GUIDELINES CONCERNING COMPANIES WHICH CONSTITUTE AN EXCESSIVE CONCENTRATION OF ECONOMIC POWER

November 12, 2002

Fair Trade Commission

Preface

The Act for Partial Amendment of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (hereafter referred to as "Antimonopoly Act") shall come into force on November 28, 2002, and Section 9 of the Act shall prohibit establishment or transformation of a company which constitutes an excessive concentration of economic power by the acquisition or possession of shares (includes those of employees) of a Japanese company (hereafter referred to as "acquisition etc."). Although the conditions of the prohibition shall be defined in Section 9 (3), the Fair Trade Commission thinks that it is important to achieve greater understanding and predictability among entrepreneurs of what kind of companies will be prohibited to establish or transform an existing company into and to strive for transparency by showing the interpretation of prohibited companies in advance of the enforcement of this regulation. Therefore, we have drawn up "Guidelines Concerning Companies which Constitute an Excessive Concentration of Economic Power" and make it public.

Besides it come into force on November 28, 2002 and "Guidelines Concerning Holding Companies which Constitute an Excessive Concentration of Economic Power" (Issued on December 8, 1997, Fair Trade Commission) shall be abrogated.

1. Subject of the Regulation

(1) Definition of a Company Group

a. Upon the judgment of constituting excessive concentration of economic power, not only the company itself but "the company and its subsidiaries and other companies in

Japan whose overall business scale over significant number of business fields are controlled by the company by means of holding of stock "(Section 9 (3)), or "the company + its subsidiaries + its virtual subsidiaries," as a company group, should be taken into the consideration whether the group constitutes excessive concentration of economic power.

b. A subsidiary means the company in Japan in which greater than 50 percent of its total voting right (except for the stocks issued or voting right given to the shares under the Article 211-2 (4) of the Commercial Act (Law No. 48 of 1899) and including the voting right attached to the stocks issued and shares eligible for voting) given to all the stock holders (or all the individual members) is owned by another company. (Section 2 (10) and 9 (4))

c. A virtual subsidiary ("other companies in Japan whose overall business scale over significant number of business fields are controlled by the company by means of holding stock") means the company in Japan in which greater than 25 percent and 50 percent or less of its total voting right is owned by the company (including those owned by its subsidiaries, the same applies hereinafter) and in which its voting rights are the largest among all the holders (excepting the case that the holders hold the same amount of the voting right).

(2) Prohibited Cases in which companies are prohibited to establish or transform into

a. When a company is established that constitutes excessive concentration of economic power by possessing stocks of other companies in Japan.

b. When a company is transformed into a company which constitutes excessive concentration of economic power by possessing stocks of other companies in Japan even if it did not constitute excessive concentration of economic power when it was established.

2. Interpretation of "Excessive Concentration of Economic Power"

(1) As defined in Section 9 (3), "excessive concentration of economic power" shall refer to a situation in which a company group has (a) business activities whose overall scale is exceptionally large and covers a substantial number of principle fields of business; (b) a high degree of influence over other companies derived from trades involving; or (c) a substantial position in each of a substantial number of principle fields of business that are interrelated, and in doing so, has big influence over the national economy and obstructs enhancement of fair and free competition.

The interpretation of this provision is that a company is considered to be a company group which constitutes an excessive concentration of economic power if it fulfills all of the following conditions:

a. Either of the following conditions applies to the configuration of the said company group:

(a) It has business activities whose overall scale is exceptionally large and covers a substantial number of principle fields of business,

(b) It has a high degree of influence over other companies derived from trades involving funds, or

(c) it occupies a substantial position in each of a substantial number of principle fields that are interrelated.

b. It has big influence over the national economy, and

c. It obstructs enhancement of fair and free competition.

Companies which are prohibited to establish or transform into because they meet the above conditions and constitute an excessive concentration of economic power are interpreted as ones that are applicable to any one of the following (2) Type 1 to (4) Type 3, provided that this must not apply when companies are applicable to (5) "Samples of Companies which Do Not Constitute Excessive Concentration of Economic Power".

(2) Type 1

A company group is (a) of large scale and has (b) large-scale enterprises in each of a (c) substantial number of (d) principal fields of business.

(a) "A company group is of large scale" shall be a company group in which the total assets of the group exceed 15 trillion JPY. Total assets shall be calculated by adding assets of the member companies of the group and subtracting double-counting transactions (investment account - capital account and credit - debt) among companies within the group. (However, the total assets of a financial company belonging to the company group shall be not included in the calculation.)

(b) "Large-scale enterprises" shall be companies whose total assets exceed 300 billion JPY each, on a non-consolidated basis. The business field to which the said company belongs shall be the one which the said company mainly performs.

(c) "A substantial number" shall be five or more.

(d) "Principle fields of business" shall be types of industries which are included in the 3-digit classifications of the Japan Standard Industrial Classification and in which shipment volume exceeds 600 billion JPY. However, industries belonging to the same type of 2-digit classification shall be considered the same field of business if it is deemed to be the same type of business in light of the scope of entry regulations and actual conditions of business activity. (See List 1)

(3) Type 2

A company which owns both (a) a large-scale financial company and (b) a large-scale company except (c) a company engaged either in financial business or in a line of business closely related thereto.

(a) "A large-scale financial company" shall be a financial company whose total assets exceed 15 trillion JPY, on a non-consolidated basis.

(b) "A large-scale company" shall be only that company whose total assets exceed 300 billion JPY each, on a non-consolidated basis.

(c) "A company engaged in either financial business or in a line of business closely related thereto" shall be a company operating banking or insurance business and a company which the Fair Trade Commission designates (Section 10 (2)).

(4) Type 3

A company which owns (a) a substantial number of (b) companies each of which possesses a substantial position (c) over a principal field of business, (d) the said fields of business being interrelated but different for each company.

In determining whether a company is a Type 3 company, we shall adopt a consideration according to each of the following interpretations below, summing up, individually and concretely, such factors as the size and the number of the business fields involved, the degree of the influence of the company, and so on.

(a) "A substantial number" shall be five or more. (Three or more, depending on the degree of influence which the said companies possess, if the said company owns a company which possesses a substantial position over a principal field of business with extremely vast scale.)

(b) "Companies each of which possesses a substantial position" shall be companies each of which commands a sales share of not less than ten percent in the said field of business.

(c) "A principal field of business" shall be a type of industry which is included in the 3-digit classifications of Japan Standard Industrial Classification and in which shipment volume exceed 600 billion JPY. However, industries belonging to the same type of 2-digit classification shall be considered the same field of business if it is deemed to be the same type of business in light of the scope of entry regulations and actual conditions of business activities. (See List 1)

(d) "The said fields of business being interrelated"
The degree of interrelatedness shall be examined with reference to the degree of actual trade dependency among different fields of business and the circumstances of user choice. The following are examples of situations in which the fields of business are interrelated.

(i) Trade relationships
When there are close trade relationships between the business fields through good and service supplies such as those between manufacturing industry and raw material industry, and between manufacturing industry and plant and equipment industry, and so on. (See List 2)

(ii) Complement or substitute relationships
When the goods and services provided are complementary to or substitutable for one another from the viewpoint of users such as when users consume both of goods and services in combination or utilize them selectively. (See List 3)

(Note) Sometimes a company group including multiple member companies which belong to the same field of business may be formed. In this case, to judge the degree of influence of those companies, not only individual shares of those companies in the business field, individual their sales rankings or other business situation but also all those combined for the member companies in the group should be taken into the consideration.

(5) Samples of "Companies which Do Not Constitute an Excessive Concentration of Economic Power"

a. When a company establishes subsidiaries solely through the process of splitting off its operational divisions
When a company splits off its business sector being performed by itself to establish its subsidiaries and acquires 100 percent of the stock of the said subsidiaries. (This shall apply only to cases in which 100 percent ownership is retained from the outset of their establishment.)

b. A venture capital company

When a company is a venture capital investing those companies not listed at the Security Exchanges stipulated in the Section 2 (14) of the Security Exchange Law (Law No. 25 of 1948) or at the Over-the-counter register book stipulated in the Section 75 (1) of the Law, and with less capital than 500 million JPY and with the ratio of the total amount of the research and development expenditure and the cost stipulated in the Section 14 (1) 5 of the Corporate Tax Ordinance (Ordinance No. 97 of 1965) against the ordinary profit (the operating profit minus the revenue arising from its fixed assets and the transfer of securities stipulated in the Section 2 (22) of the Corporate Tax Law (Law No. 34 of 1965)) is more than 3 percent or those companies with less than 1 year operation history and employing 2 full time researchers or more which account more than 10 percent of the number of its total officials and employees.

c. Mutual entry of financial companies into another business sphere

When a financial company enters another sphere of financial business different from its own by newly establishing financial companies in the said business field.

d. When the scale of business is small

When the total assets of the company and its subsidiaries are 600 billion JPY or less on a consolidated basis.

3. Application of Other Provisions of the Antimonopoly Act Regarding Companies

Based on the views outlined in 2, even when a company is not considered "a company which constitutes excessive concentration of economic power", it is prohibited for the company to hold stock where such holding of the stock may substantially restrain competition in a individual market or other cases by Section 10. Furthermore, Section 15 shall apply for mergers of companies and Section 15-2 shall apply for splitting of companies. Through the implementation of these provisions, certain actions are prohibited if the actions may substantially restrain competition in an individual market.

4. Prior Consultation System

When the entrepreneurs ask the Fair Trade Commission whether their plans of establishment of companies, etc. raise problems with respect to Section 9 of the Antimonopoly Act prior to their actual actions, the Commission will answer based on this “Guidelines”.

Excluding those portions that include confidential information of the entrepreneurs, the content of prior consultation on establishment of a company, etc., and answers from the Commission will be made public in abridged form insofar as this does not present a problem.

(List 1) Examples of fields of business that are regarded to be the same field of business:

- Paper manufacturing industry (184), paper container manufacturing industry (185) and other pulp, paper, processed paper product manufacturing industries (189)
- Computers and computer equipment manufacturing industry (305), electronic components and device manufacturing industry (308)
- Domestic telecommunications (471) and international telecommunications (472)

(The numbers in parenthesis ( ) are the classification number under the Japan Standard Industrial Classification. The same applies in List 2 and 3.)

(List 2) Examples of business fields in which there are business transactions that are regarded to be interrelated

- General civil engineering and construction industry (091) and:
- Cement and cement products manufacturing industry (252)
- Blast furnace iron manufacturing industry (261)
- Building and land purchasing industry (701)
- Various commodity wholesale industries (481)
- General industrial equipment and apparatus manufacturing industry (297)
- Electric appliances for office, service and consumer use manufacturing industry (298)
- Hardware for construction and architectural use (284)
- Automobile and auto part manufacturing industry (311) and:

  Blast furnace iron manufacturing industry (261),
  Electronic components and devices manufacturing industry (308),
  Tire and inner tube manufacturing industry (231),
  Plastic board, etc. manufacturing industry (221),
  Glass and glass product manufacturing industry (251) and
  Various commodity wholesale industries (481).

- Shipbuilding, repair industry and marine engine product manufacturing, etc. (314) and the overseas marine transportation industry (421)
- Electric power industry (351) and the oil refining industry (211)
- Banking (622), securities (681), life insurance (691), credit guarantee card industry (663), money-lending business (661) and non-life insurance (692)

(List 3) Examples of business fields that are complement to or substitute for one another and are regarded to be interrelated

- Domestic telecommunications industry (excepting wire broadcasting telephone industry) (471) and telecommunications equipment and related equipment manufacturing (304)
- Banking (622), securities (681), life insurance (691), credit guarantee card industry (663), money-lending business (661) and non-life insurance (692)
- Movie theaters (761) and film and video production and distribution (801)
- Software (821) and computers and computer equipment manufacturing (305)
- Advertising agency business (831) and newspaper industry (191) and private broadcasting industry (excepting wire broadcasting industry) (812)