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English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

PUBLIC INTEREST CONSIDERATIONS IN MERGER CONTROL

-- Note by Japan --

14-15 June 2016

This document reproduces a written contribution from Japan submitted for Item 3 of the 123rd meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 14-15 June 2016.

*More documents related to this discussion can be found at
www.oecd.org/daf/competition/public-interest-considerations-in-merger-control.htm*

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JAPAN

1. Factors to consider in the review of the business combination (merger review) in Japan

1. Chapter 4 of Japanese Antimonopoly Act (hereinafter referred to as ‘AMA’) prohibits business combinations (mergers) that may be substantially to restrain competition in any particular field of trade. For example, article 10 (1) of the AMA provides as follows and “the public interest consideration” is not a constituent requirement in this article.

2. Article 10 (1): No company may acquire or hold shares of any other companies if its acquisition or holding of shares substantially restrains competition in any particular field of trade, nor may any company use unfair trade practices to acquire or hold shares in another company.

3. The Japan Fair Trade Commission (hereinafter referred to as ‘JFTC’) has published the guidelines to identify factors which the JFTC should take into account in the analysis with the aim of improving predictability and transparency of the review of business combinations. While the guidelines explain the method of market definition and factors to consider in the competition analysis, they don’t describe factors relevant to “the public interest”. The JFTC will determine whether business combinations is problematic solely from the viewpoint of competition policy.

2. Independence of the JFTC’s authority

4. In Japan, the JFTC is not obligated to consult with other administrative agencies before a decision and has never done so in practice, on the occasion of making decision in the review of the business combination (The JFTC sometimes communicates with other administrative agencies for the purpose of gathering information). Furthermore, there is no administrative agency which has the authority that can override the JFTC’s decision. This shows that the JFTC has the independence of its authority in making its decision with regard to the AMA.