

GUIDELINES CONCERNING THE INTERPRETATION OF
“SPECIFIC BUSINESS FIELDS” AS DEFINED
IN THE PROVISIONS OF “MONOPOLISTIC SITUATIONS”

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General Secretariat, Fair Trade Commission

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1. Definition of terms

(1) Goods

- a. “Goods of the same description” are goods with “function and utility” of the same description.

Function refers to physical actions and uses of a good, and utility refers to the satisfaction and economic usefulness generated by a good. “Goods of the same description” are usually of the same description in terms of the “facilities or kinds” of business activities related to supply of the goods, but even if there are differences here, goods that have the “function and utility” of the same description and that are supplied as an alternative to the same demanders are “goods of the same description.” In the case of manufacturers, “goods of the same description” generally correspond to 6-digit classifications of the Census of Manufactures, but there are possible exceptions due to differences in “function and utility.”

Examples:

- * “General color photographic film” is included as “photographic film” along with

“cinematographic color photographic film,” “general black and white photographic film,” “cinematographic black and white photographic film,” “x-ray film,” etc., but each has its own use and their “function and utility” are all different, therefore “general color photographic film” is “goods of the same description” in this case, not “ photographic film.”

* For “two-wheeled vehicles,” both vehicles under 125cc and those over 125cc are classified as 6-digit on the Census of Manufactures, but in terms of their “function and utility,” the 125cc division is meaningless, so “two-wheeled vehicles” are “goods of the same description.”

b. “Goods capable of being supplied without making any significant change to business facility or kind of business activities” refers to goods that can be supplied without any qualitative change to the basic form in the business activities that are actually being carried out to supply “goods of the same description.”

Facilities refer to an entire system of physical equipment that is organically combined or deployed in order to supply “goods of the same description,” and kinds refers to business activity methods, such as suppliers of raw materials, sales methods, sales channels and the like related to “goods of the same description.” “Business facilities or kinds of business activities” is judged on the basis of an overall consideration of both.

c. “Particular goods” are the “goods capable of being supplied without making any significant change to business facilities or kinds of business activities” in B., in addition to “goods of the same description” in A.

There does not necessarily have to be any overt relationship of competition between the goods themselves, but if when looking at the “facilities or kinds” of business activities related to supply of the goods, there is a probability that such competition will easily arise, both are included in the same category as “particular goods.”

In general, it can be said that there is a probability, for example, among goods that are being supplied through “facilities or kinds” which have no significant differences, and that have a relevance in the aspect of “function and utility,” or among goods that are being supplied in an alternate way by the same entrepreneur through common “facilities or kinds.”

Example:

* “Beer” and “sparkling liquor” share the same basic brewing facilities. As sparkling liquor can be brewed at a brewery without any significant change to

the brewing facility for “beer,” and most of the major “beer” brewers are producing “sparkling liquor,” these products overall are “particular goods.”

- d. “Other goods having a strikingly similar function and utility” (hereinafter referred to as “similar goods”) are not included in “particular goods,” but have a close substitutive relationship with “similar goods,” and actual direct competition can be seen between the “similar good” and “particular goods.”

“Similar goods” are not necessarily strikingly similar in “function and utility” to all “particular goods,” but it must at least be recognized that they have a close substitutive relationship with the “goods of the same description” which are the essence of “particular goods.” Therefore, goods that are regarded as “similar goods” are very limited.

Example:

- * “General color photographic film (excluding instant color film)” and “instant color film” are produced by different methods and are differentiated by how easy they are to develop. However, their “function and utility” are strikingly similar in the respect that they are both used for general color photography. Therefore, “instant color film” is a “similar good” to “general color photographic film (excluding instant color film).”

(2) Services

“Services of the same description” are services that have functions and utilities of the same description. These are usually demarked using detailed classifications (4-digit classifications) of the Japan Standard Industrial Classification as a reference.

2. Market structure requirements

(1) Domestic total supply value requirements

a. Goods

- (a) The value (domestic total supply value) obtained by subtracting the value of “particular goods” and “similar goods,” which are exported, from the total shipping value of those goods, adding the value of those goods which are imported to the above value, and deducting an amount equivalent to the amount of taxes levied directly on goods of the same description concerned from the above value must be over 100 billion JPY.

- (b) Taxes levied directly on the goods concerned include consumption tax, liquor tax, tobacco tax, sugar tax, trump tax, gasoline tax, local road taxes, petroleum tax, petroleum gas tax and customs duties.

b. Services

- (a) The value (domestic total supply value) obtained by deducting an amount equivalent to the amount of taxes related to the services concerned levied on the recipients of the services concerned from the total value of “services of the same description” supplied domestically must be over 100 billion JPY.
- (b) The amount of supply is the amount of money obtained for the provision of services. Amount of freight revenues in the transportation business, amount of brokerage commissions in the real estate brokerage business and other amounts correspond to this.
- (c) Taxes related to services of the same description concerned levied on the recipients of the services concerned include golf course utilization tax and bathing tax.

(2) Market share requirements

- a. One company must have over 50% of the market share or two companies must hold over 75% of the market share between them.
- b. (a) In the case of the manufacturing industry, market share is calculated according to the following formula (example in the case of quantity):

$$\text{Market share} = \frac{\text{(The quantity of [“particular goods” + “similar goods”] shipped by entrepreneurs concerned) - (the quantity of [“particular goods” + “similar goods”] exported by entrepreneurs concerned)}}{\text{(The total amount of [“particular goods” + “similar goods”] shipped) - (the total amount of [“particular goods” + “similar goods”] exported) + (the total amount of [“particular goods” + “similar goods”] imported)}}$$

- (b) In the case of “services of the same description,” market share is calculated according to the following formula:

$$\text{Market share} = \frac{\text{(The amount of “services of the same description” supplied domestically by entrepreneurs concerned)}}{\text{(The total amount of “services of the same description”}}}$$

supplied domestically)

- c. Market share is, in principle, calculated by quantity. If calculating by quantity is not appropriate, then market share is calculated by price amounts.
- (a) As for the goods concerned, if it is recognized that there is a significant price difference and that there is an established practice of calculating supply results, etc., by price, then the calculation is performed by price amounts.
 - (b) As for “particular goods” and “similar goods,” although it is stated that it is appropriate for both of them to be calculated by quantity, even in cases where no common standards exist overall for quantity, the calculation is performed by quantity where it is recognized that there is a rational conversion method, and in other cases, the calculation is carried out by price amounts.
 - (c) In the case of “services of the same description” also, the calculation is performed by quantity where rational indexes can be obtained, such as the caloric amount of town gas supplied or the amount of electricity supplied. However, there are many cases in which the calculation cannot be performed by quantity due to the nature of services, and in such cases the calculation is carried out by price amounts.
 - (d) Unlike in the case of the calculation of domestic total supply value, in the case where market share is calculated by price amounts, an amount equivalent to the amount of taxes levied directly on the goods concerned or taxes related to the services concerned that are levied on the recipients of the services concerned is not deducted.
- (3) Business fields recognized as corresponding to market structure requirements of monopolistic situations in the recent calendar year, and business fields recognized as likely to come under such requirements according to changes in future economic circumstances, are shown in the appendixes.

Appendix 1

Particular goods			
Goods of the same description	Goods capable of being supplied without making any significant change to business facilities or kinds of business activities	Particular business fields	Similar goods
Beer	Sparkling liquor	Beer and beer-type beverage industry	
Whiskey		Whiskey industry	
Cigarettes	Cigars, cut tobacco, pipe tobacco	Tobacco manufacturing industry	
General color photographic film (excluding instant color film)		Color photographic film manufacturing industry	Instant color film
Plastic drinking bottles		Plastic drinking bottle manufacturing industry	
Interior/exterior tiles (including mosaic tiles)	Floor tiles	Tile manufacturing industry	
Boilers		Boiler manufacturing industry	
Turbines		Turbine manufacturing industry	
Beverage vending machines		Beverage vending machine manufacturing industry	
Incandescent instruments (for automobiles)		Incandescent instrument (for automobiles) manufacturing industry	
Lead acid storage batteries		Lead acid storage battery manufacturing industry	
Digital transmission equipment		Digital transmission equipment manufacturing industry	
Router		Router	

		manufacturing industry	
Inkjet printers		Inkjet printer manufacturing industry	
Central processing unit		Central processing unit manufacturing industry	
Two-wheeled vehicles		Two-wheeled vehicle manufacturing industry	
Shock absorbers		Shock absorber manufacturing industry	
Air conditioners for transportation equipments		Manufacturing industry of air conditioners for transportation equipment	

Appendix 2

Services of the same description	Particular business fields
Fixed telecommunications	Fixed telecommunications business
Mobile telecommunications	Mobile telecommunications business
Operating system for personal computer	Operating system for personal computer business
Rail freight transport	Rail freight transport business
Domestic air passenger transport	Domestic air passenger transport business
Dust control	Dust control business
Substitutional medical administrative work	Substitutional medical administrative work business

Note: (1) These appendixes show business fields recognized as corresponding to domestic total supply value requirements and market share requirements of monopolistic situations and business fields recognized as likely to come under such requirements according to changes in future economic circumstances (business fields recognized as having a total domestic supply value over 95 billion JPY and a top-one-company market share of more than 45% or a top-two-company total market share of more than 70% in 2000) based on a survey carried out by the Fair Trade Commission of Japan.

(2) The order of goods in these appendixes is based on the Census of Manufactures and the order of services is based on the Japan Standard Industrial Classification.