

## Policies Concerning Commitment Procedures

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Japan Fair Trade Commission

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### 1. Purpose

Consequent to the establishment of the Act on the Development of Related Legislation Following the Conclusion of the Trans-Pacific Partnership Agreement and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (Act No. 108 of 2016), the procedures stipulated in the provisions of Article 48-2 to Article 48-9 (hereinafter referred to as the “Commitment Procedures”) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947, hereinafter referred to as the “Antimonopoly Act”) on the voluntary resolution through a consent between the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) and the enterprise (including trade associations, etc. and the agents of enterprises, trade associations, etc.; hereinafter the same applies.) have been adopted for cases of suspected violation of the Antimonopoly Act. In addition, to prepare the rules needed for Commitment Procedures, the JFTC has established the Rules on Commitment Procedures by the Fair Trade Commission (Japan Fair Trade Commission Rules No. 1 of 2017; hereinafter referred to as the “Rules on Commitment Procedures”).

Compared to the procedures regarding cease-and-desist orders or surcharge payment orders (hereinafter collectively referred to as the “Legal Measure”), Commitment Procedures will, enable swifter elimination of competition concerns, broaden the range of cooperative problem-solving by the JFTC together with enterprises, and contribute to efficient and effective enforcement of the Antimonopoly Act. At the same time, since Commitment Procedures are newly introduced procedures under the Antimonopoly Act, it is essential to clarify as much as possible related policies, including the subjects of Commitment Procedures and the relationships between them and the procedures conducted prior to migration to Commitment Procedures.

Accordingly, ensuring the transparency and the predictability regarding the enforcement of the law related to Commitment Procedures, the JFTC hereby stipulates the “Policies Concerning Commitment Procedures”.

### 2. Commencement of Commitment Procedures

It will be commenced when the JFTC believes that there to be a fact in violation of the provisions of the Antimonopoly Act and finds it appropriate to apply the Commitment Procedures to the activities leading to such suspicion (hereinafter referred to as the “Suspected Violation”). To be accurate, when the JFTC recognizes that it is necessary for promotion of fair and free competition (including cases in which the Suspected Violation has already ceased to exist and there is a particular need for such procedures for promotion of free and fair competition; hereinafter the same applies.), the JFTC may commence the Commitment Procedures by issuing a written notice (hereinafter referred to as the “Notice of Commitment Procedures”) to the enterprise conducting or has conducted the Suspected Violation (hereinafter collectively referred to as the “Suspected Violator”), pursuant to the provisions of Article 48-2 or Article 48-6 of the Antimonopoly Act, of the following: (i) the overview of the Suspected Violation; (ii) the clause of the laws and regulations for which there is or was suspicion of violation; and, (iii) the fact that is possible to make an application (hereinafter referred to as the “Application for Commitment Approval”) for the approval of Exclusion Measures Plan which is necessary to eliminate the Suspected Violation or a Plan for Measures to Ensure Exclusion which is necessary to ensure that the Suspected Violation has been eliminated (hereinafter collectively referred to as the “Commitment Plan”).

### 3. Consultation regarding Commitment Procedures

Commitment Procedures constitute a method for the voluntary resolution of a Suspected Violation through a consent between the JFTC and the enterprise concerned. Therefore close communication between the JFTC and the enterprise would enable the swift application of the law related to Commitment Procedures and thus be beneficial to both the JFTC and the enterprise.

For the reason, in order to advance Commitment Procedures more quickly, an enterprise under investigation by the JFTC for a suspected violation may at any time, even before the JFTC issues a Notice of Commitment Procedures, consult with the JFTC regarding Commitment Procedures for the activities subject to investigation, including confirming whether or not the Commitment Procedures are applicable to the case, or indicating its desire for the application of Commitment Procedures.

### 4. Flow of Commitment Procedures

During the period from the start of an investigation to Notice of hearing of opinions (this refers to the notice described under Article 50, paragraph (1) of the Antimonopoly Act [including when these are applied *mutatis mutandis* pursuant to Article 62, Paragraph

(4) of the Antimonopoly Act following the deemed replacement of terms]; hereinafter the same applies.), the JFTC will issue a Notice of Commitment Procedures to the Suspected Violator, in case the JFTC finds that it is appropriate to apply the Commitment Procedures.

In order to indicate to the party that has received a Notice of Commitment Procedures (hereinafter referred to as the “Notified Enterprise”) how it should eliminate the Suspected Violation or how it should ensure that the violation has been eliminated, in other words, in order to indicate what types of Commitment Plan should be prepared, the JFTC will describe in the document of the Notice of Commitment Procedures an overview of the Suspected Violation based on the facts that have been ascertained as of the time of issuing the Notice of Commitment Procedures.

However, since a Notice of Commitment Procedures does not constitute a determination that the act of the Notified Enterprise breached the Antimonopoly Act, it will not include detailed descriptions of the founded facts or application of laws or regulations to the same extent as a cease-and-desist order.

When the Notified Enterprise makes an Application for Commitment Approval, it needs to make an application within sixty days from the date when it received the Notice of Commitment Procedures pursuant to the provisions of Article 48-3, paragraph (1) or Article 48-7, paragraph (1) of the Antimonopoly Act.

After the Notified Enterprise has made an Application for Commitment Approval, the JFTC makes a judgment as to whether or not the relevant Commitment Plan conforms to the requirements for approval provided in both of the items of Article 48-3, paragraph (3) or both of the items of Article 48-7, paragraph (3) of the Antimonopoly Act (hereinafter collectively referred to as the “Approval Requirements”) and approves the Commitment Plan when the JFTC recognizes that the Commitment Plan conforms to the Approval Requirements.

## 5. Subjects of Commitment Procedures

Pursuant to the provisions of Article 48-2 of the Antimonopoly Act, possible subjects of Commitment Procedures are Suspected Violations of the provisions of said Act regarding private monopolization (Article 3 of the Antimonopoly Act), unreasonable restraint of trade (Article 3 or Article 6 of the Antimonopoly Act), acts prohibited to trade associations (Article 8 of the Antimonopoly Act), unfair trade practices (Article 6 or Article 19 of the Antimonopoly Act), prohibited aggregate concentration (Article 9, paragraph (1); Article 9, paragraph (2); Article 11, paragraph (1); or the provisions of Article 17 relevant to Article 9 or Article 11 of the Antimonopoly Act), or prohibited

business combination (Article 10, paragraph (1); Article 13; Article 14; Article 15, paragraph (1); Article 15-2, paragraph (1); Article 15-3, paragraph (1); Article 16, paragraph (1); or the provisions of Article 17 relevant to Article 10, Article 13, Article 14, Article 15, or Article 16 of the Antimonopoly Act), as well as Suspected Violations of the provisions of said Act regarding private monopolization, unreasonable restraint of trade, acts prohibited to trade associations, or unfair trade practices, even if such Suspected Violations have already ceased to exist, under the provisions of Article 48-6 of the Antimonopoly Act.

On the other hand, the following cases are not subject to Commitment Procedures due to the need for strict enforcement of Legal Measure by finding violation, as in such cases, Commitment Procedures cannot be considered necessary to promote free and fair competition:

- (i) Suspected Violations of the provisions of Article 3, Article 6, or Article 8, item (i) or item (ii) of the Antimonopoly Act, such as bid-rigging, price-fixing cartels, quantity-fixing cartels and others, and when such case falls under the provisions of Article 7-2, paragraph (1) of the Antimonopoly Act (including the provisions applied *mutatis mutandis* under Article 8-3 of the Antimonopoly Act)
- (ii) cases in which an enterprise was subject to Legal Measure pursuant to the same provision as one about the act related to a Suspected Violation (limited to when the Legal Measure has become final and binding) within ten years prior to the date on which the measure listed in Article 47, paragraph (1) of the Antimonopoly Act was taken for the first time regarding the act related to the Suspected Violation
- (iii) cases recognized as constituting vicious and serious Suspected Violations which are considered to have wide spread influence on people's livings, as a result of substantially restraining competition of a particular field of trade as described in the "JFTC Policies on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Antimonopoly Violations" (JFTC, October 7, 2005).

In other cases, the JFTC will make a judgment, based on the specific traits of each individual case, as to whether or not a resolution of competition concerns through Commitment Procedures is necessary to promote free and fair competition.

## 6. Commitment Plan

### (1) Judgment whether or not to make an Application for Commitment Approval

The Notified Enterprise will make an independent judgment as to whether or not to make an Application for Commitment Approval, regardless the fact that the Notice of Commitment Procedures has issued by the JFTC.

If the Notified Enterprise does not make an Application for Commitment Approval, then the investigation made prior to the Notice of Commitment Procedures will resume(Note 1). The Notified Enterprise will not be subject to any disadvantageous treatment in the subsequent investigation by reason of not having made an Application for Commitment Approval.

(Note1) Concerning a business combination for which notice has been submitted to the JFTC pursuant to Article 10, paragraph (2) (including imputed application thereof under the provisions of Paragraph (5) of that article), Article 15, paragraph (2):Article 15-2, paragraphs (2) or (3): Article 15-3, paragraph (2): or Article 16, paragraph (2) of the Antimonopoly Act (hereinafter referred to as the “Notice”), if the Notified Enterprise has not applied for Commitment Approval, then the period over which Notice of hearing of opinions may be made, shall be extended through the addition of sixty days to the notice period under the provisions of the text of Article 10, paragraph (9) of the Antimonopoly Act (hereinafter referred to as the “Notice Period”) pursuant to Article 10, paragraph (11) of the Antimonopoly Act or to other provisions under which that paragraph applies *mutatis mutandis*.

## (2) Application for Commitment Approval

Pursuant to the provisions of Article 8, paragraph (1) or Article 22, paragraph (1) of Rules on Commitment Procedures, an enterprise intending to make an Application for Commitment Approval shall make the application using either of the application forms Form No.1 or Form No.3 to Rules on Commitment Procedures (hereinafter collectively referred to as the “Approval Application Form”). The Approval Application Form shall include the documents listed in the items of Article 8, paragraph (2) or Article 22, paragraph (2) of Rules on Commitment Procedures as attachments (hereinafter collectively referred to as the “Attachments to Approval Application”).

Pursuant to the provisions of Article 9 or Article 23 of Rules on Commitment Procedures , an enterprise that has made an Application for Commitment Approval (hereinafter referred to as the “Applicant”) may submit to the JFTC a report of amendments in order to amend the content of the Approval Application Form and the Attachments to Approval Application (hereinafter collectively referred to as the “Approval Application Documents”) (including submittal of additional Attachments to Approval Application), after it has made an Application for Commitment Approval, given that it is during a period of up to sixty days from the date of the Notice of Commitment Procedures and until the disposition related to the Application for Commitment Approval in question has yet to be issued.

In addition, pursuant to the provisions of Article 11 or Article 25 of Rules on Commitment Procedures, during the period from the date the Application for Commitment Approval was made to the time the disposition related to the Application for Commitment Approval is implemented, the Applicant may, at any time, submit additional Attachments to Approval Application, showing relevant matters to which the JFTC should refer to in approving the Commitment Plan.

Pursuant to the provisions of Article 10 or Article 24 of Rules on Commitment Procedures, Approval Application Documents need to be submitted through methods such as by bringing directly or by delivery through registered mail.

Furthermore, pursuant to the provisions of Article 36, paragraph (1) of Rules on Commitment Procedures, during the period from the date the Application for Commitment Approval was made to the time the disposition related to the Application for Commitment Approval is implemented, the Applicant may, at any time, withdraw the Application for Commitment Approval.

Pursuant to the provisions of Article 36, paragraph (2) of Rules on Commitment Procedures, withdrawal of an Application for Commitment Approval shall be made in writing.

When an Application for Commitment Approval has been withdrawn, the investigation made prior to the Notice of Commitment Procedures will resume (Note 2). The Notified Enterprise will not be subject to any disadvantageous treatment in the subsequent investigation by reason of having withdrawn the Application for Commitment Approval.

(Note2) In the case of a business combination for which a notice has been submitted, if the Notified Enterprise has canceled an Application for Commitment Approval, the period for which Notice of hearing of opinions may be made shall be extended through the addition of the period corresponding to the length of time from the date of the Notice of Commitment Procedures to the date of the cancellation, pursuant to the provisions of Article 10, paragraph (12) of the Antimonopoly Act and each of the provisions applied mutatis mutandis under that paragraph.

### (3) Commitment Measures

#### A. Basic viewpoint

The content of Exclusion Measures or Measures to Ensure Exclusion included in the Commitment Plan (hereinafter collectively referred to as the “Commitment Measures”) is to be considered by the Notified Enterprise based on the specific traits of the individual case.

While Notified Enterprise can apply for specific behavioral measures or structural measures such as transfer of a business, in order to ensure the restoration of competition order or that the act will not be repeated in the future, the Commitment Measures of the said plan is required to satisfy the following requirements: (i) they are sufficient for eliminating the Suspected Violation or to ensure that the Suspected Violation has been eliminated (hereinafter referred to as the “Sufficiency of the Content of Measures”) and (ii) they are expected to be reliably conducted (hereinafter referred to as the “Reliability of Measures Implemented”).

#### (A) Sufficiency of the Content of Measures

The JFTC will assess whether or not Commitment Measures satisfy the Sufficiency of the Content of Measures, based on the specifics of each individual case with regard to. In assessing, the JFTC refers to the content of measures employed in the past cease-and-desist orders or other procedures which found as long as these cases have similar specifics, to some degree, to the said case, with regard to matters such as overviews of the cases or applicable provisions.

#### (B) Reliability of Measures Implemented

Even in the case the Sufficiency of the Content of Measures is satisfied, it cannot be ensured that the Suspected Violation will be or has been eliminated unless the Commitment Measures are implemented. Accordingly, a Commitment Plan cannot be approved unless the JFTC considers that the Commitment Measures will be implemented reliably by the deadline for their implementation.

For example, in a case in which there is a need for consent with a third party, such as when the content of Commitment Measures involves amendments to a contract, the requirement for Reliability of Measures Implemented cannot, in principle, be determined to have been satisfied unless consent has been reached with said third party by the time of the Application for Commitment Approval.

#### B. Typical examples of Commitment Measures

While the measures listed under (A) to (G) below can be considered typical Commitment Measures, Commitment Measures are not limited to these alone(Note 3). Also, though for some cases a single Commitment Measure may be enough to conform to Approval Requirements, in the other cases, the combination of multiple Commitment Measures may be necessary to satisfy Approval Requirements.

Pursuant to the provisions of Article 48-3, paragraph (2), item (ii) or Article 48-7, paragraph (2), item (ii) of the Antimonopoly Act, a deadline for implementation needs to be specified for each of the content of Commitment Measure to ensure the Reliability of Measures Implemented.

(A) Cessation of the Suspected Violation, confirmation that it has already ceased to exist, etc.

One necessary measure to ensure the Sufficiency of the Content of Measures is a resolution by the decision-making body (e.g., the board of directors) of the Notified Enterprise that both (i) confirms that it will cease or has already ceased the Suspected Violation and (ii) affirms that it will not engage in the Suspected Violation in the future.

(B) Notification to trade partners and others or publicizing information to users and others

In a case, for example, when the Suspected Violation involves the Notified Enterprise having prohibited its trade partners and others from trading with its competitors, it is necessary to make notification to trade partners and others or publicize information to users and others about the matters described under (A) above in order to ensure the restoration of competition order.

Accordingly, notification or publicizing information as stated above will be necessary in some cases, in order to ensure the Sufficiency of the Content of Measures.

(C) Development of a compliance program

In order to ensure matters such as the cease of the Suspected Violation or confirmation that it has already ceased to exist, the Notified Enterprise will need to develop a compliance program (including regular auditing and in-house training of employees).

Accordingly, when confirming that it will cease or has already ceased the Suspected Violation, the development of a compliance program also may be necessary in some cases, in order to ensure the Reliability of Measures Implemented.

(D) Amendments of Contracts

In some cases, for example, when the Suspected Violation involves the provision of rebates (in general, this refers to monetary payments made to trade partners systematically or per individual transaction, separately from purchase prices) by the Notified Enterprise and such rebates have the effect of restricting the competition on the products by being conditional on matters such as the degree to which its own products are dealt, the Suspected Violation is backed by existing contracts and it would not be possible to ensure the restoration of competition order without amending the content of such contracts.

Accordingly, amendment of a contract to which the Notified Enterprise is a party may be necessary in some cases, in order to ensure the Sufficiency of the Content of Measures.

(E) Transfer of businesses etc.

In a case, for example, when the Suspected Violation includes that the Notified Enterprise holds its, it might not be possible to ensure the restoration of competition order without taking measures such as the sale of such shares.

Accordingly, the Notified Enterprise may need to, in some cases, take steps such as the transfer of its business or sale of shares it owns, in order to ensure the Sufficiency of the Content of Measures.

(F) Recovery of monetary value provided by trade partners and others

In cases such as when a Suspected Violation involves a contract price reduction after the Notified Enterprise has purchased products or services, or a forced purchase of products or services which are not involved in the transaction, it would be beneficial to have the Notified Enterprise return to the trading partner the amount of gains that the Notified Enterprise had received or the amount of costs incurred by the partner, in order to ensure the Sufficiency of the Content of Measures.

(G) Reporting on the state of implementation

Even if the Commitment Measures satisfies the Sufficiency of the Content of Measures, if they are not actually implemented, then it will not be possible to ensure restoration of competition order.

Accordingly, the reporting of the state of implementation of each Commitment Measure to the JFTC by the Notified Enterprise or an independent third party to whom the Notified Enterprise has entrusted with monitoring its performance of Commitment Measures (only if said third party has been approved by the JFTC) is one measure necessary to ensure the Reliability of Measures Implemented.

The frequency of the reporting needs to be specified depending on the content of Commitment Measure.

(Note 3) For Commitment Measures related to business combinations, Part VII (Measures to Remedy Substantial Restraint of Competition) of the “Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination” (JFTC, May 31, 2004) shall be referred to.

## 7. Public comments

If the JFTC finds that it needs to seek opinions from the public in assessing whether or not an applied Commitment Plan conforms to the Approval Requirements, the JFTC will establish a period for submittal of opinions, not to exceed thirty days, in principle, and seek the opinions of third parties regarding an overview of the Commitment Plan, through its website or other means.

When the JFTC has commenced the seeking of opinions, any party with an opinion on the overview of the Commitment Plan may submit written opinions to the JFTC within the period for submittal of such opinions.

The JFTC will not reply to opinions submitted.

In case the JFTC does not seek opinions from third parties, the JFTC may take actions such as confirmation of the facts related to the Commitment Plan with the Applicant's competitors, trade partners, and others individually.

## 8. Approval or dismissal

### (1) Viewpoint on approval or dismissal of the Commitment Plan

After the JFTC has received an Application for Commitment Approval from the Notified Enterprise, the JFTC shall assess whether or not the Approval Requirements are satisfied, based on the Approval Application Documents. As described under Section 3 above, Commitment Procedures constitute a method for the voluntary resolution of a Suspected Violation through a consent between the JFTC and the enterprise concerned, and close communication between the JFTC and the enterprise would enable the swift application of the law related to Commitment Procedures and thus be beneficial to both the JFTC and the enterprise. For this reason, after Notice of Commitment Procedures, the JFTC shall explain the issues at that point in time and other matters when the JFTC deems it necessary or when the Applicant has requested an explanation of issues during the process of approval. The JFTC may also ask the Applicant to explain the content of the application.

If the Commitment Measures have been determined as conforming to the Approval Requirements, that is, as satisfying both the requirements of Sufficiency of the Content of Measures and Reliability of Measures Implemented, the JFTC shall approve the Commitment Plan describing the Commitment Measures in accordance with the provisions of Article 48-3, paragraph (3) or Article 48-7, paragraph (3) of the Antimonopoly Act.

On the other hand, if the JFTC has determined that the Commitment Measures do not conform to the Approval Requirements, in a case in which the content of Commitment Measures responds to only part of the Suspected Violation, for example, the JFTC shall render a decision to dismiss the Application for Commitment Approval in accordance with the provisions of Article 48-3, paragraph (6) or Article 48-7, paragraph (5) of the Antimonopoly Act. In such a case, the investigation made prior to Notice of Commitment Procedures will resume(Note4).

(Note4) When the JFTC has decided to reject an Application for Commitment Approval for a business combination for which notice has been submitted, the period during which Notice of hearing of opinions may be issued shall be extended with the addition of ninety days to the Notice Period, pursuant to Article 10, Paragraph (13) of the Antimonopoly Act or other provisions applicable mutatis mutandis under that paragraph.

## (2) Effect of approval

When the JFTC has approved a Commitment Plan pursuant to the provisions of Article 48-4 or Article 48-8 of the Antimonopoly Act (including cases of approval of amendment of an approved Commitment Plan), the JFTC shall not take issue any Legal Measure with regard to the Suspected Violation and the acts related to Commitment Measures. Approval of a Commitment Plan by the JFTC does not represent a determination that the Applicant's Suspected Violation constitutes a violation of the provisions of the Antimonopoly Act.

## 9. Modification to an Approved Commitment Plan

An Applicant that has received approval of a Commitment Plan (hereinafter referred to as the "Approved Enterprise") shall implement the Exclusion Measures or Measures to Ensure Exclusion (hereinafter collectively referred to as the "Approved Commitment Measures") described in the Commitment Plan for which it has received approval (hereinafter referred to as the "Approved Commitment Plan").

If it would be difficult for the Approved Enterprise to implement the Approved Commitment Measures by the deadline for their implementation due to circumstances arising after approval of the Commitment Plan, or there is no longer a need to implement the Approved Commitment Measures due to changes in economic conditions or other reasons, the Approved Enterprise may apply for approval of modifications to the Approved Commitment Plan (hereinafter referred to as the "Application for Approval of Modification").

Pursuant to the provisions of Article 14, paragraph (1) or Article 28, paragraph (1) of Rules on Commitment Procedures, an Approved Enterprise intending to modify an Approved Commitment Plan must apply for approval of such modifications using the application Form No.2 or Form No.4 to Rules on Commitment Procedures (hereinafter collectively referred to as the "Modification Approval Application Form"). The documents provided in the items of Article 14, paragraph (2) or Article 28, paragraph (2) of Rules on Commitment Procedures (hereinafter collectively referred to as the "Attachments to the

Modification Approval Application”) need to be attached to the Modification Approval Application Form.

Pursuant to the provisions of Article 16 or Article 30 of Rules on Commitment Procedures, the Modification Approval Application Form and Attachments there to need to be submitted through methods such as by bringing directly or by delivery through registered mail.

Same as a case of approval of a Commitment Plan as described under Section 8 (1) above, in approving modification to an Approved Commitment Plan, the JFTC shall approve the modifications to the Approved Commitment Plan, when the JFTC has assessed that the content of Commitment Measures after such modification conforms to the Approval Requirements, in accordance with the provisions of Article 48-3, paragraph (3) applicable *mutatis mutandis* under Article 48-3, paragraph (9) or Article 48-7, paragraph (3) applicable *mutatis mutandis* under Article 48-7, paragraph (8) of the Antimonopoly Act. While neither the Antimonopoly Act nor Rules on Commitment Procedures specify a deadline for Application for Approval of Modifications, in a case, for example, when an Application for Approval of Modifications has been submitted immediately prior to the deadline for implementation of the Commitment Measures, the JFTC shall assess as to the Sufficiency of the Content of Measures and the Reliability of Measures Implemented based on a consideration of the circumstances that led the Approved Enterprise to apply for approval of modification at such timing.

The Approved Enterprise will independently determine as to whether or not to make an Application for Approval of Modification.

#### 10. Rescission of approval of an Approved Commitment Plan

##### (1) Rescission of approval

Pursuant to the provisions of Article 48-5, paragraph (1) or Article 48-9, paragraph (1) of the Antimonopoly Act, the JFTC must render a decision to rescind the approval of a Certified Commitment Plan when the JFTC finds that the Approved Commitment Measures have not been implemented or that the Approved Enterprise obtained the approval of the Commitment Plan based on false or wrongful facts.

In addition, when the JFTC considers particularly necessary, the JFTC may exercise its investigatory authority pursuant to the provisions of Article 47 of the Antimonopoly Act to determine whether or not there are grounds for rescission as provided in any of the items of Article 48-5, paragraph (1) or Article 48-9, paragraph (1) of the Antimonopoly Act, pursuant to the provisions of Article 68, paragraphs (1) or (2) of the Antimonopoly Act.

## (2) Effect of rescission of approval

When an Approved Commitment Plan has been rescinded, the approval under the provisions of Article 48-4 or Article 48-8 of the Antimonopoly Act shall no longer be in effect and the investigation made prior to Notice of Commitment Procedures will resume (Note 5).

In usual case, the period of limitation (this refers to the period from the time the violation was complete and during which Legal Measure may be taken; hereinafter the same applies.) for Legal Measure (except for cases related to aggregate concentration or business combination) shall be the period of seven years from the date when the violation was complete. However, when the JFTC has rescinded the approval of an Approved Commitment Plan pursuant to the provisions of Article 48-5, paragraphs (3) or (4) or Article 48-9, paragraphs (3) or (4) of the Antimonopoly Act, notwithstanding the period of limitation, the JFTC may take Legal Measure within the period of two years from the date of the decision on such rescission.

(Note 5) When the JFTC has canceled an Approved Commitment Plan for a business combination for which notice has been submitted (only in cases of cancellation as described in Article 48-5, paragraph (1), item (i) of the Antimonopoly Act), then Notice of hearing of opinions must be issued within one year from the date of the decision to cancel the certified Commitment Plan, pursuant to Article 10, paragraph (14) of the Antimonopoly Act or other provisions applicable *mutatis mutandis* under that paragraph.

## 11. Public announcement of approval of the Commitment Plan

After the approval of a Commitment Plan, in order to make clear what kinds of specific acts could have an adverse effect on free and fair competition and to ensure the transparency and the predictability regarding the enforcement of the law related to Commitment Procedures, the JFTC shall announce in public an overview of the Approved Commitment Plan, an overview of the Suspected Violation related to such approval, and other necessary matters. It shall be noted to such public announcement that the JFTC has not determined a violation of the Antimonopoly Act to have taken place.

In principle, no such public announcement shall be made when the JFTC has dismissed an Application for Commitment Approval or rescinded the approval of an Approved Commitment Plan, or the Applicant has withdrawn its Application for Commitment Approval, since the investigation made prior to the Notice of Commitment Procedures will resume.

## 12. Relationship of procedures conducted prior to migration to Commitment Procedures

### (1) Exercise of investigatory authority pursuant to Article 47 of the Antimonopoly Act after migration to Commitment Procedures

It is not prohibited by law for the JFTC to make an investigation to confirm the facts of the matter as necessary for taking Legal Measure, including the exercise of its investigatory authority pursuant to the provisions of Article 47 of the Antimonopoly Act or seeking voluntary testimony, even after the JFTC found that it would be appropriate to initiate Commitment Procedures and issued a Notice of Commitment Procedures. Having said that, in order to facilitate the smooth implementation of Commitment Procedures, the JFTC shall not, in principle, make any investigation of the Notified Enterprise to confirm the facts of the matter as necessary for taking Legal Measure against that enterprise during the period before the dispositions related to the Application for Commitment Approval.

However, in cases such as when, in the approval of the Commitment Plan following the Notice of Commitment Procedures, (i) the JFTC has a firm belief that there are grounds for dismissal of the Commitment Plan and it is expected that the Applicant will not submit sufficient prima facie evidence and other materials, or (ii) it is not possible to secure the voluntary cooperation of the Applicant's trading partners and others for the JFTC's confirmation of facts and interviews, then even during the period before the dispositions related to the Application for Commitment Approval, the JFTC may make an investigation to confirm the facts of the matter as necessary for purposes of taking Legal Measure.

### (2) Notice of hearing of opinions after commencement to Commitment Procedures

From the time when the JFTC has issued Notice of Commitment Procedures through the dispositions related to the Application for Commitment Approval, the JFTC shall not, in principle, issue a Notice of hearing of opinions to the Notified Enterprise, although such notice is not prohibited by law.

### (3) Treatment of materials submitted by the enterprise in Commitment Procedures

As described under (1) above, the JFTC shall not, in principle, make an investigation to confirm the facts of the matter as necessary to take Legal Measure against the Notified Enterprise during the period before the disposition related to the Application for Commitment Approval.

However, if, in a case in which the JFTC has dismissed an Application for Commitment Approval or rescinded the approval of a Commitment Plan, or the Applicant has withdrawn the Application for Commitment Approval and the materials submitted by

the Applicant in connection with the application cannot be used at all as evidence, then such practice may impede necessary fact finding for taking Legal Measure. For this reason, in such a case, the materials submitted by the Applicant shall not, be returned, and they can be used as evidence in fact finding for taking Legal Measure.