for innovation </div>	

- In **many cases**, business alliances are expected to have a **pro-competitive effect**.
- On the other hand, depending on the mode, there may be an **anti-competitive effect** so the impact on competition is evaluated as given below.
(⇒ In addition, when effects are not foreseen other than the effect of restricting competition, such as price maintenance and raising, this is usually regarded as just a hardcore cartel)

<Horizontal business alliances>

A. Evaluation of the impact on the relationship between the alliance partners

Evaluate to what extent competition between the alliance partners is restricted from the perspective of integration of the business activities of the alliance partners. When evaluating the impact, the following factors should mainly be considered.

- Integration of decision-making relating to important modes of competition such as production quantity, price, cost, quality, etc.
- Possibility of facilitating coordinated action through the exchange and sharing of information and sharing a common cost structure
- Expansion of the business alliance such as the implementation period

Competition among the alliance partners is restricted

Competition among the alliance partners is not restricted

Review from two perspectives

B. Evaluation of impact on the entire market

(A) The possibility of an impact on the market due to loss of competition between the alliance partners and due to them acting together

Mainly consider the following judgment factors

- **Market share and ranking**
- **Conventional competition between the alliance partners**
 - > Cases where there was conventionally vigorous competition between alliance partners ⇒ the impact on competition in the market is large
- **Disparity between the supply capacity of the competitors and extent of differentiation in the products**
 - > When the disparity with the market share is large ⇒ the competitiveness of the competitors is weak and the impact on competition is large.
- **Competitive supply capacity and degree of product differentiation**
- **Import pressure, market entry pressure, competition pressure from neighboring markets**
 - > When these pressures are working sufficiently ⇒ the impact on competition is small.
- **Competitive pressure from consumers**
 - > When the customer has competitive bargaining power ⇒ the impact on competition is small.
- **Comprehensive business capability**
- **Efficiency**
 - > If the alliance partner is expected to take competitive action through an improvement in the efficiency of the alliance partner as a result of the business alliance, this point should also be taken into consideration.
The improvement in efficiency in this case is judged from the following three viewpoints.
 - The improvement in efficiency cannot be caused by other methods that have a less restrictive effect on competition.
 - It must be feasible
 - There must be an increase in consumer welfare

(B) The possibility of coordinated action with competitors other than affiliated partners

Mainly consider the following judgment factors

- **Number of competitors, etc.**
- **Conventional competition between the alliance partners**
 - > Cases where competition was promoted throughout the market due to there being conventionally vigorous competition between the alliance partners
⇒ a reduction will have a significant impact on competition
- **Supply capacity of the alliance partners and competitors**
 - > When the partners have a large supply capacity and the competitors' supply capacity is small
⇒ even if sales are increased by lowering the prices, there is a limit to the amount of sales that the alliance partners will be deprived of due to competitors lowering the prices so the incentive to take coordinated action with competitors is small.
- **Ease of obtaining information such as trading conditions**
- **Past situation of competition**
 - > When there are huge fluctuations in market share and prices
⇒ It is easy to predict competitors' behavior and coordinated action is easily facilitated.
- **Import pressure, market entry pressure, competitive pressure from neighboring markets**
 - > When these pressures are working sufficiently
⇒ Coordinated action is easily promoted.
- **Efficiency**
 - > Same as (A)

Moreover

C. Evaluation of arrangements that unilaterally or mutually restrict or constrain the business activities of each alliance partner associated with implementation of the business alliance. *Review also taking into considering the results of examination of A and B

Main actions that are problematic under the Antimonopoly Act	Specific examples
(A) An act in which one party unfairly imposes unfavorable conditions on the other party (abuse of superior bargaining position, etc.)	An act that requires only some of the participants to disclose technological information out of the alliance partners in joint research and development, and that would result in an unfair disadvantage for the alliance partners that are obliged to disclose such information.
(B) An act in which one party unfairly restrains the business activities of another party (trading on restrictive terms, etc.)	The act of imposing an obligation to transfer improved inventions, etc. of the outcomes among the joint R&D alliance partners to another party, or an act imposing an obligation on another party to grant an exclusive license.
(C) The act of arranging the sales price, sales area, customers, etc. of the product between the alliance partners (unreasonable restraint of trade)	An act that mutually restricts the price, quantity, etc. of the product in joint research and development conducted between business operators that have a competitive relationship in the product market
(D) An act in which an alliance partner excludes a person other than the alliance partners (private monopolization, concerted refusal to trade, etc.)	An act of restricting the participation of a specific business operator without justifiable reason in cases where without participation in the standardization activities, it would be difficult to develop and produce products that adopt the established standards and there is a risk that such business operator will be excluded from the product market.

<Vertical and mixed business alliances>

A. Evaluation of the impact on the relationship among the alliance partners

The following points are evaluated from the viewpoint of integration of the business activities of the alliance partners.

(i) Issue of closure and exclusivity among the alliance partners

Consider the following judgment factors comprehensively with regard to whether customer closure or input closure occurs

- Degree of closure among the alliance partners
- Degree of closure through information exchange or sharing
- Expansion of the business alliance such as the implementation period

(ii) Issue of coordinated action is promoted among the alliance partners

Whether information important in terms of competition will be exchanged and shared pertaining to one of the competitors among the alliance partners, and it will be easier to predict the actions of the competitor

No closure or exclusivity arising among the alliance partners

Closure or exclusivity arising among the alliance partners

Easier to predict competitors' behavior

Not easier to predict competitors' behavior

B. Evaluation of impact on the entire market

(A) The possibility of an impact on the market due to loss of competition between the alliance partners and due to them acting together

> Cases where the market share of the alliance partners is high and the gap between the competitors and the market share is large

⇒ Problems such as market closure and exclusivity occur because competitors cannot secure alternative customers

- Import pressure, entry pressure, competitive pressure from neighboring markets

> When these pressures are working sufficiently ⇒ the impact on competition is small.

- Competitive pressure from consumers

> When the customer has competitive bargaining power ⇒ the impact on competition is small.

- Comprehensive business capability

> If it is expected that it will be difficult for competitors to take competitive action as a result of the expansion of the overall business capacity of the alliance partners and increased competitiveness due to the business alliance, take this point into consideration.

- Efficiency

> If the alliance partner is expected to take competitive action though an improvement in the efficiency of the alliance partners as a result of the business alliance, take this point into consideration.

The improvement in efficiency in this case is judged from the following three viewpoints.

- The improvement in efficiency cannot be caused by other methods that are have a less restrictive effect on competition.
- It is feasible
- There will be an increase in consumer welfare

(B) The possibility of coordinated action with competitors other than affiliated partners

Mainly consider the following judgment factors

- Number of competitors, etc.

- Supply capacity of alliance partners and competitors

> The alliance partners have a large supply capacity and competitors have a small supply capacity

⇒ Even if sales are increased by lowering the prices, there is a limit to the amount of sales that the alliance partners will be deprived of due to competitors lowering the prices so the incentive to take coordinated action with competitors is small.

- Ease of obtaining information such as trading conditions

- Past situation of competition

> When there are huge fluctuations in market share and prices

⇒ It is easy to predict competitors' behavior and coordinated action is easily facilitated.

- Import pressure, market entry pressure, competitive pressure from neighboring markets

> When these pressures are working sufficiently

⇒ Coordinated action is easily promoted.

- Efficiency

> Same as (A)

Moreover

C. Evaluation of arrangements that restrict or constrain each alliance partner's business activities unilaterally or mutually in association with the implementation of the business alliance * Review considering the results of A and B

Main actions that are problematic under the Antimonopoly Act	Specific examples
(A) An act in which one party unfairly imposes unfavorable conditions on the other party (abuse of superior bargaining position, etc.)	An act where one party causes the other party to unilaterally attribute the results of the joint R&D to another party and imposes an unfair disadvantage on another party, etc. in joint R&D among business operators who have a trading relationship.
(B) An act in which one party unfairly restrains the business activities of another party (trading on restrictive terms, etc.)	An act in cases where a parts manufacturer and an end product manufacturer that uses the part conduct joint research and development of the part and the end product manufacturer imposes restrictions on the sales price of the part to a third party.
(C) An act of arranging the sales price, sales area, customers, etc. of the products among the alliance partners (unreasonable restraint of trade)	An act where a manufacturer and distributor who have an alliance relationship jointly refuse the supply of products in order to exclude other distributors.

Consideration in terms of the Antimonopoly Act relating to business alliances [Part V]

For each of the seven types, a more specific way of consideration and special points to be noted have been organized as follows.

*These are simply special notes on the characteristics of each type, and evaluation of the impact in terms of competition is based on common and general thinking (see pages 3-4).

Production alliances	<ul style="list-style-type: none"> - Integration of decision-making related to important modes of competition (the closer the product is to the end product, and the more the supply becomes the entire supply amount, the greater the degree of integration) - Possibility of coordinated action (necessary exchange and sharing of information important to competition such as cost and quantity (requires information blocking measures with sales departments, etc.), sharing of the cost structure)
Sales alliances	<ul style="list-style-type: none"> - Risks in terms of competition are greater than other types. ⇒ If decision-making related to important modes of competition such as sales prices is integrated, it may come under a hardcore cartel.
Purchasing alliances	<ul style="list-style-type: none"> - With regard to purchasing markets, in many cases the purchasing conditions (purchase price, purchase quantity, supplier, etc.) are often determined in an integrated manner, and this does not pose an immediate problem, but a problem arises when market dominance emerges due to a high market share. (*Vertical and mixed types also have a competitive relationship in the purchase market.) - Consider the sales market from the same perspective as the production alliance
Logistics alliances	<ul style="list-style-type: none"> - Consider the logistics procurement market from the same perspective as purchasing alliances (purchasing market). (*Vertical and mixed types also have a competitive relationship in the logistics procurement market.) - Logistics is an incidental business and is unlikely to be a problem in the product sales market (however, since information on customers, sales quantities, etc. is exchanged and shared, information blocking measures with sales departments, etc. are required).
R&D alliances	<ul style="list-style-type: none"> - The technology market and product market are the main considerations. (*Vertical and mixed alliances are not usually a problem, but for example, when developing highly versatile technology, there may be a competitive relationship in the technology market.) - (i) R&D collaboration that can be performed independently, and (ii) restrictions on participation in joint research and development of technologies essential to business activities may be problematic. - In addition, the problem of arrangements associated with implementation of the business alliance (for example, an obligation to transfer the results of improved inventions, etc. to another party) - Safe harbor: Joint R&D (product improvement / substitute product development) where the total market share of the parties is 20% or less is not usually a problem (Joint R&D Guidelines).
Technological alliances	<ul style="list-style-type: none"> - Technological markets and product markets are the main consideration. - With regard to cross-licensing, the problem of arrangements mainly associated with implementation of the business alliance (for example, unreasonable constraints on business activities such as arrangements for sales prices of products using technology and restrictions on the scope of technology use, etc.) - With regard to patent pools, in addition to the arrangements associated with implementation of the alliance, (i) not permitting licenses outside the pool beyond the scope required for smooth operation, (ii) exclusion of alternative technologies through bundled licensing with essential technologies, etc. may become problematic. In addition, because information important in terms of competition related to the product market is concentrated with the pool operator, it is necessary to take information blocking measures with other alliance partners. - Safe harbor: As a general rule, the effect of restricting the use of technology when the total market share of the companies using the technology is 20% or less has a negligible competitive effect (Intellectual Property Guidelines)
Standardization alliances	<ul style="list-style-type: none"> - The market for technology incorporated into the standards and the product market are the main considerations. (*Vertical and mixed alliances usually have multiple competitors participating. For example, if the technology incorporated into the standards is highly versatile, it may have a competitive relationship in the technology markets. - (i) Formulation of standards beyond the scope necessary to realize the benefits of standardization, such as ensuring compatibility, (2) restrictions on participation without a justifiable reason when it is difficult to develop and produce products that adopt the standards unless there has been participation in the standardization activities may be problematic. - In addition, the issue of arrangements associated with implementation of the alliance (for example, arranging sales prices of products that adopt the standards, restrictions and prohibition of the development of competing standards and the development and production of products that adopt competing standards without a justifiable reason).

Consideration in terms of the Antimonopoly Act relating to cross-industry data-collaboration business alliances [Part VI]

Location of the problem

- In recent years, cross-industry business alliances (cross-industry data collaboration-type business alliances) have become proactive for the purpose of joint collection and joint utilization of data as the basis of business activities.
- ⇒ **Business alliances that transcend business type and industry boundaries** in order to provide services that combine various products and service elements, such as **social problem-solving businesses** (for example, smart cities, MaaS [Mobility as a Service]) **have become proactive.**
- ⇒ **Data-driven businesses** that comprehensively analyze data and help to create new businesses, develop new products and improve quality, strengthen marketing, etc. have been attracting attention, and various **business operators are involved in jointly collecting and using diverse data** (for example, the development of automated driving systems, provision of common point services)
- Recent improvements in sensor and communication technology and AI-related technology enable large-scale data to be collected and accumulated in real time, and unstructured data such as images and voices can be analyzed quickly in large quantities, and therefore, **the importance of the data business is greater than before.**
- ⇔ On the other hand, **there are concerns and criticism regarding problems with the Antimonopoly Act in the unauthorized collection and containment of data.**

Location of issues under the Antimonopoly Act (i)

Study based on nature as a business alliance

Nature similar to joint R&D, focusing on the fact that cross-industry data collaboration-type business alliances are mainly aimed at the development and creation of new businesses through joint collection and utilization of data.

⇒ Based on the thinking in the Guidelines Concerning Joint Research and Development under the Antimonopoly Act, etc., the following two cases are envisaged as cases where problems will arise under the Antimonopoly Act.

-Cases where through joint data collection and utilization, business activities among alliance partners are unfairly restricted, and competition in the market is substantially restricted (unreasonable restraint of trade) when seen in light of the necessity of collaboration, the number of participants, market share, etc.

- Cases where the business activities of a specific business operator become difficult and the specific business operator is excluded from the market through restrictions on participation in business alliances and access to results (private monopolization, etc.)
- Cases where the business activities of alliance partners are unreasonably restricted due to arrangements associated with implementation of the business alliance, and this has an impact on competition in the market (unreasonable restraint of trade, etc.)

Study due to its nature as a data driven business

Due to the following characteristics, a **monopoly or oligopoly easily progresses**, the switching cost of users may increase, it becomes difficult for late coming business operators to collect and accumulate data compared to existing business operators, **new entry may become difficult, and a monopoly or oligopoly may be easily maintained.**

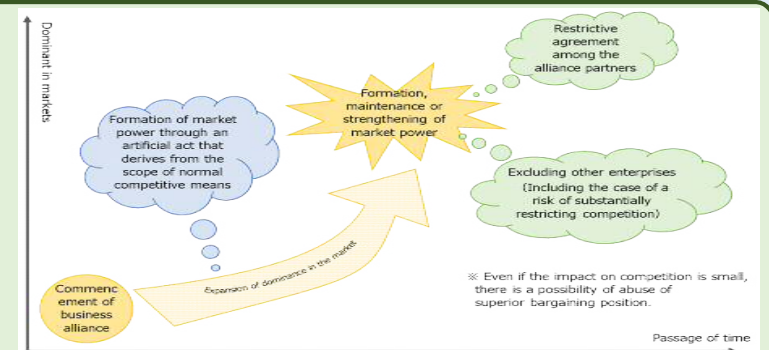
- Data collection and analysis improves the quality of products and services and creates new users. The direct network effect works strongly, so it is possible to acquire more users and accumulate more data (feedback loop). The indirect network effect works strongly especially in the platform type business, and this action may be further strengthened.
- As the amount of data to be collected and used increases, and as the range of use increases, the average cost required for it may significantly decrease (economies of scale, economies of range)
- If data accumulation exceeds a certain threshold (critical mass), there is a possibility that data accumulation will improve in a continuous and amplifying manner due to the network effect and economies of scale, etc.

Situations that may be a problem under the Antimonopoly Act

Based on the above, the following situations are mainly envisaged as situations where cross-industry data-collaboration business alliances may be a problem under the Antimonopoly Act.

(i) Cases **where the alliance partners actually have market dominance** (or at least there is a leading business operator in the market), they use that dominance to **exclude the business activities of other business operators** or there is an agreement between the alliance partners to restrict competition.

(ii) Cases where **in the process of collecting and aggregating data**, from the perspective of forming, maintaining, and strengthening market dominance, **market dominance is formed by improperly manipulating and amplifying the occurrence of the network effect, etc. or such mechanism through actions that have “an artificiality that deviates from the scope of normal modes of competition” (private monopolization).**



Consideration in terms of the Antimonopoly Act relating to cross-industry data-collaboration business alliances [Part VI]

Location of issues under the Antimonopoly Act (ii)

Specific action with an artificiality that deviates from the scope of normal modes of competition

At least in past cases, etc., where the method itself is unacceptable and unfair under the Antimonopoly Act, an “artificiality deviating from the scope of normal modes of competition” was recognized.

(i) An act of artificially or intentionally amplifying the network effect etc. by using the following unfair techniques

- Concentrating data collection sources on themselves due to unfair leverage effects using market dominance in related and adjacent markets
[Example] Unauthorized tie-ups, unreasonable rebates, etc., unilaterally acquiring business partners of data collection sources
- In a platform-type business, with respect to the various conditions in terms of cost allocation among each customer group on the platform*, the profits gained by abusing a superior position with respect to one customer group is used as a source to give preferential treatment and solicit other customers used as a starting point to amplify the indirect network effect, etc.
*Conditions related to consideration, use, rights and obligations, etc.
[Example] In a transaction through a matching platform, terms of use to unilaterally assign the rights of an intellectual property right, etc. that arise to one party to another party during the transaction execution process
- Collecting data that is not normally provided by the customer in an unfair manner in light of the Personal Information Protection Act or other laws by exploiting the limitations of customer perception, behavioral bias and literacy
[Example] Creating a state where customers will agree to the policy without reading or understanding the privacy policy, and collecting personal information and behavior history data that cannot usually be acquired
- Misleading the extent of convenience based on network externalities and forceful solicitation
[Example] Padding of information such as the number of service users

(ii) Acts to lock in customers and alliance partners and unify data collection sources by using the following unfair techniques:

- Unfairly restricting the use of competing services (including indirect services that are de facto restrictions)
[Examples] Unreasonable obligation of single homing, unreasonable restrictions on API opening and connection, setting of unnecessary standards or techniques to hinder data interoperability
- Intentionally creating unreasonable sunk costs and significantly increasing switching costs
[Example] Obligation of large-scale investment in facilities used for joint research and development, etc.

Specific issues when conducting evaluations in terms of the Antimonopoly Act

Rights and obligations related to data

When considering the applicability of the Antimonopoly Act for data-related actions, it is necessary to work out how the rights and obligations related to data are treated.

⇒ In the current situation where the concept of data ownership is not fully established, it is appropriate to handle the situation as follows:

- Data that is legally protected for exclusive use as intellectual property rights should be handled based on the thinking of the Intellectual Property Guidelines.
- If the rights and obligations relating to the use of data are stipulated in the contracts between the parties, and actions or restrictions based on such contracts hinder competition, the contracts may be cancelled through the intervention of the Antimonopoly Act.
- Restrictions derived from a position that can effectively control access and use of data (through ownership, etc. related to data storage facilities) basically do not require special consideration when considering them in terms of the Antimonopoly Act.

Characteristics of data as a resource and considerations

In the report “Study Group on Data and Competition Policy” (June 6, 2017, Competition Policy Research Center, Japan Fair Trade Commission), the following points were pointed out regarding the characteristics of data as a property.

- The degree of possibility of separately obtaining the same or similar data may vary depending on the data attributes.
 - The characteristics and usefulness of the data may change depending on the data content, purpose, amount of accumulation, and multiplication.
 - The degree of usefulness and versatility may also depend on the technology and equipment used for data collection and analysis.
 - In many cases, the use of certain elemental technologies is a prerequisite for data collection and analysis
- ⇒ The characteristics of the data as a property need to be individually determined according to the specific form of the data

[Main points to consider when evaluating the impact on competition]

- Based on the effects of combining different types of data, the degree of increase in utility value due to mass accumulation and the limited availability of data, etc., whether it is possible for new entrants to technologically and economically accumulate data with similar usage value.
- Whether data is an important input for products and services
- Whether the cycle of data collection, accumulation and functional improvement is strengthened by the network effect, etc.

Cumulative nature of markets where there is competition

As in the technology market and the product market, the input goods purchasing market and the product sales market, **markets exist in multiple stages** such as the stages of R&D, procurement, manufacturing and sales.

Furthermore, even looking at the sales stage, for example, **multiple sales markets coexist**.

[Example] If it is a social-issue resolving business, there is a separate market for each product or service element that makes up the business. In addition, there are markets that compete between ecosystems.



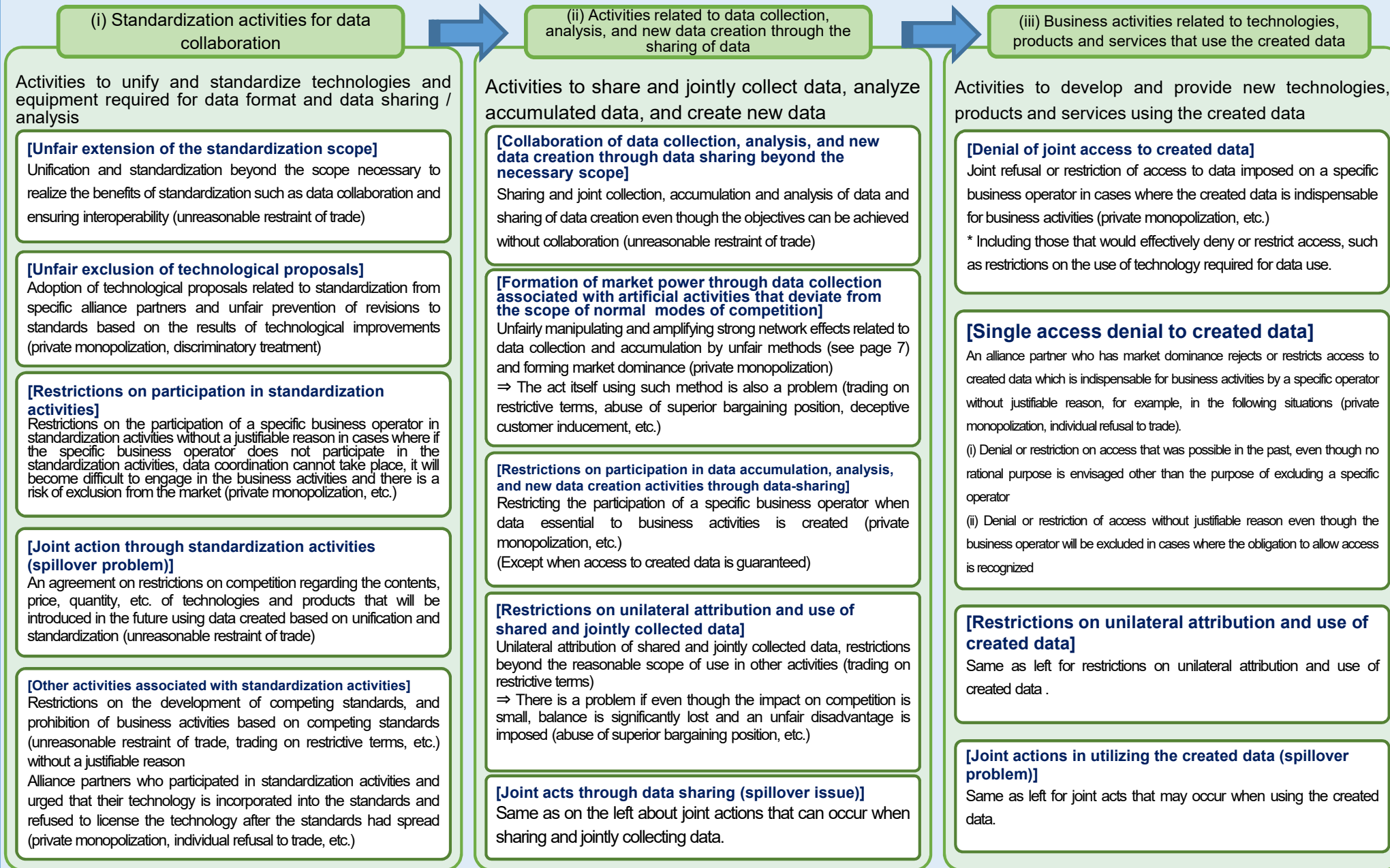
When evaluating the impact on competition, **it is crucial to identify and analyze where and how such competitive relationships occur in a cumulative manner among business operators, and to identify the markets where there may be an impact.**

Consideration in terms of the Antimonopoly Act relating to cross-industry data-collaboration business alliances [Part VI]

Consideration under the Antimonopoly Act (general)

The following is a summary of the consideration under the Antimonopoly Act regarding cross-industry data collaboration business alliances, focusing mainly on data handling.

⇒ Although a pro-competitive effect is expected this is not immediately a problem under the Antimonopoly Act, but the following actions may be problematic depending on the form.

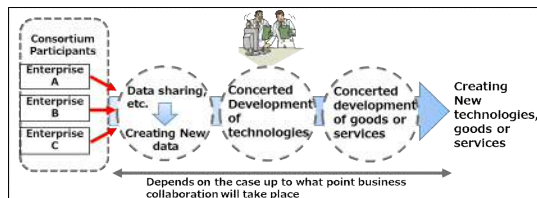


Main issues in specific forms of cross-industry data collaboration business alliances

Some of the main forms that have been widely used recently have been selected, and the actions that can be considered to be particularly likely to occur in each form have been compiled.

Creating new products and services through data sharing

[Outline] Multiple operators across business type and industry boundaries accumulate and analyze data through the sharing of data, etc. based on the formation of a consortium, etc., and use the created data



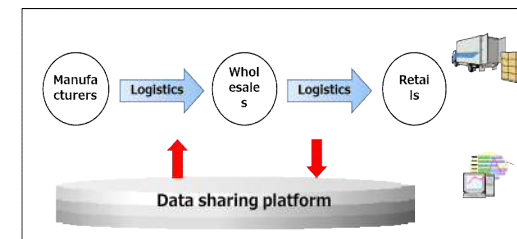
[Applicable examples] Cross-industry collaboration for smart cities, MaaS and other social problem solving businesses, automated driving system development, etc.

[Examples of actions that could be a problem under the Antimonopoly Act]

- Collaboration such as data sharing beyond the necessary range
- Joint or single access refusal to created data (← As a result of competition between consortiums, there is a strong tendency towards a de facto standard)
- ⇒ Problems with refusal of licenses for new technologies and connection to new services
- Joint acts in utilizing created data
- Restrictions on unilateral attribution and use of shared data and created data

Improving efficiency by sharing data between supply chains

[Outline] Sharing information related to transactions in real time between business operators in the supply chain, and promoting business efficiency in the supply chain



[Applicable examples]

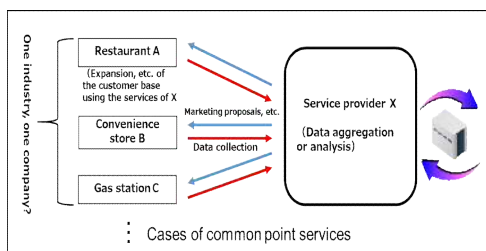
Efforts in the logistics field are particularly remarkable (contributing to efficiency improvement, traceability, food loss countermeasures, etc. through data sharing)

[Examples of actions that could be a problem under the Antimonopoly Act]

- Restrictions on participation in the business alliance (or refusal to connect to the data sharing infrastructure)
- Joint action through data sharing (← Because there are competitors at each stage of trading, there is a high risk that sharing important information such as quantity and customers will promote coordinated action)
- Restrictions on unilateral attribution and use of shared data

Creating or improving services, etc., based on the created data obtained by the concentrated collection of data

[Outline] A specific alliance partner (service provider) collects, accumulates, and analyzes data generated in a concentrated manner through the business activities of another alliance partner (service user) to create new data. Improvement of services and provision of new services by using the created data.



[Applicable examples]

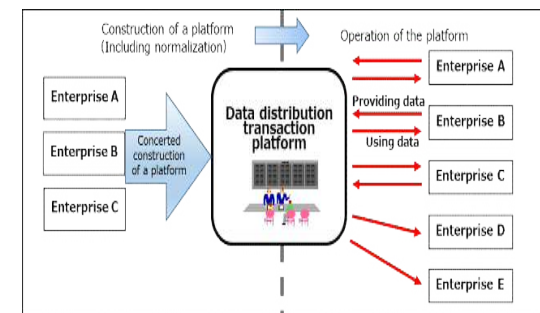
Common point service, maintenance management service by an industrial machine manufacturer

[Examples of actions that could be a problem under the Antimonopoly Act]

- Collaboration of data collection beyond the necessary range
- Formation of market dominance through data collection associated with artificial activities that deviate from the scope of normal modes of competition (for example, collection of customer behavior history data that exploits customer perceptions and behavioral biases, use of an unfair leverage effect, unfair obligation of single homing)
- Exclusion of the business operators of competing services through the above method
- Rejection of single access to created data (in the case of one company in one industry, the need for access increases. There is also a problem of restrictions on participation in the service itself)
- Obligation to provide or disclose data separately acquired or held by service users (for example, POS data acquired at stores)
- Implementation of alliances on condition of not using competing services or not providing services to competitors (← Since the interests of the parties may be the same, there is an actual situation that leads to a bilateral exclusive relationship)

Constructing a data distribution transaction base and intending to trade necessary data between operators

[Outline] Partners jointly build a data distribution transaction platform. On the platform, the data held by each partner and non-partner is mutually provided.



[Applicable examples]

Construction and operation of so-called data exchange

[Examples of actions that could be a problem under the Antimonopoly Act]

- Restrictions on participation in standardization activities
- Formation of market dominance through data collection associated with artificial activities that deviate from the scope of normal modes of competition (for example, unfair obligation of single homing)
- Exclusion of competing platform operators through the above method
- Unreasonable discriminatory handling of platform use between alliance partner and others