Attachment 2

Major Business Combinations in FY 2022

June 28, 2023 Japan Fair Trade Commission

From the perspective of ensuring transparency and improving the predictability of business combination reviews, the Japan Fair Trade Commission (JFTC) has enacted and published its approach to the application of the Antimonopoly Act in business combinations in the "Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination" (May 31, 2004, the JFTC; hereinafter referred to as the "Guidelines"). In addition, the JFTC has compiled and published the results of reviews of major business combination cases in each fiscal year.

The JFTC is also publishing the results of the review of major business combinations in FY 2022.

Companies planning a business combination are encouraged to utilize the Guidelines as well as the major examples of business combinations published herein.

	Form of business combination, etc				tc.			
Number	Case (Major field of examination)	Horiz ontal	Verti cal	Conglo merate	Rem edy	Econ omic analy sis	Informat ion exchang e with overseas authoriti es	Page
1	Acquisition of stock in Kumamoto Flour Milling co., Ltd. by Nisshin Flour Milling Inc. (Flour)	0		_		_	_	1
2	Acquisition of stock in JFE PipeFitting Mfg. Co., Ltd. by RikenCorporation(Malleable fitting)	0	-	-	-	-	-	12
3	Joint share transfer by Riken Corporation and Nippon Piston Ring Co., Ltd. (Piston ring)	0		-		-	_	20
4	Acquisitionofnickel-cadmiumbatteriesbusinessofSANYO ElectricCo., Ltd.byTheFurukawa BatteryCo., Ltd.co., Ltd.co., Ltd.(Cylindrical nickel-cadmium battery)	0	0	-	-	Ο	-	38
5	Acquisition of stock in Tenneco Inc. by Pegasus Holdings III, LLC (automotive exhaust treatment equipment)	-	0	-	-	-	-	60
6	Establishment of a joint investment company in the large marine engine business by Imabari Shipbuilding Co., LTD. and Hitachi Zosen Corporation (Marine engines)	-	0	-	0	-	-	72

Major business combinations in FY 2022

7	Integration of Microsoft Corporation and Activision Blizzard, Inc. (games for videogame consoles, etc.) (Announced on March 28, 2023)	0	Ο	0	_	Ο	Ο	104
8	Acquisition of stock in The Kanagawa Bank, Ltd. by The Bank of Yokohama, Ltd. (Business loans to small and medium-sized enterprises)	0	-	-	-	-	-	148
9	Acquisition of stock in CCCMK HOLDINGS Co.,Ltd. by Sumitomo Mitsui Financial Group, Inc. and Sumitomo Mitsui Card Company, Limited (Shared points)	0	-	Ο	-	-	-	155

- (Note 1) The order in which the cases are listed is based on the order in the Japanese Standard Industrial Classification of Businesses pertaining to the goods or services that were the subject of the business combination review.
- (Note 2) In each case, confidential information regarding the Parties and the names of competing enterprises are withheld. For competing enterprises, an arbitrary letter is used.
- (Note 3) The market share, post-action HHI (the Herfindahl-Herschman Index; same applies hereinafter) level, and the incremental HHI based on the action, etc. listed in each case are calculated based on the materials submitted by the Parties and are expressed as approximate numbers by the JFTC. In this case, in principle, market share is described in units of 5%. For example, "approximately 40%" is used for a market share of 37.5% or more but less than 42.5%. Thus, the total value does not necessarily equal 100.
- (Note 4) In each case, a horizontal business combination refers to a business combination between companies in a competitive relationship in a particular field of trade. A vertical business combination refers to a business combination between companies at different stages of a transaction, for example, a merger between a manufacturer and a distributor of goods. A conglomerate business combination refers to a business combination that does not fall under either a horizontal or a vertical business combination, for example, a merger between companies in different industries, or a shareholding between companies in different geographical ranges in a particular field of trade.

Case 1 Acquisition of stock in Kumamoto Flour Milling co., Ltd. by Nisshin Flour Milling Inc.

Part I The Parties

Nisshin Flour Milling Inc. (JCN 2010001074767) ("Nisshin Flour Milling") and Kumamoto Flour Milling Co., Ltd. (JCN 7330001001453) ("Kumamoto Flour Milling"). Both companies are mainly engaged in the manufacture and sale of wheat flour.

Nisshin Seifun Group (JCN 8010001008736), the ultimate parent company of Nisshin Flour Milling, and the Company Group already in a joint relationship with Nisshin Seifun Group shall hereinafter be referred to as the "Nisshin Flour Milling Group," and the Company Group already in a joint relationship with Kumamoto Flour Milling shall hereinafter be referred to as the "Kumamoto Flour Milling Group. The Nisshin Flour Milling Group and Kumamoto Flour Milling Group are collectively referred to as the "Company Group."

Part II Outline of the case and applicable provisions

This case is about Nisshin Flour Milling's plan to acquire more than 50% of the voting rights in Kumamoto Flour Milling's stock (the "Action").

The applicable provision is Article 10 of the Antimonopoly Act.

There are multiple competitive or business relationships that exist among the businesses operated by the Company Group. Of the examinations conducted regarding this point, the following is a detailed description of the results of the review of horizontal business combinations in the flour manufacturing and sales business in the Kyushu area, which was considered to have a relatively large impact on competition.

Part III Background of the review

The JFTC examined the materials submitted by the Company Group, conducted questionnaires and interviews with competitors and users, and also examined the materials and minutes related to the Action taken from actual meetings, including those of the Board of Directors, which the JFTC requested the Group to submit.

Part IV Particular field of trade

1. Product overview

(1) Wheat flour

Wheat flour is a cereal flour produced from wheat that is used as an ingredient in confectionery, bread, noodles, and other products. Wheat grains are classified into three parts (endosperm, epidermis, and germ). The

endosperm, which makes up about 80% of the wheat grain, is the part that becomes flour¹.

Flour is classified into three types according to the quality and quantity of protein (gluten) it contains: strong flour, medium-strength flour, and light flour. For example, hard wheat, which is the wheat used to make strong flour for bread, etc. (hereinafter referred to as "raw wheat"), has a high gluten content, while soft wheat, which is the wheat used to make light wheat flour for cakes, etc., has a low gluten content. Strong, medium and light flours are made from different types and varieties of raw wheat, but there is no difference in manufacturing facilities and processes.

Domestic wheat flour production declined from 4.725 million tons in 2010 to 4.482 million tons in 2020 and is expected to continue to decline in the future.

Of the total volume of raw wheat in the domestic market, 4.88 million tons is wheat imported from overseas (hereinafter referred to as "imported wheat") and 820,000 tons is wheat produced in Japan (hereinafter referred to as "domestic wheat").² About 86% of the wheat flour distributed in Japan is made from imported wheat.

Imported wheat is procured by the national government (Ministry of Agriculture, Forestry and Fisheries, MAFF) through trading companies and sold to enterprises that manufacture and sell flour (hereinafter referred to as "flour milling companies"). Under Article 42-2 of the "Act on Stabilization of Supply, Demand and Prices of Staple Food (Act No. 113 of 1994, hereinafter referred to as "the Act")," issued by the national government (MAFF), imported wheat is sold to each flour milling company based on the government sale price, and each milling company can purchase imported wheat from the government (MAFF) in the quantity it desires.³

Flour is broadly classified into commercial flour and household flour. However, the quality of both is the same. The manufacturing equipment and processes are almost identical, differing only in that household flour is packaged in small packages. Most of the flour sold by flour mill companies is commercial

¹ In the flour manufacturing process, there are inevitable by-products, such as "powder" made from the endosperm part near the epidermis and "bran" made from the epidermis. These are different from edible flours, which are mainly used for animal feed or as an adhesive for plywood.

² Ministry of Agriculture, Forestry and Fisheries, "The situation concerning wheat," March 2022 p. 1.

This volume is the average volume for the past five years (FY 2008 - FY 2020).

³ In terms of how domestic wheat is procured, flour milling companies procure wheat directly from producer organizations, such as the National Federation of Agricultural Cooperative Associations. Transactions are based on pre-sowing contracts so that production can be planned according to demand. The primary wheat varieties are listed for bidding, which is conducted by the National Rice, Wheat and Barley Improvement Association. Bids are taken for approximately 30% of the planned annual sales volume of each type prior to sowing. The remaining approximately 70% of the crop is also traded through relative transactions prior to sowing.

flour.

In terms of commercial distribution, flour for commercial use is sold directly from flour millers or through food wholesalers (including businesses within groups of flour millers; same applies hereinafter) to food product manufacturers, restaurants, etc., which are the final users. Household flour is sold from flour mills directly or through food wholesalers to retailers, who in turn sell it to consumers, the final users.

Most of the food manufacturers and other users surveyed purchase flour from different flour milling companies from the perspective of business continuity planning (BCP), etc. According to the results of the user questionnaire and interviews, there is no difference in the quality of the flour itself among the flour milling companies, and the flour that users have commissioned to be manufactured according to their own specifications can basically be manufactured by other flour milling companies.

The price of flour sold by flour milling companies is negotiated and revised between the milling companies and users after the revision and announcement of the government sale price of imported wheat that takes place twice a year (in April and October).

Kumamoto Flour Milling Group's main business areas are the prefectures of Fukuoka, Saga, Nagasaki, Kumamoto, Oita, Miyazaki, and Kagoshima (hereinafter referred to as "Kyushu area"). The Group's head office and flour mill are located in Kumamoto Prefecture. The Nisshin Flour Milling Group's flour mills are located in Fukuoka Prefecture in the Kyushu region.

(2) Premix flour and other cereal flour

Pre-mix flour is a flour preparation that combines flour such as wheat flour with sugar, fats, skimmed milk powder, egg powder, expanders, salt, flavorings, and other ingredients depending on the final product, and is used as an ingredient in confectionery, bread, noodles, and prepared foods, etc. and has some overlap with wheat flour in its application. Therefore, it can be used as a substitute for flour to a certain extent.

While wheat flour must be mixed with other ingredients by users, premix flour is characterized by the fact that the ingredients are uniformly mixed in advance, thereby stabilizing the quality of the final product and eliminating the need for users to procure and mix ingredients. The price of premix flour is higher than that of wheat flour, and there is a considerable degree of price difference within the Company Group. Furthermore, the manufacturing process for premix flour is centered on weighing and blending the ingredients to be blended, and

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the manufacturing equipment and processes are different from those for wheat flour.

In addition, in the same way as wheat flour, rice flour, rye flour, etc. (hereinafter referred to as "other grain flours") are used as ingredients for confectionery, bread, noodles, etc. However, wheat flour and other cereal flour have different components, such as gluten content, and bread made with wheat flour, for example, has a different texture and flavor than bread made with rye flour. In addition, manufacturing facilities and processes differ between wheat flour and other cereal flour.

2. Scope of goods

Based on (1) through (5), below, "wheat flour" was defined as the scope of goods.

(1) Substitutability between wheat flour and premix flour

As mentioned in 1. (2), above, premix flour can be used to a certain extent as a substitute for wheat flour. In fact, there are users who state that they use different flours and premixes for different reasons, such as the convenience of not having to mix flour with each ingredient, the stable quality of the final product because the ratio of each ingredient is constant, the cost of procuring each ingredient themselves, and the price difference between wheat flour and premix flour. On the other hand, the added value of premix flour, as described above, is added to the price of wheat flour, making pre-mix flour more expensive. Also, demand substitutability is limited, as some users who use it without mixing wheat flour with other ingredients have stated that it cannot be substituted because the purpose of use is different.

In addition, supply substitutability is limited because of the difference in manufacturing equipment and processes between wheat flour and premix flour.

In light of the above, wheat flour and premix flour constitute a different scope of goods.

(2) Substitutability between wheat flour and other cereal flour

As described in 1. (2) above, although both wheat flour and other cereal flours are used as ingredients in confectioneries, bread, noodles, etc., the texture and flavor of foods made with wheat flour differ from those made with other cereal flours. Therefore, demand substitutability is limited, as food manufacturers and other users have stated that wheat flour and other cereal flour cannot be substituted for each other.

In addition, the manufacturing facilities and processes for wheat flour and other cereal flour are different, and supply substitutability is not recognized.

In light of the above, wheat flour and other cereal flour constitute different scopes of goods.

(3) Substitutability between flours made with domestic wheat and flours made with imported wheat

Flour made from domestically produced wheat and flour made from imported wheat are both used as ingredients in confectionery, bread, noodles, etc., and there are users who state that flour made from either of these raw wheat can be substituted for the other. However, some users, such as food manufacturers, manufacture final products made from flour made from domestically produced wheat based on the belief that there is added value from the fact that it is domestically produced. Such users cannot substitute flour made from domestically produced wheat for flour made from imported wheat. In addition, as stated in 1. (1) above, the volume of flour made from imported wheat is far greater than the volume of wheat flour in circulation, so there is a limit to the substitution by flour made from domestically produced wheat. Therefore, demand substitutability is limited.

On the other hand, the only difference is the origin of the raw wheat, and although there are differences in procurement costs by variety, the difference in procurement costs between imported wheat and domestic wheat is not that great in the Company Group. The manufacturing facilities and processes for flour made from domestic wheat and flour made from imported wheat are the same, and the suppliers are almost the same.

In light of the above, flour made from domestic wheat and flour made from imported wheat constitute the same scope of goods.

(4) Substitutability between flour types

As stated in 1. (1) above, wheat flour is classified into strong, medium, and light flours according to the quality and quantity of the protein (gluten) contained, each of which has different uses. Since users such as food manufacturers state that they cannot switch between uses, no demand substitutability is recognized.

On the other hand, the only difference between strong, medium, and light flours is the brand and variety of the raw wheat, while the manufacturing facilities and processes are the same.

In light of the above, strong, medium, and light flours constitute the same

scope of goods.

(5) Substitutability between household flour and commercial flour

As stated in 1.(1) above, while there is no difference in quality between wheat flour for household use and wheat flour for commercial use, there are differences in users, price, capacity, distribution channels, trading units, etc. Therefore, demand substitutability is limited.

On the other hand, the manufacturing facilities and processes for home-use flour and commercial-use flour are basically the same, with the only difference being the packaging facilities and processes. According to the Company Group, flour millers usually have packaging facilities for commercial flour. If they wish to introduce new packaging facilities for home-use flour, they can do so without incurring significant costs, depending on their packaging capacity and the degree of automation. Furthermore, the Company Group and many of the competing enterprises that were surveyed and interviewed regarding this case stated that they manufacture both household flour and commercial flour and that it is possible to switch production. In addition, even if the company does not own household flour packaging facilities, it can outsource the household flour packaging process to a business that provides food portioning and small packaging services and can outsource OEM supply of its products to other flour milling companies. Therefore, supply substitutability is recognized.

In light of the above, wheat flour for household use and wheat flour for commercial use constitute the same scope of goods.

3. Geographic range

Flour can be transported over long distances due to the product's resistance to deterioration and its ability to be stored for a certain period of time. Some products are actually transported over long distances, and the Company Group and many competing enterprises state that their products can be sold in all regions of Japan.

On the other hand, as mentioned in 1. (1) above, Kumamoto Flour Milling Group has its head office and factory in the Kyushu area, and the sales volume in the Kyushu area, the Group's main business area, accounts for a large portion of its total wheat flour sales volume. In addition, there are other local competing enterprises with headquarters and factories in the Kyushu area. In addition, the Nisshin Flour Milling Group also has a factory in the Kyushu area, and most of the flour sold by the group in the Kyushu area is produced at its Kyushu factory.

The cost of raw materials (the cost of procuring raw wheat) accounts for a

large proportion of the sale price of flour and, in fact, for the majority of the sale price in the Company Group. In addition, as mentioned in 1.(1) above, imported wheat, which accounts for approximately 86% of the raw wheat, is procured by the government (MAFF) through trading companies, and the government (MAFF) sells imported wheat to each flour mill company based on the government sale price according to Article 42-2 of the Act. Therefore, the difference in the sale price of flour between the various milling companies is considered to be caused by factors other than the cost of the raw materials.

Although transportation costs account for less than 10% of the sales price of the Company Group, if the cost of raw materials based on the situation explained above is excluded, transportation costs comprise a considerable percentage of the sales price.

In addition, according to competing enterprises, wheat flour is a commodity product with little added value (a product with little differentiation) and is therefore affected by transportation costs and other factors. The majority of wheat flour purchased by users in the Kyushu area is likely to be procured from flour milling companies that have plants in the Kyushu area. Another competing enterprise also stated that, due to the difference in transportation costs, users in the Kyushu area may procure as much as possible from flour milling companies that have plants within a short distance of the demand area. In fact, some users stated that, in principle, they try to procure flour from milling companies that are close to their own mills.

Based on the above, the geographical range to be considered in this case with respect to flour was defined as the "Kyushu area" in which the Company Group competes.

Part V Impact of this action on competition

Since the Company Group is engaged in the business of manufacturing and selling wheat flour in the Kyushu area, this action constitutes a horizontal business combination in the business of manufacturing and selling wheat flour in the Kyushu area.

1. Substantial restraint of competition based on unilateral conduct

(1) Condition of the Company Group and competing enterprises

A. Status of the Company Group

The market share of flour is shown in the table below. The HHI after the action is approximately 3,100 and the incremental HHI is approximately 700. The safe-harbor criteria for a horizontal business combination is not met.

Ranking	Company Name	Market share
1	Nisshin Flour Milling Group	Approx. 35%
2	Company A	Approx. 30%
3	Kumamoto Flour Milling Group	Approx. 10%
4	Company B	Approx. 10%
5	Company C	Approx. 5%
6	Company D	Approx. 5%
7	Company E	0-5%
8	Company F	0-5%
9	Company G	0-5%
	Other	0-5%
	100%	
Combined market share/ranking: Approx. 45%, No. 1		

Market share of wheat flour in FY 2021 (Kyushu region)

As stated above, in the Kyushu region, Nisshin Flour Milling Group has the No. 1 market share (approximately 35%) and Kumamoto Flour Milling Group has the No. 3 market share (approximately 10%). The market share of the Company Group will be approximately 45% after this action.

B. Conditions of competing enterprises

a) Market share

There are more than 10 competing flour enterprises in the Kyushu region, including Companies A through G, as described in (a) above. Company A, in particular, holds the second largest market share of approximately 30%.

- b) Excess capacity
- a. Plant

The capacity utilization rate of flour mills in 2019 was 88.0% for large flour mills and 45.6% for small and medium-sized flour mills⁴, suggesting that there is a certain level of excess capacity.

In addition, based on the responses to the questionnaire and interviews with competing enterprises, a calculation was made of the capacity-output relation for the most recent one-year period for (1) factories located in the Kyushu area owned by the competing enterprises and (2) factories located in

⁴ Ministry of Agriculture, Forestry and Fisheries, "Reference Material for Wheat in 2022: Outlook for Wheat Supply and Demand (Trends)," p. 16.

other areas owned by the competing enterprises (only factories that responded that they are currently supplying or can supply flour to the Kyushu area). Although it is unlikely that all of the said excess capacity can be allocated to the Kyushu area, even taking into account the said circumstances, plentiful excess capacity is recognized in comparison with the Company Group sales volume in the Kyushu area.

b. Raw materials

As stated in 4-1 (1) above, the raw material for flour is wheat, most of which is imported. Institutionally, there are no obstacles to each flour miller procuring the quantities needed. Each flour mill has a stockpile of imported wheat equivalent to 2 or 3 months of its annual demand. Even if it needs to meet a sudden demand, it can do so with this stockpile, so there is no immediate shortage of raw wheat. Although it is difficult to procure additional domestic wheat because it is contracted prior to sowing, each company holds a certain amount of inventory and can receive flexible supplies from other milling companies.

In light of the above, the procurement of raw wheat does not constrain the excess capacity of competing enterprises.

C. Summary

In light of the above, competitive pressure from competing enterprises is recognized.

(2) Import

Currently, only a small amount of wheat flour is imported from abroad due to the high level of tariffs imposed on flour at 90 yen per kilogram.

Therefore, import pressure is not recognized.

(3) Entry

According to the Company Group and competing enterprises, domestic demand for flour is expected to decline in the future. In addition, under the circumstances where each milling company is allowed to have an excess capacity as described in (1) B b) a. above, it is not expected that new enterprises will enter the market by investing in facilities. Therefore, entry pressure is not recognized.

⁵ In FY 2023, tariffs on "wheat and wheat flour, etc." will be eliminated within the quota of 4,400 tons under the EU-Japan EPA and 17,500 tons under TPP11, but this is a small amount compared to the amount of wheat flour produced in Japan (approximately 4.5 million tons).

(4) Competitive pressure from adjacent markets

As mentioned in Part IV, although premix flour is used as an ingredient for confectionery, bread, noodles, etc., in a similar way to wheat flour, it is not necessarily a new competitive pressure separate from wheat flour, since the main ingredient of premix flour is wheat flour, and flour mill companies are often also manufacturers of premix flour. Some users also state that premix flour is more expensive than wheat flour and cannot be substituted because it has different uses from the outset.

In addition, there are other cereal flours that are also used as ingredients for confectionery, bread, noodles, etc., but users state that they cannot be used as a substitute for wheat flour.

Therefore, there is no competitive pressure from adjacent markets.

(5) Competitive pressure from users

As described in the above Part IV 1. (1), since the government sale price of imported wheat is published twice a year, users are able to know the government sale price of purchased wheat flour raw materials (imported wheat). This information is actually obtained by some users. Therefore, if the Company Group raises the sale price of flour in a way that differs from the range of fluctuation in the government sale price of imported wheat, users will require the reason to be explained. Therefore, the market environment makes it difficult to adjust prices to the disadvantage of users. In fact, the sale price of wheat flour fluctuates in tandem with the government sale price of imported wheat, and most of the users surveyed and interviewed did not express concern about the increase in the sale price of wheat flour triggered by this action.

In addition, most of the users interviewed stated that they purchase flour from different flour milling companies from the perspective of BCP, etc. Some stated that they actually try to get the best price conditions by comparing the sale prices of multiple flour milling companies to see if the prices of the flour they purchase are suitable. Others stated that the reason they purchase from multiple flour milling companies is to ensure stable procurement and to create an environment where the flour milling companies are aware of competition, enabling advantageous negotiations.

Based on the above, some users stated that:

- The price of flour sold was not increased by this action.
- There is no difference in the quality of the flour between flour mills, and it is possible for other flour mills to produce flour for commercial use.
- If the Company Group raises its sale prices, it will consider starting

transactions with new suppliers or increasing procurement volume from existing suppliers.

Therefore, competitive pressure from users is recognized.

(6) Summary

As described above, (1) competitive pressure from competitive enterprises is recognized because there are strong competitive enterprises (there is one enterprise with a market share of approximately 30%) with excess capacity, and (2) considering the fact that users are able to grasp the government sale price of raw wheat, and that some users actually know the price, and that users make multiple purchases from different flour milling companies because the difference in flour quality is small, competitive pressure from users was recognized. Therefore, there was no recognition of a substantial restraint on competition in the manufacturing and sales of wheat flour in the Kyushu area from the unilateral conduct.

2. Substantial restraint of competition through coordinated conduct

As described in 1(1)(a) above, as a result of this action, the top two companies account for approximately 75% of the market share. In addition to the fact that wheat flour is a homogeneous product, the cost of raw materials (cost of procuring raw wheat) accounts for a large proportion of the sale price. Imported wheat, which accounts for approximately 86% of the raw wheat, is procured by the government (MAFF) through trading companies. Cost conditions are similar because, under Article 42- 2 of the Act, the government (MAFF) sells imported wheat to flour milling companies based on the government sale price.

On the other hand, as mentioned in 1(5) above, the sale price of wheat flour fluctuates in tandem with the government sale price of imported wheat, making it difficult to revise prices to the disadvantage of users. In addition, taking into consideration the fact that there are more than 10 competing enterprises, as stated in 1(1)(B)(a) above, it is not recognized that this action will result in a substantial restraint of competition in the flour manufacturing and sales business in the Kyushu area through coordinated conduct.

Part VI Conclusion

The court found that the action in question did not result in a substantial restraint of competition in the particular field of trade.

Case 2 Acquisition of stock in JFE Pipe Fitting Mfg. Co., Ltd. by Riken Corporation

Part I The Parties

Riken Corporation (JCN 3010001032014) ("Riken") is a company engaged in the manufacture and sale of automotive parts centering on internal combustion engines (engines), as well as pipe fittings and other products.

JFE Pipe Fitting Mfg. Co., Ltd. [](JCN 7120101037360) ("JFE Fittings") is a company primarily engaged in the manufacture and sale of pipe fittings.

Riken and JFE FITTINGS are hereinafter collectively referred to as the "Parties."

Part II Outline of the case and applicable provisions

This case is about Riken's plan to acquire more than 50% of the voting rights relating to shares in JFE Fittings (hereinafter referred to as "this Action").

The applicable provision is Article 10 of the Antimonopoly Act.

Part III Particular field of trade

1. Product overview

Pipe fittings are parts used to connect pipes and tubes for transporting water, oil, air, steam, etc. They are classified into metal fittings (made of iron, brass, etc.) and plastic fittings (made of polyvinyl chloride, etc.). According to the Japan Pipe Fittings Association, metal fittings are classified according to material and shape into (1) malleable fittings², (2) welded fittings³, (3) flange fittings⁴, (4) high-pressure fittings³ and (5) drain pipe fittings⁶. In addition, (1) malleable fittings are sub-

¹ On May 9, 2023, the company changed its name to Nippon Pipe Fitting Corp.

² Malleable fittings are fittings manufactured using cast iron (malleable cast iron) that have been given malleability (ductility) by heat treatment, etc. They are mainly used to connect various pipes such as water supply and hot water pipes, cold and hot water pipes, cooling water pipes, fire-extinguishing pipes, air pipes, gas pipes, steam pipes, and oil pipes.

³ Welded fittings are used to join pipes and tubes. This joining method can be used in special environments. This method enables pipe fittings that are stronger and more reliable than threaded joints. Therefore, it is also used in many power plants, gas plants, oil and chemical plants, water purification plants, shipbuilding, water treatment facilities, etc.

⁴ Flange fittings are fittings in which a disk-shaped plate (flange) is welded or screwed onto both ends of a pipe, a rubber seal (packing) is inserted between the flanges, and a bolt is inserted into the flange hole and secured with a nut. This method provides superior sealing and strength, as well as easy disassembly and assembly. In addition to general piping such as water supply and hot water piping and cold and hot water piping, depending on the type of packing, it is also used for high-temperature and high-pressure piping.

⁵ High-pressure fittings are forged steel fittings and are used for hydraulic, gas, and fire-extinguishing piping. For piping with relatively low working pressure, threaded fittings made of malleable cast iron (20K fittings (K is the unit for pressure)) are sometimes used.

⁶ Drainage steel pipe fittings are fittings for indoor piping and are mainly used for sewage and miscellaneous water piping in medium and high-rise buildings. There are two types of drainage pipe fittings: threaded fittings called drainage pipe fittings and mechanical fittings (MD fittings) where a rubber seal is

classified into screwed fittings and housing fittings.

In this case, Riken manufactures metal fittings, while JFE Fittings manufactures and sells both metal fittings and plastic fittings. Among the metal fittings mentioned above, the parties are competing specifically with respect to (1) malleable fittings.

(1) Threaded fittings

Threaded fittings are products that have female threads (or male threads) cut into the fittings. They connect a male threaded (or female threaded) pipe to a fitting by inserting and tightening the pipe into the fitting. They are used to connect various pipes such as water supply and hot water pipes, cold and hot water pipes, cooling water pipes, fire extinguishing pipes, air pipes, gas pipes, steam pipes, and oil pipes.

(2) Housing fittings

A housing fitting is a piping joint commercialized for piping work rationalization and labor-saving. It is a fitting method in which a specially shaped gasket [7] is inserted into both ends of the connecting pipe, a housing [8] is placed over it, and bolts, nuts, etc. are tightened. Compared to welded fittings that require welding techniques and other heavy fittings, this installation method is relatively simple. In the same way as threaded fittings, they are used to connect a variety of pipes, including water supply and hot water piping, cold and hot water piping, cooling water piping, fire fighting piping, air piping, and oil piping.

2. Scope of goods

(1) Substitutability between malleable fittings and other fittings (welded fittings, flange fittings, high-pressure fittings and drainage steel pipe fittings)

A. Malleable fittings and welded fittings

While malleable fittings and welded fittings are sometimes used selectively for small diameters (15A ⁹to 50A), malleable fittings (housing fittings) and welded fittings are used selectively for medium diameter (65A to 150A) fire fighting piping and air conditioning piping, in particular. In addition, in shipbuilding and plant construction where pipes are subject to vibration, malleable fittings (threaded fittings) and welded fittings are used selectively because welded fittings can be used with small diameters in some cases.

used for waterproofing at the fitting. MD fittings are often used because they do not require threading or welding, and they have flexibility and elasticity to absorb inter-story displacement of the building.

⁷ A gasket is a sealing material used to seal connections.

⁸ The housing is the covering component that encases and protects the gasket and other parts.

⁹ "A" is an indication of the nominal diameter (inside diameter of the pipe) in mm. "15A" means the nominal diameter is 15 mm.

Therefore, a certain degree of demand substitutability is recognized between malleable fittings and welded fittings.

However, while the manufacturing equipment for malleable fittings consists mainly of casting equipment and threading equipment (dedicated threading machines and NC machines 10), welded fittings do not require threading, and the manufacturing equipment consists mainly of equipment for cutting and bending steel pipes, etc. The manufacturing processes and equipment for malleable and welded fittings are very different. Therefore, no supply substitutability is recognized between malleable fittings and welded fittings.

B. Malleable fittings and flange fittings

While malleable fittings and flange fittings are sometimes used selectively for small diameters (15A to 50A), they are used selectively for medium diameter (65A to 150A) to large diameter (200A to 300A) piping, mainly in air conditioning and plant piping. Therefore, a certain degree of demand substitutability is recognized between malleable fittings and flange fittings.

However, where flange fittings are made of steel and cast iron, (1) the manufacturing process for steel flange fittings involves cutting, heating, pressing, and fabricating round bar materials, and the manufacturing equipment required differs greatly from that of malleable fittings, and (2) although cast iron flange fittings can basically be manufactured with the same equipment as malleable fittings, in order for manufacturers of cast iron flange fittings to enter into the production of threaded fittings, there is an additional requirement for heat treatment furnaces and thread processing machines (NC machines can be used for some types of fittings) due to the different materials used for the fittings. In addition, to enter the manufacture of housing fittings made of the same material, it is necessary to prepare painting lines and molds, which require a certain amount of new capital investment. Therefore, the manufacturing process and equipment differ from malleable fittings is limited.

C. Malleable fittings and high-pressure fittings

Malleable fittings can be used selectively with high-pressure fittings for piping with relatively low operating pressures, but are not used selectively when steel high-pressure fittings are used for hydraulic or gas piping because of

¹⁰NC machines are machine tools equipped with NC devices that are numerically controlled (controlled by numbers).

the high operating pressure. Thus, demand substitutability between malleable fittings and high-pressure fittings is limited.

In addition, high-pressure fittings are generally made of steel and manufactured by cutting iron, which differs significantly from malleable fittings made of cast iron in both the manufacturing process and equipment. Therefore, no supply substitutability is recognized between them and malleable fittings.

D. Malleable fittings and drainage steel pipe fittings

Drainage steel pipe fittings are specially shaped to prevent debris and dirt from remaining inside the joint, and their shape differs significantly from that of malleable fittings, so no demand substitutability is recognized between them and malleable fittings.

Some drainage steel pipe fitting manufacturers have manufactured malleable fittings (threaded fittings) in the past, and although there seems to be some commonality in manufacturing equipment such as casting facilities, additional capital investment would be required for such manufacturers to enter the malleable fittings manufacturing market, which would require a considerable amount of money. Therefore, the supply substitutability is limited.

E. Summary

From the above, malleable fittings and other fittings (welded fittings, flange fittings, high-pressure fittings, and drainage steel pipe fittings) constitute different scopes of goods.

(2) Substitutability between threaded fittings and housing fittings

Both threaded fittings and housing fittings are used to connect various types of piping such as water supply and hot water piping, cold and hot water piping, cooling water piping, fire extinguishing piping, air piping, and oil piping, and have common or similar applications and functions. This is supported by the fact that housing fittings were developed as a new, easy-to-install product to replace the traditional product, the threaded fitting.

In addition, threaded fittings and housing fittings are similar in terms of the price of the product itself and the cost of installation.

Therefore, since demand substitutability is recognized between threaded fittings and housing fittings, threaded fittings and housing fittings constitute the same scope of goods.

(3) Summary

Based on the above, "malleable fitting" was defined as the scope of goods.

3. Geographic range

Manufacturers and distributors of malleable fittings are located in all regions of Japan, and there are no special circumstances regarding product characteristics or transportation costs. General contractors and subcontractors (construction companies), who are users of malleable fittings, can procure malleable fittings under the same conditions in all regions of Japan, Therefore, "all regions of Japan" was defined as the geographical range.

Part IV Applicability of the Safe-harbor Criteria in a Particular Field of Trade

Since the Parties are engaged in the manufacturing and sale of malleable fitting in all regions of Japan, this case constitutes a horizontal business combination involving the malleable fitting manufacturing and sales business in all regions of Japan.

The market share for the malleable fitting manufacturing and sales market in Japan is shown in the table below. The HHI after this action is approximately 2,700 and the incremental HHI is approximately 700, so the safe-harbor criteria for a horizontal business combination is not met.

Therefore, an examination of whether this action constitutes a substantial restraint of competition is made in Section 5 below.

Ranking	Company name	Market share	
1	Company A	Approx. 30%	
2	JFE Fittings	Approx. 20%	
3	Riken	Approx. 15%	
4	Company B	Approx. 15%	
5	Company C	Approx. 10%	
6	Company D	0-5%	
7	Company E	0-5%	
8	Company F	0-5%	
9	Company G	0-5%	
10	Company H	0-5%	
11	Company I	0-5%	
	100%		
Combined market share/ranking: Approx. 35%; No. 1			

Market share of the malleable fittings manufacturing and sales industry in FY 2021

Part V Impact of this action on competition

1. Position of the Parties and conditions of competing enterprises

The market share of the Party after this action will be approximately 35% (No. 1), but Company A is a leading competitor with a market share of approximately 30%. There are nine competitors including Company A.

In addition, Company A, which currently holds the largest market share, has a long history in metal fittings, which has earned its metal fittings a strong sense of trust in the world of on-site workers.

Furthermore, as the demand for and production volume of malleable fittings have been decreasing year by year, many of the fitting manufacturers are now operating their plants under a single-shift, 8-hours per day production system, whereas they used to operate under a three-shift production system in the past. Since fittings manufacturers can increase their supply simply by restoring the production system to the original three-shift system, the excess capacity of fittings manufacturers that are competitors of the Party is recognized.

Therefore, since there are several competitors, including a leading competitor named Company A, and such competitors are considered to have sufficient excess capacity, competitive pressure from the competitors is recognized.

2. Competitive pressure from adjacent markets

(1) Competitive pressure from welded fittings

As described in Part III 2. (1) (a) above, welded fittings are selectively used with malleable fittings (housing fittings), especially in medium-diameter (65 A to 150 A) fire extinguishing and air conditioning piping, etc. In addition, welded fittings are used even in small diameter (15 A to 50 A) pipes that are subject to vibration in the shipbuilding and plant fields, sometimes selectively with malleable fittings (threaded fittings).

Although the price of welded fittings is higher than that of malleable fittings, they have the advantage of reducing damage in the event of an accident.

Therefore, if the price of malleable fittings were higher, a certain degree of competitive pressure from welded fittings would be recognized because welded fittings would likely be selected.

(2) Competitive pressure from flange fittings

As described in 3-2(1)(b) above, while flange fittings are rarely used selectively with malleable fittings in the small diameter range (15A-50A), in the medium diameter range (65A-150A) to large diameter range (200A-300A), they are used

selectively with malleable fittings mainly in air conditioning and plant piping.

Although the price of flange fittings is considerably higher than that of malleable fittings, flange fittings have the advantage of limiting damage in the event of an accident.

Therefore, if the price of malleable fittings were higher, a certain degree of competitive pressure from flange fittings would be recognized, since flange fittings would likely be selected as well.

(3) Competitive pressure from plastic fittings

Plastic fittings are used to connect plastic piping and are less expensive than metal fittings, but are not used to connect metal piping (similarly, metal fittings are not used to connect plastic piping). In the past, metal piping and metal fittings were widely used in applications requiring higher durability and fire resistance (e.g., piping in common areas of hotels and office buildings, connection of fire extinguishing pipes, etc.) because metal piping performed better than plastic piping in terms of durability and fire resistance.

In recent years, however, as the performance of plastic piping has improved, plastic piping and plastic fittings are being used in the design stage of buildings for applications that require high durability and fire resistance, as described above. This is supported by the fact that the production of metal piping and metal fittings is actually declining, while the production of plastic piping and plastic fittings is increasing.

Therefore, it can be said that there is a certain degree of competitive pressure from plastic fittings on malleable fittings, which are metal fittings, due to the certain extent of competitive pressure of plastic piping on metal piping in the building design stage.

(4) Summary

From the above, a certain degree of competitive pressure from adjacent markets is recognized.

3. Competitive pressure from users

Pipe fittings are sold from fittings manufacturers to general contractors and subcontractors (construction companies) through primary (wholesalers) or secondary (distributors) stores 11. In recent years, there has been a sharp increase in the overall cost of building construction due to the rising cost of building materials,

¹¹As a general rule, primary stores have many affiliated transactions, while secondary stores also deal with certain specific primary stores.

and general contractors and subcontractors (construction companies) are under strong pressure from clients to lower their prices.

In addition, as described in 1., above, there are several competitors in the malleable fitting manufacturing and sales market, including Company A, which is a strong competitor. The said competitors are considered to have sufficient excess capacity. Therefore, general contractors and subcontractors (construction companies), etc., which are the final users, can easily change their suppliers from the Party to the competitors.

Furthermore, each fittings manufacturer deals almost exclusively with distributors (primary (wholesalers) or secondary (dealers) stores). Therefore, they lack bargaining power with regard to such distributors.

For this reason, a certain degree of competitive pressure from users is recognized because the pressure to suppress price increases is being exerted on the Party through distributors by general contractors and subcontractors (construction companies), who are under strong pressure from clients to reduce prices.

4. Summary

As described above, there is a recognition of (1) competitive pressure from competing enterprises, (2) competitive pressure from adjacent markets, and (3) a certain degree of competitive pressure from users. Therefore, it is recognized that this action will not substantially restrain competition in the business field pertaining to the malleable fitting manufacturing and sales industry in all regions of Japan, either through unilateral conduct by the Party or through coordinated conduct with competing enterprises.

Part VI Conclusion

It was determined that this action did not result in a substantial restraint of competition in a particular field of trade

Case 3 Joint share transfer by Riken Corporation and Nippon Piston Ring Co., Ltd.

Part I The Parties

Riken Corporation (JCN 3010001032014) (hereinafter referred to as "Riken") and Nippon Piston Ring Co., Ltd. (JCN 8030001006457) (hereinafter referred to as "Nippon Piston Ring") are both engaged in the manufacture and sale of engine parts.

The group of companies that have already formed a joint relationship with Riken as the ultimate parent company will be referred to as the "Riken Group," and the group of companies that have already formed a joint relationship with Nippon Piston Ring as the ultimate parent company will be referred to as the "Nippon Piston Ring Group." The Riken Group and the Nippon Piston Ring Group will be referred to collectively as the "Company Group."

Part II Outline of the case and applicable provisions

Riken and Nippon Piston Ring planned to become wholly owned subsidiaries of a holding company newly established through a joint share transfer (the "Action").

The applicable provision is Article 15-3 of the Antimonopoly Act.

There are multiple competitive relationships in the businesses managed by the Company Group. The following is a detailed description of the results of a review of a horizontal business combination in the manufacturing and sales of automotive piston rings for OEM and OES and OES and OES (brand) in the manufacturing and sales of 2-stroke MAN-brand OEM/OES and OES (brand) marine piston rings, where the impact on competition was considered to be relatively large.

Part III Outline of goods and services, etc.

A piston ring is a ring that is attached to the outer circumference of the piston inside the cylinder of an engine. There are three types of piston rings: "top ring," "second ring," and "oil ring," and these three types of piston rings are generally used in combination. Piston rings have three main functions: 1) to maintain the airtightness of the combustion gases when the engine expands the combustion gases to push the piston down to generate power, 2) to release heat to the cooled cylinder walls, and 3) to control lubrication oil to reduce wear and seizure.

Piston rings are engine parts. They are classified into (1) automotive, (2) marine, and (3) general-purpose, depending on the engine in which they are installed.

1. Summary of automotive piston rings

¹ Abbreviation for Original Equipment Manufacturers.

² Abbreviation for Original Equipment Suppliers.

Automotive piston rings are divided into piston rings for (a) 4-wheeled vehicles (for passenger cars), (b) 4-wheeled commercial vehicles (for trucks, buses, and construction equipment), and (c) 2-wheeled vehicles.

In addition, the two types of automotive piston rings, "OEM/OES" and "aftermarket" are described in (1) and (2) below.

(1) OEM and OES

Piston rings for OEMs and OES are piston rings distributed through automobile manufacturers, commercial vehicle manufacturers, and motorcycle manufacturers (hereinafter collectively referred to as "automobile manufacturers"). OEM piston rings are installed in newly manufactured automobile engines (for new installation). OES piston rings are used as replacements by automobile maintenance shops affiliated with the automobile manufacturer. They are supplied by the automobile manufacturer to the affiliated automobile maintenance shops. Both OEM and OES products are distributed through automobile manufacturers, and the only difference is whether they are used for new installation or replacement. Users of OEM and OES piston rings are automobile manufacturers.

(2) Aftermarket

Aftermarket piston rings are replacement automotive piston rings that are distributed without going through the automobile manufacturers. For the aftermarket, parts trading companies sell to independent automobile maintenance shops that are not affiliated with the automobile manufacturers. Users for the aftermarket are parts trading companies.

2. Summary of marine piston rings

A marine piston ring is a piston ring for marine engines whose size (diameter) is generally larger than 150 mm.

(1) For 2-stroke and 4-stroke

There are two types of marine engines: "2-stroke engines," in which the piston movement is two strokes per fuel combustion ((1) compression and (2) expansion), and "4-stroke engines," in which four strokes are performed ((1) intake, (2) compression, (3) expansion, and (4) exhaust)).

The design rights for 2-stroke engines are owned by MAN Energy Solutions ("MAN"), Winterthur Gas & Diesel ("WinGD"), and Japan Engine Corporation (hereinafter referred to as "Japan Engine"). It is necessary to obtain licenses from these licensors in order to manufacture and sell 2-stroke engines and their parts

(piston rings, etc.). On the other hand, 4-stroke engines are designed by individual engine manufacturers. Therefore, it is not necessary to obtain licenses for the manufacture and sale of engines and their components in the same way as it is for 2-stroke engines.

In other words, the difference is that a license is required for the manufacture and sale of 2-stroke piston rings, while a license is not required for the manufacture and sale of 4-stroke piston rings.

(2) Types of marine piston rings

The following types of marine piston rings are available for both 2-stroke and 4stroke applications.

OEM

OES (supplied by engine manufacturers) (hereinafter simply referred to as "OES")

Aftermarket

In addition to the above, the 2-stroke version also includes:

OES (Licensor-supplied products) (hereinafter referred to as "OES (branded products)")

A. OEM and OES

Piston rings that are incorporated into new engines manufactured and sold by engine manufacturers to shipbuilding companies are "OEM" piston rings. In contrast, piston rings sold as replacement parts by engine manufacturers to shipowners or dock companies (mean companies that repair ships) are "OES" piston rings.

OES are used by dock companies as replacement parts. Both OEM and OES are stamped by the engine manufacturer, and the engine manufacturer is basically responsible for the warranty in case of piston ring failure.

The functions and effects of OEM piston rings and OES piston rings are generally the same. When piston rings purchased by an engine manufacturer are installed in a newly manufactured engine, they are conceptually classified as "OEM" rings, and when they are sold to ship owners as replacements, they are conceptually classified as "OES" rings. There is no need to discuss OEM and OES piston rings as separate items. Therefore, both are hereinafter collectively referred to as "OEM and OES" piston rings.

Since ships are generally used for several decades and marine piston rings are replaced every time the engine undergoes periodic inspections (overhaul inspection every five years and interim inspections every two and a half to three years after the overhaul inspection), the market size for OES is considered to be considerably larger than that for OEM.

B. OES (branded products)

Licensors of 2-stroke engines purchase piston rings from licensee piston ring manufacturers and distributors and sell them to shipowners or dock companies. OES (branded products) are stamped with the licensor's mark, and the licensor is basically responsible for warranty in case of defects. When OES (branded products) are used as replacement parts by independent dock companies that are not affiliated with the engine manufacturer, the prices for OES (branded products) sold by MAN tend to be lower than the prices for OEM and OES products manufactured and sold by the Company Group.

Of the licensors, only MAN and W $\operatorname{i}\,$ nGD purchase OES (branded products).

C. Aftermarket

Aftermarket piston rings are piston rings used for replacement and are not guaranteed by the engine manufacturer or licensor. While there is no warranty for aftermarket products, the price is lower than that of OES and OES (branded products). Aftermarket products are sold by parts trading companies to shipowners or independent dock companies.



Commercial flow for 4-stroke piston rings





Part IV Particular field of trade

1. Piston rings for automobiles

- (1) Scope of goods and services
 - A. Substitutability of piston rings with different specifications or usages
 - a) Demand substitutability

Piston rings have different specifications (mainly size and surface treatment) depending on the type of engine in which they are installed. Since piston rings of different specifications are put to different uses depending on the type of engine, there is no demand substitutability among piston rings with different specifications.

b) Supply substitutability

As mentioned in the Part III 1., above, automotive piston rings have 4-wheel, 4-wheel commercial, and 2-wheel applications. In view of the actual situation of manufacturing by piston ring manufacturers and distributors, immediate supply can be issued without significant additional cost or risk, since the differences in specifications are not significant for the same application even if the piston rings are manufactured to different specifications. On the other hand, it may be difficult to provide an immediate supply of piston rings with such a wide variation in specifications that they are used in different applications without incurring significant additional costs and risks.

Therefore, supply substitutability is recognized between piston rings that have different specifications but the same application, but supply substitutability between piston rings with different uses is not recognized.

c) Summary

As described above, since supply substitutability between piston rings with different uses is not recognized, piston rings for 4-wheel, 4-wheel commercial,

and 2-wheel applications are defined as different goods and services.

B. OEM/OES and aftermarket

a) Demand substitutability

There are OEM/OES and aftermarket piston rings for 4-wheeled vehicles. As described in Part III 1. (1) and (2), above, OEM and OES piston rings are distributed through automobile manufacturers. Therefore, for piston rings manufacturers and distributors, users of OEM and OES piston rings are automobile manufacturers, whereas aftermarket rings are purchased by parts suppliers and sold to independent automobile repair shops that are not affiliated with automobile manufacturers rather than being distributed through automobile manufacturers. Thus, OEM/OES users are not the same as aftermarket users. Even if there is a certain price increase for OEM/OES, aftermarket products will not be purchased by automobile manufacturers, who are the users of OEM/OES products, because of the difference in distribution, as described above. Even if there is a certain price increase for aftermarket piston rings, OEM/OES products will not be purchased will not be purchased by parts trading companies, who are the users of aftermarket products, because of the difference in distribution, as described above.

Therefore, there is no demand substitutability between OEM/OES use and aftermarket use.

b) Supply substitutability

Manufacturing and sales for the aftermarket do not seem to require as much mass production capacity as that of OEM and OES. Therefore, even if aftermarket piston rings could be manufactured and sold, it would not be possible to commence the mass production of OEM and OES piston rings for automobile manufacturers in the short term.

Therefore, the supply substitutability between OEM/OES use and aftermarket use is limited.

c) Summary

Based on the above, OEM/OES and aftermarket products are defined as different goods and services.

C. Summary

Based on the above, the scope of goods and services was defined as "OEM/OES piston rings for 4-wheeled vehicles."

(2) Geographic range

Automobile manufacturers, who are the users of OEM/OES piston rings for 4wheeled vehicles, purchase piston rings from piston ring manufacturers and distributors in Japan. Piston ring manufacturers and distributors also sell piston rings primarily to domestic automobile manufacturers.

Based on the above, the geographic range of OEM/OES piston rings for 4wheeled vehicles was defined as "all regions of Japan."

2. Piston rings for marine use

(1) Scope of goods and services

A. For 2-stroke and 4-stroke

a) Demand substitutability

As described in Part III 2. (1), above, there are two types of marine engines: 2-stroke engines and 4-stroke engines. Since 2-stroke and 4-stroke engines have different structures, they have different piston ring specifications. For this reason, piston rings for 2-stroke engines are not installed on 4-stroke engines, and vice versa.

Therefore, there is no demand substitutability between piston rings for 2stroke and 4-stroke applications.

b) Supply substitutability

An enterprise that has the facilities and know-how to manufacture and sell piston rings for 2-stroke engines would normally be able to manufacture and sell piston rings for 4-stroke engines. On the other hand, it is unlikely that a manufacturer and distributor of 4-stroke piston rings will be able to start manufacturing and selling 2-stroke piston rings in a short period of time since it is necessary to obtain a license to manufacture and sell 2-stroke piston rings.

Thus, the supply substitutability between the 2-stroke and 4-stroke piston rings is limited.

c) Summary

From the above, piston rings for 2-stroke engines and piston rings for 4stroke engines are defined as different goods and services.

The following section details the 2-stroke version.

B. Substitutability between OEM/OES, OES (branded products), and aftermarket (2-stroke)

a) Demand substitutability

The are different users for each type of piston ring. The users for OEM and OES are engine manufacturers, the users for OES (branded products) are licensors, and the users for aftermarket piston rings are parts trading companies. Even if there is a price increase relating to the type of piston ring purchased by a certain user, that user will not purchase another type of piston ring as a substitute.

Therefore, there is no demand substitutability between OEM/OES, OES (branded products), and aftermarket piston rings.

b) Supply substitutability

In the case of 2-stroke products, OEM/OES, OES (branded products), and aftermarket products all require license acquisition. For this reason, as long as a license has been acquired, the company would have the capacity to produce any of these types.

Therefore, for 2-stroke piston rings, supply substitutability is recognized between OEM/OES, OES (branded products) and aftermarket piston rings.

c) Summary

As described above, since supply substitutability is recognized between OEM/OES, OES (branded products), and aftermarket products for 2-stroke use, they can be defined as identical goods and services. On the other hand, there is a clear difference in the users of OEM/OES, OES (branded products), or aftermarket piston rings (OEM/OES users are engine manufacturers, OES (branded products) users are licensors (MAN or WinGD), and aftermarket users are parts trading companies).

There are also some differences in purchasing behavior among users, with Japanese engine manufacturers, who are the users of OEM/OES, purchase piston rings mainly from domestic piston ring manufacturers and distributors, while licensors, who are the users of OES (branded products), purchase piston rings from piston ring manufacturers and distributors worldwide.

In light of the above, for the purpose of a more careful review and with an emphasis on demand substitutability, 2-stroke piston rings for OEM/OES use, OES use (branded products), and aftermarket use shall be demarcated as different goods and services.

Below, the details for OEM/OES and OES (branded products) for 2-stroke engines will be discussed in detail.

C. Substitutability between different brands (2-stroke OEM/OES and OES (branded products))

a) Demand substitutability

Manufacturers of 2-stroke engines, who are the users of OEM and OES piston rings, need to purchase licensed brand piston rings, and licensors, who are the users of OES (branded products), need to purchase their own branded piston rings. Therefore, even if MAN brand piston rings, for example, were to increase in price by a certain amount, W i nGD brand or Japan Engine brand piston rings would not be purchased as a substitute.

Therefore, there is no demand substitutability between different brands of marine piston rings.

b) Supply substitutability

If a company wishes to manufacture a certain brand of piston ring, it is necessary to obtain a license from the licensor of that brand. Therefore, even if there is a certain price increase among unlicensed brands of piston rings, it would be difficult for unlicensed piston ring manufacturers and distributors of such brands to commence manufacturing and selling such brands of piston rings in a short period of time. This is true for both OEM/OES and OES (branded products).

Therefore, supply substitutability between different brands of marine piston rings is not recognized.

c) Summary

Based on the above, different brands of OEM/OES and OES (branded products) piston rings for 2-stroke engines are each defined as different goods and services.

D. Substitutability between different sizes

Based on the above considerations from A. to C., the piston rings for 2stroke marine use in (1) to (5) in the following Table are defined as different goods and services, respectively. In this section, an examination is made of the demand substitutability and supply substitutability between 2-stroke marine piston rings of different sizes among each of the goods and services in (1)through (5).

Table

	OEM and OES	OES (branded products)
MAN	1	2
WinGD	3	(4)
Japan Engine	(5)	_

a) Demand substitutability

The users of marine piston rings select piston rings that match the bore diameter of the engine cylinder. Piston rings that do not fit this bore diameter are not selected.

Therefore, there is no demand substitutability between the different sizes of marine piston rings.

b) Supply substitutability

It is considered possible for a manufacturer and seller of marine piston rings to manufacture different sizes of marine piston rings in each of the goods and services in (1) through (5) without incurring significant additional costs.

Therefore, supply substitutability is recognized between marine piston rings of different sizes in each of the goods and services in (1) through (5).

c) Summary

From the above, marine piston rings of different sizes in each of the goods and services in 1 through 5 are defined as the same goods and services.

E. Summary

As discussed in A. through D., above, the goods and services of piston rings for 2-stroke marine engines were delineated in (1) through (5) in the Table above. The Company Group has a competitive relationship with regard to several of these goods and services. A discussion examining the following two goods and services is provided below.

i.MAN brand OEM and OES for 2-stroke engines (1) in the Table above)
ii.MAN brand OES (branded product) for 2-stroke engines (2) in the Table above)

(2) Geographic range

A. MAN brand OEM and OES for 2-stroke engines

Japanese 2-stroke engine manufacturers, who are the users, purchase 2stroke OEM and OES piston rings mainly from piston ring manufacturers and distributors in Japan.

For this reason, the geographic range of MAN brand 2-stroke OEM and OES piston rings ((1) in [Table] above) was defined as "all regions of Japan".

B. MAN brand OES (branded product) for 2-stroke engines

Licensors, who are the users, purchase 2-stroke OES (branded product) piston rings from piston ring manufacturers and distributors around the world. For this reason, the geographical scope of MAN brand OES (branded product) for 2-stroke engines (2 in [Table] above) was defined as "worldwide."

Part V Applicability of the Safe-harbor Criteria in a Particular Field of Trade0EM/0ES piston rings for 4-wheeled vehicles

The market share of OEM/OES piston rings for 4-wheeled vehicles is shown in the table below and does not meet the safe-harbor criteria for a horizontal business combination.

Ranking	Company name	Market share	
1	Company A	Approx. 40%	
2	Riken Group	Approx. 35%	
3	Nippon Piston Ring Group	Approximately 25%	
Total amount 100			
Combined market share/ranking: Approx. 60%; No. 1			

Market share of OEM and OES for 4-wheeled vehicles in FY2021

2. Piston rings for marine engines

Since the market shares of the two particular fields of trade discussed in detail in Part IV 2. above are unknown, it shall be considered that neither of them meets the safe-harbor criteria for a horizontal business combination.

Part VI Consideration of substantial restraints on competition

1. OEM/OES piston rings for 4-wheeled vehicles

(1) Consideration of substantial restraints on competition by unilateral conduct

A. Position of the Company Group and status of competitors

a) Market share status

After this action, the market share of the Company Group concerned will be approximately 60% (No. 1) and that of competitor Company A will be 40% (No. 2).

b) Competitor's excess capacity

Competition for orders for piston rings mainly occurs when new engines are being developed. Piston ring manufacturers and distributors generally increase their production facilities for mass production after receiving an order. Therefore, even if there is no surplus production capacity at the time of order receipt, this does not mean that there is no excess capacity. In addition, the past market share trends of the Company Group and Company A suggest that they are competing for orders, and there has been, and still is, active competition for orders among piston ring manufacturers and distributors.

Therefore, Company A retains the necessary excess capacity to adopt competitive behavior.

c) Homogeneity of goods

OEM/OES piston rings for 4-wheeled vehicles are mature goods, and there is little room for technological innovation. Also, there is no significant difference in the quality of piston rings for 4-wheeled vehicles among piston ring manufacturers and distributors. In addition, since automobile manufacturers select piston ring manufacturers and distributors based on a collation of estimates when developing new engines and changing models, etc., it is possible that any piston ring manufacturer and distributor will receive orders from automobile manufacturers.

Therefore, piston rings for 4-wheeled vehicles supplied by the Company Group and Company A are considered to be homogeneous.

d) Summary

As described above, Company A has a market share of approximately 40%. Since the 4-wheel vehicle piston rings supplied by the Company Group and by Company A are considered to be homogeneous, if the Company Group raises its prices, users are likely to switch their purchases to Company A, which is a competitor. In addition, Company A has sufficient excess capacity for competitive behavior, and there is active competition among piston ring manufacturers and distributors. In view of the shifts in piston ring manufacturers and distributors that take place when automobile manufacturers develop new engines or change models, it seems that there is active competition for orders.

From the above, it seems that there is competitive pressure from Company A, a powerful competitor.

B. Import

Although there are some 4-wheeled vehicle piston ring manufacturers and distributors outside of Japan, domestic piston ring manufacturers and distributors are striving to sell piston rings at the quality and price desired by automobile manufacturers. It seems that there is no need for automobile manufacturers to switch to imported piston rings, and, therefore, imports of piston rings for 4-wheeled vehicles are rare.

However, although products from overseas suppliers are inferior to those from domestic suppliers in terms of transportation costs and lead time, there is no significant difference in function and utility between products from domestic and overseas suppliers. For this reason, products from overseas suppliers may also be an option for automobile manufacturers.

Based on the above, there is a strong chance that automobile manufacturers, for whom cost reduction is important, will switch their purchases to imports if domestic piston ring manufacturers and distributors raise their prices.

Therefore, competitive pressure from imports is recognized to a certain extent.

C. Entry

In the 4-wheeled piston ring manufacturing and sales business, the Company Group and Company A have been supplying most of the products. No new entrants have entered the market for some time.

Therefore, entry pressure is not recognized.

D. Competitive pressure from adjacent markets

There is no adjacent market for OEM/OES piston rings for 4-wheeled vehicles, as there are no products similar in function or utility, etc. to OEM/OES piston rings for 4-wheeled vehicles.

E. Competitive pressure from users

Automobile manufacturers select suppliers when developing new engines or at the timing of model changes, etc., based on a competitive method in which estimates from piston ring manufacturers and distributors are collated. The Company Group is striving to sell piston rings of the quality and price desired by automobile manufacturers by streamlining production and taking other measures to reduce costs.

Therefore, competitive pressure from automobile manufacturers (users),
who have considerable price bargaining power over 4-wheeled vehicle piston ring manufacturers and distributors such as the Company Group, is recognized.

F. Summary

As described above, the market share of the Company Group will increase as a result of this action. Competitive pressure from leading competitors is recognized, and, in addition to a certain degree of import pressure, competitive pressure from users is also recognized. Therefore, it is considered that this unilateral conduct will not substantially restrain competition in the particular field of trade.

(2) Substantial restraint of competition through coordinated conduct

A. This action will reduce the number of suppliers of OEM/OES piston rings for 4-wheeled vehicles from three to two. In addition, the goods of the Company Group and the competitors are homogeneous and have similar cost structures. In view of this, it is easy for the Company Group concerned and competitors to reach a common understanding, and it is also easy for other enterprises to monitor whether they have deviated from coordinated conduct.

In addition, in the field of OEM/OES piston rings for 4-wheeled vehicles, in the long-term, it is not difficult to predict the behavior of competitors in this field because market share and price fluctuations caused by demand trend changes and technological innovation are not likely to be significant.

B. However, it seems that transactions for OEM/OES piston rings for 4wheeled vehicles are increasing in volume, as competition for full-scale orders is concentrated during the period of new engine development. OEM/OES piston rings for 4-wheeled vehicles are adopted by collating estimates at the time of new engine development or model changes, etc. However, the timing is not fixed. As a result, there is price competition among piston ring manufacturers and distributors who are incentivized to aggressively take on large, irregular transactions. Furthermore, the transaction volume of OEM/OES piston rings for 4-wheeled vehicles is not stable, and prices are revised in accordance with fluctuations in transaction volume and other factors.

Therefore, from a short-term perspective, it is considered difficult for the Company Group and Company A to predict each other's actions, and the incentive to adopt coordinated conduct is considered to be small.

Furthermore, a certain degree of import pressure and competitive pressure from users are recognized as obstructions to coordinated conduct.

C. Based on the above, it seems that in the business of manufacturing and

selling piston rings for 4-wheeled vehicles, coordinated conduct among the Company Group and its competitors will not result in a substantial restraint of competition.

2. Piston rings for marine engines

- (2) MAN brand OEM/OES piston rings for 2-stroke engines (all regions of Japan)A. Substantial restraint of competition based on unilateral conduct
 - a) Position of the Company Group and status of competitors

The Company Group has a total market share of over 90% in the overall market for OEM and OES piston rings for marine vessels (in all regions of Japan), and it is unlikely that the Company Group's market share in transactions for MAN brand OEM and OES piston rings for 2-stroke vessels (in all regions of Japan) will be significantly smaller than this. Therefore, it is considered that the Company Group concerned has a considerably strong market share.

Company B is a competitor of the Company Group that manufactures and sells MAN brand OEM and OES piston rings for 2-stroke engines, but since Company B is an enterprise with a large market share from a worldwide perspective, competitive pressure from Company B will be considered as import pressure in b) below. In that case, there is no competitive pressure from competitors other than Company B.

b) Import

Approximately 90% of the world's 2-stroke engines are produced in Korea (45%), Japan (26%), and China (23%). Of these, piston rings are supplied to Korea and China almost exclusively by Company B. Therefore, Company B is considered to be a leading marine piston ring manufacturer and distributor with a larger market share than the Company Group on a worldwide basis.

In addition, some Japanese 2-stroke engine manufacturers already purchase piston rings from Company B. Thus, Company B's competitive position in terms of import pressure is considered to be high.

Based on the above, import pressure from Company B is recognized.

c) Entry

No entry pressure is recognized in the marine piston ring manufacturing and sales industry in Japan, as there have been no new entrants in the industry for some time.

d) Competitive pressure from adjacent markets

There is no directly adjacent market for MAN brand OEM/OES piston rings for 2-stroke engines, as there are no products that are similar in function or efficacy, etc.

On the other hand, although MAN branded products for OES sold by 2stroke engine manufacturers and OES (branded products) sold by MAN constitute a different particular field of trade because of the difference in direct users, they both compete at the final user stage because the final users are worldwide ship owners or dock companies.

It seems that MAN purchases piston rings for marine vessels from piston ring manufacturers and distributors around the world. As described in b) above, Company B is considered to be a leading manufacturer and distributor of piston rings for marine vessels with a larger market share than the Company Group when viewed on a worldwide basis. Therefore, it is believed that MAN purchases most of the piston rings for OES (branded products) from piston ring manufacturers and distributors other than the Company Group, such as Company B. For this reason, it is considered that the percentage of Company Group goods among OES (branded products) purchased by MAN is not large.

If, after this action, the Company Group raises the price for MAN-branded OES, shipowners or dock companies, who are the final users, are expected to switch from OES to OES (branded products). As mentioned above, given that MAN, as a licensor, is believed to purchase most of the OES piston rings (branded products) from piston ring manufacturers and distributors other than the Company Group, such as Company B, it is expected that a switch from OES to OES (branded products) by end users would reduce Company Group sales of OES piston rings. Since OEM and OES piston rings are the same product, there would be an equivalent price increase. As described in Part III 2 (2) a), above, given that the market of OES is considerably larger than that of OEM, it would be difficult for the Company Group to cover the reduction in OES sales with an increase in OEM sales.

From the above, it can be considered that MAN brand OES (branded products) have a certain restraining power on price increases for MAN brand OEM/OES Company Group piston rings. Therefore, it is recognized that there is competitive pressure from MAN brand OES (branded products), which is an indirect adjacent market, on MAN brand OEM/OES.

e) Competitive pressure from users

Engine manufacturers, who are the users, select suppliers of piston rings by collating estimates. Engine manufacturers have established a system that allows

them to purchase from overseas manufacturers, and many of them purchase parts other than piston rings from overseas manufacturers. Therefore, it is normal for them to conduct business with overseas manufacturers, and it is possible for them to purchase piston rings from overseas manufacturers. This suggests that engine manufacturers have a certain degree of bargaining power, as piston rings can be purchased from different manufacturers.

Therefore, a certain degree of competitive pressure from users is recognized.

f) Summary

As described above, in the market for the manufacture and sale of MAN brand OEM and OES piston rings for 2-stroke engines, the Company Group has a substantial market share and there is no competitive pressure from competitors, nor is there any pressure to enter the market.

On the other hand, import pressure and indirect competitive pressure from adjacent markets are recognized, and a certain degree of competitive pressure from users is also recognized.

Therefore, unilateral conduct would not substantially restrain competition in the market for the manufacture and sale of MAN-branded OEM and OES piston rings for 2-stroke engines.

B. Substantial restraint of competition through coordinated conduct

Currently, only the Company Group is in the market for manufacturing and selling MAN brand OEM and OES piston rings for 2-stroke engines, and since this action will reduce the number of competitive units in that market from two to one, no coordinated conduct will be taken.

Therefore, it cannot be found that coordinated conduct would result in a substantial restraint of competition.

(2) MAN brand OES (branded products) piston rings for 2-stroke engines (worldwide)

A. Substantial restraint of competition based on unilateral conduct

Company B, a competitor of the Company Group, has the largest share of the worldwide market for marine piston rings, and since Company B's market share is considered to be much larger than the total market share of the Company Group, it seems that there strong competitive pressure from Company B, who is a powerful competitor.

Therefore, it cannot be found that unilateral conduct would result in a

substantial restraint of competition.

B. Substantial restraint of competition through coordinated conduct

Since Company B's market share is expected to greatly exceed the total market share of the Company Group, Company B's production volume is expected to greatly exceed the production volume of the Company Group. Therefore, the manufacturing cost per piston ring of Company B is considered to be much lower than that of the Company Group, and since Company B and the Company Group have different cost structures, there is no recognition of coordinated conduct by Company Group and Company B.

Therefore, it is not recognized that coordinated conduct would result in a substantial restraint of competition.

Part VII Conclusion

It was determined that this action did not result in a substantial restraint of competition in the particular field of trade.

Case 4 Acquisition of nickel-cadmium batteries business of SANYO Electric Co., Ltd. by The Furukawa Battery Co., Ltd.

Part I The Parties

The Furukawa Battery Co., Ltd. (JCN: 7020001010527) (hereinafter referred to as "Furukawa Battery") and SANYO Electric Co., Ltd. (JSN: 1120001155854) (hereinafter referred to as "SANYO Electric") are companies engaged in the business of manufacturing and selling nickel-cadmium batteries (hereinafter referred to as the "nickel-cadmium battery business"; Hereinafter, a battery consisting of nickelcadmium electrode plates is referred to as a "nickel-cadmium battery" and a battery pack consisting of nickel-cadmium batteries, etc. is referred to as a "nickel-cadmium battery pack").

Hereinafter, the group of companies which has already formed a joint relationship with Panasonic Corporation (JCN 3120001236504), the ultimate parent company of SANYO Electric, will be referred to as the "Panasonic Group" and Furukawa Battery and the Panasonic Group will be collectively referred to as the "Company Group."

Part II Outline of the case and applicable provisions

This case concerns the plans of Furukawa Battery to acquire the nickel-cadmium battery business from SANYO Electric (hereinafter referred to as the "Action").

Among the companies belonging to the Panasonic Group, there are companies other than SANYO Electric that own assets related to the nickel-cadmium battery business. However, SANYO Electric will transfer the nickel-cadmium battery business to Furukawa Battery after acquiring such assets from the said companies.

Although this Action does not meet the requirement for notification, the JFTC conducted a business combination review as if a notification had been filed for a business combination plan that requires notification because Furukawa Battery presented a specific plan and held a consultation regarding this Action.

The applicable provision is Article 16 of the Antimonopoly Act.

There are multiple competitive or business relationships that exist among the businesses operated by the Company Group. The following is a detailed description of the results of the review of each horizontal business combination in (1) the manufacturing and sale of cylindrical nickel-cadmium batteries, (2) the manufacturing and sale of cylindrical nickel-cadmium battery packs for emergency broadcasting equipment, and (3) the manufacturing and sale of cylindrical nickel-cadmium battery packs for fire protection shutters (interlocking repeaters), which are considered to have a relatively large impact on competition.

Part III Outline of goods and services, etc.

1. Summary

(1) Nickel-cadmium battery types, etc.

Nickel-cadmium batteries are rechargeable batteries that can be recharged and used many times, using nickel hydroxide for the positive electrode, cadmium for the negative electrode, and an alkaline solution for the electrolyte. The two main types of nickel-cadmium batteries are cylindrical, which are small, and rectangular, which are large.

(2) Trends in demand for nickel-cadmium batteries

Since the negative electrode of nickel-cadmium batteries is made of cadmium, which has a high environmental impact, the demand for nickel-cadmium batteries has been shrinking due to the increasing environmental awareness in recent years, leading to a transition to other types of rechargeable batteries, such as nickel-metal hydride batteries and lithium-ion batteries.

2. Manufacturing processes and commercial distribution of cylindrical nickelcadmium batteries, etc.

(1) Manufacturing process for cylindrical nickel-cadmium batteries

The manufacturing process for a cylindrical nickel-cadmium battery roughly consists of ① manufacturing the electrode plates, (2) manufacturing the cylindrical nickel-cadmium battery (a single cell battery; also called a "cell" (hereinafter referred to as a "cylindrical nickel-cadmium battery")) by assembling the electrode plates and other components, and (3) manufacturing cylindrical nickel-cadmium battery packs (hereinafter referred to as a "cylindrical nickel-cadmium battery") by processing cylindrical nickel-cadmium batteries into packs. The Company Group performs all of the processes described in (1) through (3) above.

Furukawa Battery manufactures cylindrical nickel-cadmium batteries using its own (in-house) electrode plates and those purchased from the Panasonic Group. It also manufactures cylindrical nickel-cadmium battery packs using its own (in-house) cylindrical nickel-cadmium batteries and those purchased from the Panasonic Group.

Note that Furukawa Battery does not sell its own electrode plates externally.

On the other hand, the Panasonic Group manufactures cylindrical nickelcadmium batteries using its own (in-house) electrode plates and cylindrical nickelcadmium battery packs using these cylindrical nickel-cadmium batteries.

(2) Electrode plates

Nickel-cadmium batteries are manufactured by combining components such as electrode plates. There is no distinction between cylindrical and rectangular electrode plates for nickel-cadmium batteries. The only domestic manufacturer of electrode plates for nickel-cadmium batteries is the Company Group, but since Furukawa Battery does not sell its electrode plates externally as stated in (1), above, the Panasonic Group is the only domestic manufacturer that sells electrode plates for nickel-cadmium batteries to other battery manufacturers.

(3) Cylindrical nickel-cadmium batteries

A. Manufacturers, etc.

The two types of nickel-cadmium batteries are "cylindrical" and "rectangular," which have different dimensions, etc., with cylindrical batteries being smaller and rectangular batteries being larger. The only domestic manufacturer of cylindrical nickel-cadmium batteries is the Company Group.

B. Types of cylindrical nickel-cadmium batteries manufactured by the Company Group

Cylindrical nickel-cadmium batteries differ in voltage (V), capacity (mAh), mass (g), dimensions (diameter mm × height mm), standard charge (current mA × time hr), etc., depending on the type set by the Company Group. Only a few of the types of cylindrical nickel-cadmium batteries manufactured by the Company Group are considered to be equivalent goods.

When a manufacturer of cylindrical nickel-cadmium batteries manufactures a new cylindrical nickel-cadmium battery with a capacity and dimensions that are not already being manufactured, in addition to the large capital investment cost, several years are needed from the investment decision to the start of production.

(4) Cylindrical nickel-cadmium battery packs

A. Usage

As described in (1), above, a cylindrical nickel-cadmium battery pack is a processed pack of cylindrical nickel-cadmium batteries. Cylindrical nickel-cadmium battery packs are used for emergency broadcasting equipment, fire shutters (interlocking relays), building emergency lights (small), guide lights, medical equipment, consumer users, industrial equipment, and other applications.

The size and capacity of cylindrical nickel-cadmium battery packs vary depending on the size of the equipment in which they are installed, the size of the space for storing the cylindrical nickel-cadmium battery pack in the equipment, and the application of the equipment. For this reason, manufacturers of cylindrical nickel-cadmium battery packs produce cylindrical nickel-cadmium battery packs by selecting a cylindrical nickel-cadmium element battery that fits the equipment in which it is to be installed. Therefore, cylindrical nickel-cadmium battery packs are custom-made products that are manufactured to meet the specifications of the equipment in which they are installed.

B. Manufacturers, etc.

a) Cylindrical nickel-cadmium battery packs for emergency broadcasting equipment

Cylindrical nickel-cadmium battery packs for emergency broadcasting equipment are used in broadcasting equipment for warnings and evacuation guidance for people inside buildings in the case of the outbreak of a fire, etc. The only manufacturer of cylindrical nickel-cadmium battery packs for emergency broadcasting equipment is the Company Group.

b) Cylindrical nickel-cadmium batteries for fire shutters (interlocking relay)

Fireproof shutters (interlocking relays) are equipped with a sensing device that prevents people from becoming trapped when they automatically close in the event of a fire. Cylindrical nickel-cadmium battery packs are used as the backup power source.

The only manufacturer of cylindrical nickel-cadmium battery packs for fire shutters (interlocking relay units) is the Company Group.

(5) Commercial distribution of cylindrical nickel-cadmium batteries, etc.

A. Commercial distribution

The general commercial distribution of cylindrical nickel-cadmium batteries is as follows.

Electrode plates manufactured by the Panasonic Group are sold to Furukawa Battery, a manufacturer of cylindrical nickel-cadmium batteries. Furukawa Battery manufactures cylindrical nickel-cadmium batteries using electrodes manufactured in-house and those purchased from the Panasonic Group. The Panasonic Group, on the other hand, manufactures cylindrical nickelcadmium batteries using electrodes manufactured in-house.

The Company Group, a manufacturer of cylindrical nickel-cadmium batteries, sells the cylindrical nickel-cadmium batteries to manufacturers of

cylindrical nickel-cadmium battery packs.

Cylindrical nickel-cadmium battery pack manufacturers select and purchase suitable cylindrical nickel-cadmium batteries and pack them to produce cylindrical nickel-cadmium battery packs that meet the requirements of equipment manufacturers, who are the users.

Cylindrical nickel-cadmium battery pack manufacturers include Furukawa Battery and Panasonic Group.

B. Pricing

Price negotiations for electrode plates, cylindrical nickel-cadmium batteries, and cylindrical nickel-cadmium battery packs are conducted between the parties to each transaction.

Note that Furukawa Battery has not raised the price of cylindrical nickelcadmium batteries or cylindrical nickel-cadmium battery packs for many years due to the stable manufacturing cost.

For the same reasons, the Panasonic Group has not raised the prices of cylindrical nickel-cadmium batteries or cylindrical nickel-cadmium battery packs for most users for many years.

3. Types of rechargeable batteries other than nickel-cadmium batteries

Types of rechargeable batteries other than nickel-cadmium batteries include nickel-metal hydride batteries, lithium-ion batteries, and lead-acid batteries. Users of rechargeable batteries select the type of rechargeable battery to use based on the required voltage, discharge characteristics, size, cost, safety, etc. Demand for cylindrical nickel-cadmium batteries has been shrinking due to the transition toward the increasing usage of nickel-metal hydride or lithium-ion batteries primarily for fire shutters (interlocking repeaters), building emergency lights (small), guide lights, medical equipment, and consumer products.

Part IV Particular field of trade

1. Scope of goods and services

(1) Substitutability of cylindrical nickel-cadmium batteries and cylindrical nickelcadmium battery packs

A. Demand substitutability

Since a cylindrical nickel-cadmium battery pack is a processed pack of cylindrical nickel-cadmium batteries, the cylindrical nickel-cadmium battery is one component of a cylindrical nickel-cadmium battery pack. For this reason, it may be considered sufficient to consider cylindrical nickel-cadmium batteries and cylindrical nickel-cadmium battery packs not as separate goods or services but only as cylindrical nickel-cadmium battery packs.

However, there are manufacturers of cylindrical nickel-cadmium battery packs that manufacture cylindrical nickel-cadmium battery packs by purchasing cylindrical nickel-cadmium batteries from the Company Group, in which case the cylindrical nickel-cadmium batteries themselves are actually the object of the transaction. Therefore, even if there is a certain price increase for cylindrical nickel-cadmium batteries, users of cylindrical nickel-cadmium batteries are not likely to purchase cylindrical nickel-cadmium battery packs as a substitute.

Therefore, there is no demand substitutability between cylindrical nickelcadmium batteries and cylindrical nickel-cadmium battery packs.

B. Supply substitutability

Although the Company Group manufactures both cylindrical nickelcadmium batteries and cylindrical nickel-cadmium battery packs, the facilities and know-how required for the manufacture of cylindrical nickel-cadmium batteries are different from those required for the manufacture of cylindrical nickel-cadmium battery packs. For this reason, even manufacturers of cylindrical nickel-cadmium battery packs would find it difficult to switch to the production of cylindrical nickel-cadmium batteries in a short period of time without incurring significant additional costs and risks.

Therefore, no supply substitutability is recognized between cylindrical nickel-cadmium batteries and cylindrical nickel-cadmium battery packs.

C. Summary

From the above, cylindrical nickel-cadmium batteries and cylindrical nickel-cadmium battery packs are defined as different goods and services.

(2) Cylindrical nickel-cadmium batteries

A. Substitutability of cylindrical and rectangular shapes

a) Demand substitutability

Cylindrical nickel-cadmium batteries are used to make small cylindrical nickel-cadmium battery packs and rectangular nickel-cadmium batteries are used in the production of large, rectangular nickel-cadmium battery packs. Therefore, even if there is a certain price increase for cylindrical nickel-cadmium batteries, users are not likely to purchase rectangular nickel-cadmium batteries as a substitute. This would be true even in the case of a certain price increase for rectangular nickel-cadmium batteries.

Therefore, there is no demand substitutability between cylindrical nickelcadmium batteries and rectangular nickel-cadmium batteries.

b) Supply substitutability

Basically, nickel-cadmium batteries cannot be manufactured in the same manufacturing facility if they have different capacities and dimensions. Cylindrical nickel-cadmium batteries are small and rectangular nickel-cadmium batteries are large. Their capacities and dimensions differ greatly. Therefore, it would be necessary for businesses that manufacture and sell only cylindrical nickel-cadmium batteries to build new manufacturing facilities in order to newly produce rectangular nickel-cadmium batteries. This is considered to be true even in the case where an enterprise that manufactures and sells only rectangular nickel-cadmium batteries newly manufactures cylindrical nickelcadmium batteries.

Therefore, no supply substitutability is recognized between cylindrical and rectangular nickel-cadmium batteries.

c) Summary

Based on the above, cylindrical nickel-cadmium batteries and rectangular nickel-cadmium batteries are defined as different goods and services. Since the goods and services under consideration in this case are cylindrical nickelcadmium batteries, cylindrical nickel-cadmium batteries will be considered below.

B. Substitutability of cylindrical nickel-cadmium batteries and rechargeable batteries of types other than nickel-cadmium batteries

a) Demand substitutability

To manufacture cylindrical nickel-cadmium battery packs, it is necessary to use cylindrical nickel-cadmium batteries as components. Cylindrical nickelcadmium battery packs cannot be manufactured using rechargeable batteries of types other than nickel-cadmium batteries, such as nickel-metal hydride batteries. Therefore, manufacturers of cylindrical nickel-cadmium battery packs, who are the users of cylindrical nickel-cadmium batteries, do not purchase rechargeable batteries other than nickel-cadmium batteries when producing cylindrical nickel-cadmium battery packs.

Therefore, there is no demand substitutability between cylindrical nickelcadmium batteries and rechargeable batteries of types other than nickelcadmium batteries.

b) Supply substitutability

Since each type of rechargeable battery, such as nickel-cadmium and nickelmetal hydride, has different characteristics, the equipment and know-how, etc. required to manufacture cylindrical nickel-cadmium batteries are different from those required to manufacture other types of rechargeable batteries. For that reason, even if it is possible to manufacture and sell either a cylindrical nickelcadmium battery or another type of rechargeable battery, it is not possible to transition to the manufacture and sale of the other type in a short period of time without significant additional cost and risk.

Therefore, there is no supply substitutability between cylindrical nickelcadmium batteries and rechargeable batteries of types other than nickelcadmium.

c) Summary

From the above, cylindrical nickel-cadmium batteries and rechargeable batteries of types other than nickel-cadmium are defined as different goods and services.

C. Type substitutability

a) Demand substitutability

The Company Group has established types of cylindrical nickel-cadmium batteries according to differences in voltage (V), capacity (mAh), mass (g), dimensions (diameter mm × height mm), standard charge (current mA × time hr), and other factors. Regardless of the model, the functional utility of a cylindrical nickel-cadmium battery is to continuously supply the necessary electricity. In addition, manufacturers of cylindrical nickel-cadmium battery packs, who are the users of cylindrical nickel-cadmium batteries, select the appropriate type of cylindrical nickel-cadmium battery manufactured by the Company Group in order to produce cylindrical nickel-cadmium battery packs that meet the size and performance requirements of equipment manufacturers, who are users of cylindrical nickel-cadmium battery packs. They then manufacture cylindrical nickel-cadmium battery packs by processing multiple cylindrical nickel-cadmium batteries into a pack. When a manufacturer of cylindrical nickel-cadmium battery packs sets about manufacturing a cylindrical nickel-cadmium battery pack that satisfies the requirements of users, the only options for use may be certain types of cylindrical nickel-cadmium batteries, but the combinations of cylindrical nickel-cadmium batteries that can satisfy the user requirements are not necessarily uniform.

From the above, a certain degree of substitutability in demand between types of cylindrical nickel-cadmium batteries is recognized.

b) Supply substitutability

Basically, in order to manufacture new cylindrical nickel-cadmium batteries that differ in capacity and dimensions from those currently manufactured, it is necessary to build new manufacturing facilities. Therefore, it would be difficult to switch manufacturing and sales to cylindrical nickelcadmium batteries of a different type in a short period of time without significant additional cost and risk.

From the above, supply substitutability is not recognized between cylindrical nickel-cadmium batteries of different types.

c) Summary

As described above, since supply substitutability is not recognized between cylindrical nickel-cadmium batteries of different types, it may be viewed that particular fields of trade are formed for individual types of cylindrical nickelcadmium batteries.

However, if a market for the manufacture and sale of cylindrical nickelcadmium batteries was to be formed for each individual type, the Company Group would not compete in the market in most cases. From the viewpoint of a more careful examination, it is considered appropriate to define the scope of goods and services of cylindrical nickel-cadmium batteries in a cross-sectional manner, considering that the Company Group is competing in the same market.

The degree of competition within the Company Group when focusing on the difference in types shall be considered in the examination of whether the Action will substantially restrain competition, as described in Section 6 below.

D. Summary

Based on the above, the scope of goods and services was defined as "cylindrical nickel-cadmium batteries."

(3) Cylindrical nickel-cadmium battery packs

A. Substitutability of cylindrical and rectangular shapes

a) Demand substitutability

Nickel-cadmium battery packs are available in cylindrical and rectangular forms. Cylindrical nickel-cadmium battery packs are used for emergency broadcasting equipment, fire shutters (interlocking relays), building emergency lights (small), guide lights, medical equipment, consumer use, industrial equipment, and other applications. On the other hand, rectangular nickelcadmium battery packs are used for applications such as aircraft and railroad vehicles. The cylindrical and rectangular types have different applications. Therefore, even if there is a certain price increase for cylindrical nickel-cadmium battery packs, users are not likely to purchase rectangular nickel-cadmium battery packs as a substitute. This would be true even in the case of a certain price increase for rectangular nickel-cadmium battery packs.

Thus, demand substitutability between cylindrical nickel-cadmium battery packs and rectangular nickel-cadmium battery packs is not recognized.

b) Supply substitutability

Cylindrical nickel-cadmium battery packs and rectangular nickel-cadmium battery packs differ in terms of the conditions of use of the equipment in which the nickel-cadmium battery packs are installed and the size of the storage space for the nickel-cadmium battery pack. In addition, different performances and specifications are required for cylindrical nickel-cadmium battery packs and rectangular nickel-cadmium battery packs due to the differences in characteristics, etc. between the equipment equipped with each type of pack. Cylindrical nickel-cadmium battery pack manufacturers select and purchase cylindrical nickel-cadmium batteries suited for the equipment in which they are to be installed based on the size and characteristics of the equipment. They manufacture cylindrical nickel-cadmium battery packs by processing the batteries into packs. For that reason, it may be difficult to manufacture rectangular nickel-cadmium battery packs even if the technology and know-how to manufacture cylindrical nickel-cadmium battery packs are available.

Therefore, supply substitutability between cylindrical and rectangular nickel-cadmium battery packs is considered to be limited.

c) Summary

Based on the above, cylindrical nickel-cadmium battery packs and rectangular nickel-cadmium battery packs are defined as different goods and services.

B. Substitutability of cylindrical nickel-cadmium battery packs and other types of rechargeable battery packs

a) Demand substitutability

Equipment manufacturers, who are the users of cylindrical nickel-cadmium battery packs, select the type of rechargeable battery (nickel-cadmium battery,

nickel-metal hydride battery, etc.) to be installed in their equipment based on the voltage, discharge characteristics, size, cost, safety, etc. required for the equipment they are manufacturing.

Although the characteristics of nickel-cadmium batteries differ from those of rechargeable batteries other than nickel-cadmium batteries, a transition is being made toward rechargeable batteries other than nickel-cadmium batteries for use in fire shutters (interlocking repeaters), building emergency lights (small) and induction lights, medical equipment, and consumer cylindrical nickel-cadmium battery packs.

On the other hand, because of differences in performance and price between nickel-cadmium batteries and rechargeable batteries other than nickel-cadmium batteries, there has been no such transition in the case of some emergency broadcasting equipment.

In light of the above, a certain degree of demand substitutability between cylindrical nickel-cadmium batteries and rechargeable batteries of types other than nickel-cadmium batteries is recognized.

b) Supply substitutability

Because of the different characteristics of rechargeable batteries other than nickel-cadmium batteries, there are certain differences in the technology and know-how, etc. required for manufacturing. For that reason, even if an enterprise is capable of manufacturing and selling either cylindrical nickelcadmium battery packs or rechargeable batteries other than nickel-cadmium batteries, it is not expected to be possible to convert to the manufacturing and sale of the other type in a short period of time without incurring significant additional cost and risk.

Therefore, supply substitutability between cylindrical nickel-cadmium battery packs and rechargeable batteries of types other than nickel-cadmium batteries is considered to be limited.

c) Summary

Based on the above, from the viewpoint of more careful consideration, cylindrical nickel-cadmium battery packs and rechargeable batteries of types other than nickel-cadmium batteries are defined as a separate scope of goods and services.

In addition, as mentioned in a) above, with regard to cylindrical nickelcadmium battery packs for some applications, such as for fire shutters (interlocking relays), given the transition to rechargeable batteries of types other than nickel-cadmium batteries, rechargeable batteries of types other than nickel-cadmium batteries shall be considered to exert competitive pressure from adjacent markets.

C. Substitutability between cylindrical nickel-cadmium battery packs for different applications

a) Demand substitutability

Cylindrical nickel-cadmium battery packs have different usage conditions and storage spaces, etc., depending on whether the application is for emergency broadcasting equipment or fireproof shutters (interlocking repeaters), as well as differing capacity, mass, usable temperature range, and dimensions. Since cylindrical nickel-cadmium battery packs for different applications differ in size, performance, and price, users are not likely to purchase cylindrical nickelcadmium battery packs for other applications as a substitute even if there is a certain price increase on cylindrical nickel-cadmium battery packs for a certain application.

Therefore, demand substitutability between cylindrical nickel-cadmium battery packs with different applications is not recognized.

b) Supply substitutability

Cylindrical nickel-cadmium battery packs have different usage conditions and storage spaces, etc., depending on the application. In addition, the performance and specifications required for cylindrical nickel-cadmium battery packs vary depending on the usage, since the characteristics of devices equipped with cylindrical nickel-cadmium battery packs vary depending on the usage. Cylindrical nickel-cadmium battery pack manufacturers select and purchase cylindrical nickel-cadmium batteries suited to the equipment in which they will be installed based on the usage of the equipment, etc. They then manufacture cylindrical nickel-cadmium battery packs by processing the batteries into packs. For that reason, even if a manufacturer of cylindrical nickel-cadmium battery packs has the technology and know-how to manufacture cylindrical nickelcadmium battery packs for a certain application, it may be difficult to switch to manufacturing cylindrical nickel-cadmium battery packs for other applications in a short period of time without incurring significant additional cost and risk.

Therefore, supply substitutability between cylindrical nickel-cadmium battery packs with different applications is considered to be limited.

c) Summary

Based on the above, the scope of goods and services for cylindrical nickelcadmium battery packs is defined by application.

D. Substitutability of cylindrical nickel-cadmium battery packs for new and replacement usage

Since the cylindrical nickel-cadmium battery packs for new installation and cylindrical nickel-cadmium battery packs for replacement usage are the same batteries, both demand substitutability and supply are recognized.

Therefore, the scope of goods and services for cylindrical nickel-cadmium battery packs is defined as the same goods and services for both new installation and replacement usage.

E. Substitutability between cylindrical nickel-cadmium battery packs for various devices

As stated in Part III 2. (4) a) above, cylindrical nickel-cadmium battery packs are custom-made products that are manufactured to meet the specifications of the equipment in which they are installed, and therefore a particular field of trade for cylindrical nickel-cadmium battery pack may be formed for each cylindrical nickel-cadmium battery pack used for each individual device.

However, if a particular field of trade for a cylindrical nickel-cadmium battery pack is formed for each cylindrical nickel-cadmium battery pack used for each individual device, the Company Group would not compete in most markets. From the viewpoint of a more careful examination, though, it is appropriate to define the scope of goods and services for each application and to consider the Company Group as competing in the same market.

The degree of competition within the Company Group in cylindrical nickelcadmium battery packs for various devices will be considered in the examination of whether the action in question will substantially restrain competition, as described in "6," below.

F. Summary

In view of the above, cylindrical nickel-cadmium battery packs were defined by application, including those for emergency broadcasting equipment and those for fireproof shutters (interlocking repeaters).

2. Geographic range

(1) Cylindrical nickel-cadmium batteries

Cylindrical nickel-cadmium battery pack manufacturers, who are users of cylindrical nickel-cadmium batteries, purchase cylindrical nickel-cadmium batteries from Japanese manufacturers of cylindrical nickel-cadmium batteries (only the Company Group). In addition, the Company Group sells cylindrical nickel-cadmium batteries in all regions of Japan, and there is no particular price difference between different regions in Japan.

Based on the above, the geographic range of cylindrical nickel-cadmium batteries was defined as "all regions of Japan."

(2) Cylindrical nickel-cadmium battery packs with various usages

Equipment manufacturers, who are users of cylindrical nickel-cadmium battery packs, purchase cylindrical nickel-cadmium battery packs for various usages from Japanese manufacturers of cylindrical nickel-cadmium battery packs. The Company Group sells cylindrical nickel-cadmium battery packs for various usages in all regions of Japan, and there is no particular price difference between different regions of Japan.

Based on the above, the geographical range of cylindrical nickel-cadmium battery packs for each type of usage was defined as "all regions of Japan."

Part V Applicability of the Safe-harbor Criteria in a Particular Field of Trade

The market shares of (1) manufacturing and sales of cylindrical nickel-cadmium batteries, (2) manufacturing and sales of cylindrical nickel-cadmium battery packs for emergency broadcasting equipment, and (3) manufacturing and sales of cylindrical nickel-cadmium battery packs for fire protection shutters (interlocking repeaters) are shown in Tables 1 through 3, none of which meets the safe-harbor criteria for a horizontal business combination.

Table 1: Cylindrical nickel-cadmium battery manufacturing and salesmarket share in FY2020

Ranking	Company name	Market share
1	Panasonic Group	Approx. 70%
2	Furukawa Battery	Approx. 30%
Total amount 100%		
Combined market share and rank: 100%, #1		

Table 2 Cylindrical nickel-cadmium battery packs for emergencybroadcasting equipment manufacturing and sales market share in FY2020

Ranking	Company name	Market share

1	Panasonic Group	Approx. 65%
2	Furukawa Battery	Approx. 35%
Total amount 100%		
Combined market share and rank: 100%, #1		

Table 3 Cylindrical nickel-cadmium battery packs for fire shutters (interlocking repeaters) manufacturing and sales market share in FY2020

Ranking	Company name	Market share
1	Furukawa Battery	Approx. 60%
2	Panasonic Group	Approx. 40%
Total amount 100%		
Combined market share and rank: 100%, #1		

Part VI Legal assessment based on the Antimonopoly Act

1. Manufacture and sale of cylindrical nickel-cadmium batteries

(1) Substantial restraint of competition based on unilateral conduct

A. Position of the Company Group and status of competitors

Since there are no other enterprises manufacturing cylindrical nickelcadmium batteries other than the Company Group, and there are no competitors, no competitive pressure from competitors is recognized. However, as described in Part III 2. (3) b) above, of the models of cylindrical nickel-cadmium batteries manufactured by the Company Group, only a few are considered to be equivalent, and the degree of competition within the Company Group is limited. Therefore, the impact of this action on competition in the market for the manufacture and sale of cylindrical nickel-cadmium batteries is considered to be limited.

B. Import

Import pressure is limited because few imported cylindrical nickelcadmium batteries are purchased.

C. Entry

As described in Part III 1. (2) and 3, above, there are no new enterprises planning to enter the market for nickel-cadmium batteries because nickel-cadmium batteries are being replaced by other types of rechargeable batteries, such as nickel-metal hydride batteries and lithium-ion batteries, leading to a reduction in demand. Therefore, entry pressure is not recognized.

D. Competitive pressure from adjacent markets

Since a cylindrical nickel-cadmium battery must be used to produce a cylindrical nickel-cadmium battery pack, it is believed that there is no adjacent market for cylindrical nickel-cadmium batteries.

However, there is competitive pressure from nickel-metal hydride batteries and others on the market for the manufacture and sale of cylindrical nickelcadmium battery packs, which corresponds to the downstream market of cylindrical nickel-cadmium batteries. In fact, demand for cylindrical nickelcadmium battery packs for fire shutters (interlocking repeaters), building emergency lights (small size), guide lights, etc. is shrinking due to the ongoing transition to nickel-metal hydride batteries and other batteries. Regarding cylindrical nickel-cadmium battery packs for emergency broadcasting equipment, some manufacturers have already completed the development of nickel-metal hydride batteries for emergency broadcasting equipment.

Thus, the ongoing transition from nickel-cadmium battery packs to nickelmetal hydride battery packs, etc., is itself considered to be a restraint on price increases for Company Group cylindrical nickel-cadmium batteries.

Therefore, competitive pressure from indirect adjacent markets, such as nickel-metal hydride batteries, is recognized.

E. Competitive pressure from users

Cylindrical nickel-cadmium batteries are manufactured and sold only by the Company Group, and competitive pressure from users is limited.

F. Summary

As described above, competitive pressure from competitors for cylindrical nickel-cadmium batteries is not recognized because there are no other enterprises manufacturing and selling such batteries other than the Company Group, and there is no recognition of entry pressure. Import pressure and competitive pressure from users are also limited. However, since cylindrical nickel-cadmium battery packs, which is the downstream market for cylindrical nickel-cadmium batteries, are transitioning from nickel-cadmium batteries to nickel-metal hydride batteries, etc., indirect competitive pressure from adjacent markets is recognized.

Furthermore, of the models of cylindrical nickel-cadmium batteries manufactured by the Company Group, only a few are considered to be equivalent, and the degree of competition among the Company Group in cylindrical nickelcadmium batteries is limited, which means that the impact of this action on competition in the market for the manufacture and sale of cylindrical nickelcadmium batteries is limited.

(2) Substantial restraint of competition through coordinated conduct

Currently, only the Company Group is in the market for the manufacture and sale of cylindrical nickel-cadmium batteries, and since this action will reduce the number of competitive units in the market from two to one, there will be no substantial restraint of competition due to coordinated conduct.

2. Manufacture and sale of cylindrical nickel-cadmium battery packs for emergency broadcasting equipment

(1) Substantial restraint of competition based on unilateral conduct

A. Position of the Company Group and status of competitors

Since there are no other enterprises manufacturing cylindrical nickelcadmium battery packs for emergency broadcasting equipment other than the Company Group, and there are no competitors, competitive pressure from competitors is not recognized.

However, as described in Part III 2. (4) a), above, cylindrical nickelcadmium battery packs are custom-made products manufactured to the specifications of the equipment in which they are installed. The users of cylindrical nickel-cadmium battery packs purchase batteries from certain suppliers and tend not to make purchases from other suppliers.

In light of the above, and given the limited degree of competition between the Company Group, the effect of this action on competition in the market for the manufacture and sale of cylindrical nickel-cadmium battery packs for emergency broadcasting equipment is considered to be limited.

B. Import

Import pressure is limited because imported cylindrical nickel-cadmium battery packs for emergency broadcast equipment are rarely purchased.

C. Entry

As described in Part III 1. (2) and 3., above, there are no new enterprises planning to enter the market for nickel-cadmium batteries because nickel-cadmium batteries are being replaced by other types of rechargeable batteries, such as nickel-metal hydride batteries and lithium-ion batteries, leading to a reduction in demand. Therefore, entry pressure is not recognized.

D. Competitive pressure from adjacent markets

Although the transition to rechargeable batteries other than nickelcadmium battery packs for emergency broadcasting equipment is not progressing at this time, some manufacturers have already completed the development of nickel-metal hydride battery packs for use in emergency broadcasting equipment. In addition, demand for cylindrical nickel-cadmium battery packs for fire shutters (interlocking repeaters), building emergency lights (small size), and guide lights, etc., is shrinking due to the ongoing transition to nickel-metal hydride batteries and other batteries.

Thus, the ongoing transition from nickel-cadmium battery packs to nickelmetal hydride battery packs, etc., is itself considered to be a restraint on price increases for Company Group cylindrical nickel-cadmium battery packs.

Therefore, competitive pressure from adjacent markets, such as nickelmetal hydride batteries, is recognized.

E. Competitive pressure from users

Since there are no circumstances that can be evaluated as pressure from users, competitive pressure from users is considered to be limited.

F. Summary

As described above, there is no competitive pressure from competitors for cylindrical nickel-cadmium battery packs for emergency broadcasting equipment because there are no other enterprises manufacturing and selling such batteries other than the Company Group, and entry pressure is also not recognized. Import pressure and competitive pressure from users are also limited.

However, since there is a progressive transition from nickel-cadmium batteries to nickel-metal hydride batteries, etc. for cylindrical nickel-cadmium battery packs, competitive pressure from adjacent markets is recognized.

Furthermore, since cylindrical nickel-cadmium battery packs are customordered products manufactured to meet the specifications of each device in which they are installed, and since users of cylindrical nickel-cadmium battery packs tend to purchase their batteries from certain suppliers and not from other suppliers, the degree of competition within the Company Group in the market for cylindrical nickel-cadmium battery packs for use in emergency broadcasting equipment is limited. The effect of this action on competition in the market of manufacturing and sale of cylindrical nickel-cadmium battery packs for emergency broadcasting equipment is limited. (2) Substantial restraint of competition through coordinated conduct

Currently, only the Company Group is in the market for the manufacture and sale of cylindrical nickel-cadmium battery packs for emergency broadcasting equipment, and since this action will reduce the number of competitive units in the market from two to one, there will be no substantial restraint of competition through coordinated conduct.

3. Manufacture and sale of cylindrical nickel-cadmium battery packs for fire shutters (interlocking relays)

(1) Substantial restraint of competition based on unilateral conduct

A. Position of the Company Group and status of competitors

Since there are no other enterprises manufacturing cylindrical nickelcadmium battery packs for fire shutters (interlocking relay units) other than the Company Group concerned, and there are no competitors, competitive pressure from competitors is not recognized.

However, as described in Part III 2 (4) a), above, cylindrical nickel-cadmium battery packs are custom-made products manufactured to the specifications of the equipment in which they are installed. Therefore, the users of cylindrical nickel-cadmium battery packs purchase batteries from certain suppliers, and tend not to make purchases from other suppliers.

In light of the above, the degree of competition within the Company Group is limited, and the effect of this action on competition in the market for the manufacture and sale of cylindrical nickel-cadmium battery packs for fire shutters (interlocking relay units) is considered to be limited.

B. Import

Import pressure is not recognized because there are no imported cylindrical nickel-cadmium battery packs for fire shutters (interlocking relay units).

C. Entry

As described in Part III 1. (2) and 3, above, there are no new enterprises planning to enter the market for nickel-cadmium batteries because nickel-cadmium batteries are being replaced by other types of rechargeable batteries, such as nickel-metal hydride batteries and lithium-ion batteries, leading to a reduction in demand. Therefore, entry pressure is not recognized.

D. Competitive pressure from adjacent markets

Demand for cylindrical nickel-cadmium battery packs for fire shutters (interlocking relay units) is shrinking due to the ongoing transition to nickelmetal hydride batteries.

The ongoing transition from nickel-cadmium batteries to nickel-metal hydride batteries for cylindrical nickel-cadmium battery packs used in fire shutters (interlocking relay units) is itself considered to be a restraint against price hikes by the Company Group.

Therefore, competitive pressure from the adjacent market of nickel-metal hydride batteries is recognized.

E. Competitive pressure from users

Since there are no circumstances that can be evaluated as pressure from users, competitive pressure from users is considered to be limited.

F. Summary

As described above, there is no competitive pressure from competitors for cylindrical nickel-cadmium battery packs for fire shutters (interlocking relay units) because there are no other enterprises manufacturing and selling such batteries other than the Company Group concerned. There is no recognition of import or entry pressure. In addition, competitive pressure from users is limited.

However, since there is a progressive transition from nickel-cadmium batteries to nickel-metal hydride batteries for cylindrical nickel-cadmium battery packs for fire shutters (interlocking relay units), competitive pressure from adjacent markets is recognized.

Furthermore, since cylindrical nickel-cadmium battery packs are custommade products manufactured to meet the specifications of each device in which they are installed, and since users of cylindrical nickel-cadmium battery packs tend to purchase their batteries from certain suppliers and not from other suppliers, the degree of competition within the Company Group in the market for cylindrical nickel-cadmium battery packs for use in fire shutters (interlocking repeaters) is limited. Therefore, the effect of this action on competition in the market for the manufacture and sale of cylindrical nickelcadmium batteries for fire shutters (interlocking repeaters) is limited.

(2) Substantial restraint of competition through coordinated conduct

Currently, only the Company Group is in the market for the manufacture and sale of cylindrical nickel-cadmium battery packs for fire shutters (interlocking repeaters), and this action will reduce the number of competitive units in this market from two to one, which means that there will be no substantial restraint of competition through coordinated conduct.

4. Economic analysis

Using sales performance data, etc. submitted by the Company Group, comparative analyses of the prices of each individual product were conducted for cylindrical nickel-cadmium batteries and for each usage of cylindrical nickel-cadmium battery packs as quantitative analyses of the prices of horizontally-related cylindrical nickel-cadmium batteries, cylindrical nickel-cadmium battery packs for emergency broadcasting equipment, and cylindrical nickel-cadmium battery packs for fire shutters (interlocking repeaters) in order to understand the degree of competition among the Company Group.

As a result, it was observed that, for cylindrical nickel-cadmium batteries, there was no particular response in the price and quantity of Furukawa Battery products in the same price range as individual products of the Panasonic Group that underwent price increases, suggesting that the degree of competition within the Company Group may not be very high. On the other hand, with regard to cylindrical nickel-cadmium battery packs for emergency broadcasting equipment and cylindrical nickel-cadmium battery packs for fireproof shutters (interlocking repeaters), except for some individual products, the prices of all individual products remained unchanged without significant fluctuations, and the extent of competition within the Company Group could not be determined.

5. Summary

As described above, with regard to (1) the cylindrical nickel-cadmium battery manufacturing and sales business, the transition toward nickel-metal hydride batteries, etc. in cylindrical nickel-cadmium battery packs, which is the downstream market of cylindrical nickel-cadmium batteries, is itself considered to be a restraining force against price increases by the Company Group for cylindrical nickel-cadmium batteries. Therefore, indirect competitive pressure from the adjacent market of nickel metal hydride batteries, etc. is recognized.

With regard to (2) manufacturing and sales of cylindrical nickel-cadmium battery packs for emergency broadcasting equipment and (3) manufacturing and sales of cylindrical nickel-cadmium battery packs for fireproof shutters (interlocking repeaters), the transition from nickel-cadmium batteries to nickel-hydrogen batteries and the like for cylindrical nickel-cadmium battery packs is itself considered to be a restraining force against price increases by the Company Group for cylindrical nickel-cadmium battery packs. Therefore, indirect competitive pressure from the adjacent market of nickel metal hydride batteries, etc. is recognized.

In addition, the degree of competition within the Company Group in (1) through (3) above is limited, and the impact of this action on competition is considered to be limited.

Furthermore, in (1) through (3), above, the action in question will result in the creation of one competitive unit in the relevant market instead of two, and, therefore, there will be no substantial restraint of competition through coordinated conduct.

Therefore, the Board concluded that the unilateral or coordinated conduct by the Company Group as a result of this action will not produce a substantial restraint of competition in (1) through (3) above.

Part VII Conclusion

It was determined that this action did not result in a substantial restraint of competition in the particular field of trade.

Case 5 Acquisition of stock in Tenneco Inc. by Pegasus Holdings III, LLC

Part I The Parties

Pegasus Holdings III, LLC (Head Office: United States of America; hereinafter referred to as "Pegasus"; the group of companies that form a joint relationship with Apollo Global Management Inc., which is the ultimate parent company with the head office in the U.S., is referred to as the "Apollo Group") is a holding company that has companies engaged in the manufacture and sale of polycrystalline alumina fiber and catalyst support mats made from polycrystalline alumina fibers (hereinafter referred to as "support mats").

Tenneco Inc. (Head Office: United States of America; hereinafter referred to as "Tenneco"; the group of companies that form a joint relationship with Tenneco is referred to as the "Tenneco Group") is engaged in the manufacture and sale of automotive exhaust treatment equipment.

Apollo Group and Tenneco Group are hereinafter collectively referred to as "the Company Group."

Part II Outline of the case and applicable provisions

In this case, (1) Pegasus planned to establish a new subsidiary, (2) to hold a merger with the said subsidiary being the absorbed company and Tenneco as the surviving company, and (3) through (2), to acquire all the voting rights pertaining to shares of Tenneco (hereinafter referred to as the "Action").

The applicable provisions are Articles 10 and 15 of the Antimonopoly Act.

Part III Particular field of trade

1. Product overview

(1) Polycrystalline alumina fiber

Polycrystalline alumina fiber is a type of ceramic fiber manufactured by firing and crystallizing a fibrous form of liquid made from an aqueous alumina solution or silica sol, etc. from which the water has been evaporated by exposing it to the air. Polycrystalline alumina fibers are generally shipped in a blanket-like shape formed by entangling the fibers.

Polycrystalline alumina fiber is used as high-temperature refractory insulation, a high-temperature cushioning material, and furnace insulation blocks and spacers in steel mills, etc., as well as support mats described in (2), below, by processing the blanket-shaped polycrystalline alumina fiber to be impregnated and molded with latex.

(2) Support mats

Automotive exhaust treatment systems (catalytic converters, etc.) contain ceramic carriers filled with catalysts that decompose nitrogen oxides and other substances in exhaust gases. Support mats are attached to the inner walls of the vehicle's exhaust treatment system to prevent the ceramic carriers from being damaged by the vibration of the vehicle against the inner walls of the vehicle's exhaust treatment system.

Support mats are supplied by polycrystalline alumina fiber manufacturers who use their own polycrystalline alumina fibers as raw materials, or by automotive parts manufacturers (Tier-2 suppliers¹) who procure raw materials from polycrystalline alumina fiber manufacturers. In supplying support mats, including polycrystalline alumina fibers used as raw materials, certification of conformity with specifications must be obtained from automotive parts manufacturers (Tier-1 suppliers who procure support mats to manufacture exhaust treatment equipment) and automotive manufacturers (suppliers of support mats as materials for Tier-1 suppliers who manufacture proprietary exhaust treatment equipment), who are the users. Acquisition of the certification for conformity takes one to two years.

(3) Automotive exhaust treatment equipment

In order to reduce emissions of air pollutants contained in vehicle exhaust, vehicles are equipped with exhaust treatment systems. Gasoline engine vehicles are equipped with an exhaust treatment system called a catalytic converter consisting of a ceramic carrier with a catalyst called a three-way catalyst 2 attached to a metal container (hereinafter referred to as a "catalytic converter". Diesel engine vehicles are equipped with an exhaust treatment system that combines a DOC 3 using an oxidation catalyst, a DPF 4 that removes particulate matter with a ceramic filter, and an SCR 5 that uses a selective reduction catalyst to reduce nitrogen oxides (hereinafter referred to as an "aftertreatment system").

Support mats are installed inside the catalytic converter and the DOC, DPF and SCR that make up the aftertreatment system.

Tenneco Group is a global supplier of automotive exhaust treatment equipment,

¹ In the automotive industry, auto parts suppliers that directly supply materials and products to automobile manufacturers are called "Tier-1 Suppliers" and those that supply materials and parts to Tier-1 Suppliers are called "Tier-2 Suppliers."

²Catalysts have the ability to simultaneously purify three components: nitrogen oxides, carbon monoxide, and hydrocarbons.

³ Abbreviation for Diesel Oxidation Catalyst.

⁴ Abbreviation for Diesel Particulate Filter.

⁵ Abbreviation for Selective Catalytic Reduction.

manufacturing both catalytic converters and aftertreatment systems. Diesel vehicles include passenger cars and other light-duty vehicles, commercial trucks and off-highway vehicles, but the aftertreatment systems manufactured by the Tenneco Group are limited to those for commercial trucks and off-highway vehicles.

⁶A vehicle that has the ability to travel on unpaved roads. Construction and industrial vehicles fall under this category.

[Figure] Suppliers and users of polycrystalline alumina fiber, support mats and automotive exhaust treatment equipment.



2. Scope of goods

(1) Polycrystalline alumina fiber

Polycrystalline alumina fiber is a ceramic fiber with excellent heat resistance and stable functionality even in very high-temperature environments. It cannot be substituted by any other material.

Regarding supply substitutability, the manufacturing of polycrystalline alumina fiber requires unique know-how and investment. There is no recognition of the idea that enterprises producing other types of ceramic fiber could switch their production in a short period of time without incurring significant additional costs and risks. Therefore, supply substitutability with other types of ceramic fiber is not recognized.

Based on the above, "polycrystalline alumina fiber" was defined as the scope of goods.

(2)Support mats

Support mats are manufactured by processing polycrystalline alumina fiber, which has excellent heat resistance and cushioning properties. It cannot be substituted by any other product.

In addition, the manufacturing of support mats requires expertise and huge capital investment to set up a production line. Therefore, supply substitutability with other products is not recognized because there is no recognition for the idea that a business in another industry could switch production from other products to support mats in a short period of time without incurring significant additional costs and risks.

Based on the above, "support mats" were defined as the scope of goods.

(3) Automotive exhaust treatment equipment

A. Substitutability between catalytic converters and aftertreatment systems

In addition to the fact that catalytic converters and aftertreatment systems have different applications for gasoline and diesel engine vehicles, the substances they can purify and their structures are different, and it is not recognized that production could be converted in a short period of time without significant additional cost or risk. Therefore, neither demand substitutability nor supply substitutability can be recognised. From the above, catalytic converters and aftertreatment systems constitute a different scope of goods.

The Tenneco Group does not have a manufacturing base for catalytic converters in Japan, and sales of catalytic converters in Japan are minimal. Japanese automobile manufacturers, who are the users of catalytic converters, place importance on having a manufacturing base in Japan when selecting suppliers, which limits Tenneco Group's competitiveness because it does not have a domestic manufacturing base. It is not expected that Tenneco Group will expand its gasoline engine catalytic converter business in Japan in the future. Therefore, the following section omits the discussion of catalytic converters used in gasoline engine vehicles.

B. Substitutability between aftertreatment system products

There are three types of diesel vehicles: passenger cars and other light-duty vehicles, commercial trucks, and off-highway vehicles. Each has its own aftertreatment system suited to the specific usage. As mentioned in 1-(3). above, the Tenneco Group manufactures aftertreatment systems for commercial trucks and for off-highway vehicles.

First, regarding substitutability between aftertreatment systems for lightduty vehicles and those for commercial trucks and off-highway vehicles, there is no difference in the exhaust treatment mechanism itself, but commercial trucks and off-highway vehicles have larger engines than light-duty vehicles and require larger exhaust filtration. Therefore, demand substitutability is not recognized. In addition, the manufacture of aftertreatment systems for larger commercial trucks and off-highway vehicles may require specialized equipment. Therefore, supply substitutability is not recognized.

Next, regarding substitutability between aftertreatment systems for commercial trucks and off-highway vehicles, aftertreatment systems are designed according to the performance of the engine of the vehicle in which they are installed, the status of regulations regarding exhaust emissions and vehicle weight, etc. According to the user survey, since the specifications of aftertreatment systems are determined in conjunction with engine performance according to various regulations, it is not possible to substitute the use of aftertreatment systems for commercial trucks with those for off-highway vehicles, and vice versa. Therefore, no demand substitutability between aftertreatment systems for commercial trucks and for off-highway vehicles is recognized.

On the other hand, aftertreatment systems for commercial trucks and offhighway vehicles are based on the same technology and design principles, and both are constructed with a combination of DOC, DPF and SCR and have similar dimensions. In addition, the survey with the competing enterprises (manufacturers of aftertreatment systems) indicated that although there are separate production lines for aftertreatment systems installed on commercial trucks and those installed on off-highway vehicles, manufacturing can be easily converted between the two,

Thus, supply substitutability between aftertreatment systems for commercial trucks and for off-highway vehicles is recognized.

C. Summary

Based on the above, the scope of goods is defined as aftertreatment systems for commercial trucks and off-highway vehicles.

3. Geographic range

(1) Polycrystalline alumina fiber

There are only a few suppliers of polycrystalline alumina fiber in the entire world, and the products manufactured by these suppliers are shipped worldwide. Looking at the suppliers of users in Japan, the Apollo Group, the largest supplier, has a production base in Japan and therefore it is the main supplier of polycrystalline alumina fiber in Japan, yet some users procure it from suppliers who have production bases overseas. This shows that there are no restrictions on the geographical range of user purchasing and that users select their major purchasing destinations from suppliers in various parts of the world. In addition, all suppliers sell at substantially equivalent prices in their sales territories around the world.

Therefore, the geographical scope was demarcated as "worldwide."

(2) Support mats

Support mats manufactured by Apollo Group at its plant in Japan are shipped

worldwide, and, given this, there is no geographical restriction on the range of purchasing by users. On the other hand, major suppliers of support mats operate their business activities from multiple production bases in Japan and abroad, and it cannot be denied that there is the possibility of the definition of a narrower, countryor region-specific geographic range.

A survey conducted with domestic users of support mats showed that these users procure support mats for use in domestic automotive exhaust system production facilities from domestic suppliers, but it was not clear whether they could use overseas suppliers as substitutes.

Based on the above, from the perspective of making a careful examination, the geographic range was demarcated as "all regions of Japan."

(3) Aftertreatment systems for diesel engine vehicles (commercial trucks and offhighway vehicles)

Japanese users generally procure aftertreatment systems for diesel engine vehicles (commercial trucks and off-highway vehicles) from enterprises with domestic production bases due to transportation cost issues, the shorter lead time for delivery, and the prompt response in cases of trouble.

Therefore, the geographical area was demarcated as "all regions of Japan."

4. Impact of this action on competition

Since Apollo Group, which manufactures and sells support mats, and Tenneco Group, which manufactures and sells aftertreatment systems, have a supplier-user relationship for support mats, this action constitutes a vertical business combination in which support mats are the upstream market and aftertreatment systems for diesel engine vehicles (commercial trucks and off-highway vehicles) constitute the downstream market.

In addition, Apollo Group is in the business of manufacturing and selling polycrystalline alumina fiber, the raw material for support mats, and is in a position to influence the procurement of raw materials (procurement of polycrystalline alumina fiber) by support mat manufacturers and parts (procurement of support mats) by automotive exhaust treatment equipment manufacturers.

If, as a result of this action, the Apollo Group restricts the supply of polycrystalline alumina fiber or price discriminates against customers (support mat manufacturers) who supply support mats to enterprises in competition with the Tenneco Group in the field of manufacturing and selling automotive exhaust treatment equipment, the concern is that this may be an obstacle to the proper procurement of support mats by automotive exhaust treatment equipment

manufacturers in competition with the Tenneco Group and that it may restrict competition in the automotive exhaust treatment equipment market by excluding Tenneco Group's competitors from the market. For this reason, consideration will also be given to the possibility that the Apollo Group will adopt sales actions (input closure) that will lead to the exclusion of Tenneco Group's competitors in the manufacture and sale of polycrystalline alumina fiber and that issues with market closure and exclusivity will arise.

1. Vertical business combination with upstream market for support mats and downstream market for aftertreatment systems for commercial trucks and offhighway vehicles (position of the Parties and conditions of competing enterprises)

(1) Support mats (upstream market)

Although the status of market share in Japan is unknown, based on the domestic demand for support mats estimated from the number of automobiles produced in Japan and Apollo Group's domestic shipments, Apollo Group's domestic market share is estimated to be 0-10%, which meets the safe-harbor criteria for a vertical business combination.

For reference, looking at the overall worldwide market share, the Apollo Group's market share is only 0-10%, as shown in the table below.

Ranking	Company name	Market share
1	Company A	30~40%
1	Company R	30~40%
3	Company C	15~25%
—	Apollo Group	0~10%
	Other	0~10%
	Total	100%

Worldwide Support Mat Market Share in 2021

(2) Aftertreatment systems for commercial trucks and off-highway vehicles (downstream market)

Tenneco Group's market share in the area of manufacturing and sales of aftertreatment systems for commercial trucks and off-highway vehicles in Japan is shown in the table below and meets the safe-harbor criteria for a vertical business combination.

Market share of aftertreatment systems for commercial trucks and offhighway vehicles in Japan in 2021

Ranking	Company name	Market share
1	Company D	30~40%
2	Company E	20~30%
3	Company F	20~30%
	Tenneco Group	5~15%
_	Other	5~15%
	Total	100%

(3) Consideration of substantial restraints on competition

As discussed in (2) above, since the market share of the Tenneco Group is a figure that barely meets the safe-harbor criteria for vertical business combinations, from the perspective of a careful examination, an examination was made as to whether the issue of a substantial restraint of competition due to customer closure or coordinated conduct would arise. It was found that such issues do not arise, as follows.

A. Substantial restraint of competition due to unilateral conduct (customer closure)

Since Tenneco Group does not currently purchase support mats from Apollo Group in Japan, but purchases support mats from other support mat manufacturers, after this action, Tenneco Group's refusal to purchase support mats from support mat manufacturers other than Apollo Group, etc. may lead to the issues of market closure and exclusivity in the upstream market.

However, in the downstream market, as described in (2) above, there are suppliers of aftertreatment systems for commercial trucks and off-highway vehicles that are leading enterprises. Even if the Tenneco Group were to refuse to purchase, other support mat manufacturers would not lose their sales partners.

In addition, support mats used in aftertreatment systems for commercial trucks and off-highway vehicles must be certified by the user for conformance to specifications, which places certain restrictions on Tenneco Group's ability to switch its procurement of support mats to Apollo Group.

Therefore, the Tenneco Group does not have the ability to close customers, and there is no recognition of the idea that customer closures would create market closure or exclusivity issues in the upstream market.

B. Substantial restraint of competition through coordinated conduct

After this action, the Tenneco Group in the downstream market will obtain confidential information via the Apollo Group in the upstream market, including
procurement prices of support mats for manufacturers of aftertreatment systems for commercial trucks and off-highway vehicles with whom it has a business relationship. This will result in coordinated conduct in the downstream market that may lead to the issue of the substantial restraint of competition.

However, the cost of procuring support mats as a percentage of the manufacturing cost of aftertreatment systems for commercial trucks and offhighway vehicles is small. In addition, aftertreatment systems are designed based on the needs of automobile manufacturers, who are the users, and the status of regulations concerning exhaust emissions. Specifications and manufacturing costs are not uniform. Therefore, even if the Tenneco Group were able to obtain information regarding support mat procurement prices, etc. of competing enterprises, it would be difficult to obtain the procurement prices of support mats of the same system. Therefore, it is not easy for the competing enterprises to predict each other's behavior with a high degree of certainty.

Therefore, we do not find that this action will substantially restrain competition in a particular field of trade through coordinated conduct with respect to the upstream market.

(4) Summary

In light of the above, it is not recognized that this action will substantially restrain competition in a particular field of trade through unilateral conduct by the Company Group or through coordinated conduct with competing enterprises.

2. Consideration of concerns that the Apollo Group will take sales actions that will lead to the exclusion of Tenneco Group's competitors in the manufacture and sale of polycrystalline alumina fiber

(1) Capacity to perform input closure

Apollo Group's market share in the field of polycrystalline alumina fiber production and sales ranges from 55% to 65%, as shown in the table below. There is a large difference in market share between Apollo Group and competing enterprises.

worldwide i ofger gstamme munima riber market share in ri2019			
Ranking	Company name	Market share	
1	Apollo Group	55~65%	
2	Company G	20~30%	
_	Other	10~20%	
Total		100%	

Worldwide Polycrystalline Alumina Fiber Market Share in FY2019

Support mat manufacturers procure multiple part numbers of polycrystalline

alumina fiber of different densities and thicknesses to produce multiple varieties of support mats, which are then sold to automotive exhaust treatment equipment manufacturers, including the Tenneco Group. The Apollo Group is unable to ascertain or determine which part numbers of the polycrystalline alumina fibers sold by the company are used in the support mats sold to the Tenneco Group or to competing enterprises. However, if the Tenneco Group switches the procurement of support mats to Apollo Group as a result of this action, it will be possible to identify the polycrystalline alumina fiber that will be used in the support mats for enterprises in competition with the Tenneco Group to switch the procurement of support mats to the Apollo Group in terms of the Apollo Group's ability to supply support mats. Although switching suppliers of support mats requires authorization from automobile manufacturers and others, such a transition is possible in the long term.

Therefore, it is recognized that Apollo Group has the ability to perform input closure.

(2) Incentives to perform input closure

The capacity of Tenneco Group's domestic manufacturing facilities for aftertreatment systems for commercial trucks and off-highway vehicles is allocated to supply specific users. Therefore, in order for the Tenneco Group to expand domestic sales of aftertreatment systems for commercial trucks and off-highway vehicles, it is essential to expand domestic production capacity, which will require significant cost. On the other hand, with the maturity of the automotive market and the search for next-generation fuels for power sources, there is little room for users to adopt new suppliers of aftertreatment systems for commercial trucks and offhighway vehicles. User surveys indicated that they were not highly motivated to adopt new suppliers. Therefore, it is unlikely that the Tenneco Group will expand its aftertreatment systems business for commercial trucks and off-highway vehicles in Japan.

Based on the above, since the loss of sales related to polycrystalline alumina fiber due to the refusal to supply polycrystalline alumina fiber would be greater for the Apollo Group than the increase in sales to the Tenneco Group from the increased sales of support mats, the Apollo Group has no incentive to refuse to supply polycrystalline alumina fiber for the purpose of eliminating competitors of the Tenneco Group.

Even considering the possibility that Apollo Group may increase the sale price of the polycrystalline alumina fiber used in the manufacture of the support mats to exclude Tenneco Group's competitors, the cost of procuring support mats as a percentage of the manufacturing cost of after-treatment systems for commercial trucks and off-highway vehicles is small, and any relative improvement in the cost competitiveness of the Tenneco Group with respect to support mats only would have a limited impact on the overall manufacturing cost of the product. Therefore, It is unlikely that users will expand their transactions with the Tenneco Group for this reason. As described above, since Apollo Group's objective of eliminating Tenneco Group to use this action as an opportunity to raise the sales price of polycrystalline alumina fiber for the purpose of eliminating Tenneco Group's competitors.

Therefore, it is recognized that the Apollo Group has no incentive to close inputs.

(3) Summary

Based on the above, there is no recognition for concerns that the Apollo Group will take sales actions in its polycrystalline alumina fiber transactions with support mat manufacturers that will lead to the exclusion of commercial truck and offhighway vehicle aftertreatment system manufacturers that are in competition with the Tenneco Group.

5. Conclusion

It was found that the action in question did not result in a substantial restraint of competition in the particular field of trade.

Case 6 Establishment of a joint investment company in the large marine engine business by Imabari Shipbuilding Co., LTD. and Hitachi Zosen Corporation

Part I The Parties

Imabari Shipbuilding Corporation (JCN: 7500001011179) (referred to hereinafter as "Imabari Shipbuilding") is a company primarily engaged in the manufacture and sale of merchant ships.

Hitachi Zosen Corporation (JCN: 3120001031541) (referred to hereinafter as "Hitachi Zosen") is a company engaged in the manufacture and sale of marine engines.

Hereinafter, the group of companies that have already formed a joint relationship with Imabari Shipbuilding shall be referred to as the "Imabari Shipbuilding Group," and the Imabari Shipbuilding Group and Hitachi Zosen shall be collectively referred to as the "the Parties."

Part II Outline of the case and applicable provisions

In this case, Hitachi Zosen will transfer the business of manufacturing large 2-stroke engines (see Part III 1 (1) A. c) below) to a newly established whollyowned subsidiary (Hitachi Zosen Marine Engines, Ltd.; referred to hereinafter as "HZME"). Imabari Shipbuilding would then acquire 35% of the voting rights pertaining to shares of HZME (referred to hereinafter as the "Action").

The applicable provision is Article 10 of the Antimonopoly Act.

Since another business combination project related to the manufacturing and sales of marine engines was planned to take place at the same time, this action was examined in light of that business combination project.

Part III Particular field of trade

1. Product overview

(1) Large 2-stroke engine

A. Types of marine engines

a) 2-stroke and 4-stroke engines

A marine engine is an engine installed in a vessel as a power source to propel the vessel (for propulsion) or to secure onboard electric power (for power generation). Most of the marine engines used in merchant ships (see (2) below) are diesel engines¹. They work by compressing air taken into the cylinder to create high temperature and pressure, injecting fuel (heavy fuel oil) to cause an explosion, and using that pressure to move the piston to generate power. There are two types of diesel engines: 2-stroke engines, in which two piston movements (1) compression and 2) expansion) take place per fuel combustion cycle, and 4-stroke engines, in which four movements (1) suction, 2) compression, 3) expansion, and (4) exhaust) take place per fuel combustion cycle. A 2-stroke engine, in which fuel is injected and detonated for each cycle of the piston, can produce more power than a 4-stroke engine, in which fuel combustion occurs once during two piston cycles. For this reason, 2-stroke engines are used exclusively for propulsion, while 4-stroke engines are used for power generation and for propulsion of small and medium-sized vessels such as coastal vessels.

As stated inPart II, since the business to be transferred from Hitachi Zosen to HZME includes the manufacturing of large 2-stroke engines, the following consideration will focus on 2-stroke engines.

b) Heavy fuel oil and dual fuel engines

The 2-stroke engines used in commercial vessels can be broadly classified into two types: "heavy fuel oil engines," which use only heavy fuel oil as fuel, and "dual fuel engines," ²Which use both heavy fuel oil and other fuels.

In order to reduce operating costs, heavy fuel oil engines use C fuel oil (also called marine fuel oil), which is mainly made from residues generated in the oil refining process. This fuel is widely used in marine engines.

Dual fuel engines are further classified by the type of fuel used and fuel injection pressure. The following is a detailed description of the dual fuel engine.

¹ In addition to the diesel engines mentioned above, ship propulsion engines include (1) gas turbine engines, which inject fuel into compressed, high-temperature, high-pressure air to create an explosion that blows the pressure into a turbine, causing it to turn the propeller shaft, (2) electric propulsion engines, which generate electricity with a power generation engine and then use that electricity to drive the motor to turn the propeller shaft, and (3) nuclear propulsion engines, which use steam generated from the radiation produced when uranium fuel undergoes nuclear fission to turn a turbine and rotate the propeller shaft. These engines are installed in warships, patrol vessels, and icebreakers, and are not in competition with the diesel engines used in merchant ships.

a. Dual fuel engine overview

The dual-fuel engine was first used in large vessels carrying liquefied natural gas (liquefied natural gas is referred to hereinafter as "LNG"; large vessels carrying liquefied natural gas are referred to hereinafter as "large LNG carriers"). The requirement for large LNG carriers was to make effective use of natural gas vaporized in cargo tanks during transportation ("boil-off gas"). In the 2010s, a technique was established to burn natural gas in diesel engines, making it possible to use boil-off gas in diesel engines. This led to the introduction of the dual fuel engine. The duel fuel engines that have been commercialized to date include those that use LNG, as well as those that use liquefied petroleum gas (hereinafter referred to as "LPG"), methanol, and ethane.

The basic structure of the dual fuel engine is the same as that of the heavy fuel oil engine, but since combustion (the combustion method) differs depending on the type of fuel, a fuel injection system for other fuels such as LNG is added so that the method and timing of fuel injection can be adjusted for the type of fuel to be used. Therefore, the price of the dual fuel engine itself is higher than that of the heavy fuel oil engine. In addition, because of the need to install peripheral equipment to operate the dual fuel engine, the price of a ship equipped with a dual fuel engine is also higher than that of a ship equipped with a heavy fuel oil engine, and there is a considerable price difference for the high-pressure type, which is described below.

In recent years, regulations targeting air pollutants emitted from ships have been tightened. One way to address this issue is fuel conversion from heavy fuel oil to LNG and other fuels. However, depending on the type of ship (hereinafter referred to as "ship type") (see (2) A. b. below) and the size of the ship (hereinafter referred to as "ship design") (see (2) A. (c) below), the ease of conversion to dual-fuel engines varies due to differences in ship operation modes (whether LNG or other fuels can be refueled at ports of call), cargo (whether energy resources as cargo can be converted to fuel), ease of installing multiple types of fuel tanks, and ship price levels (whether the increased construction costs associated with the use of dual-fuel engines can be passed on to ship prices). In addition, Japanese shipbuilders tend not to design ships with dual-fuel engines because many of them specialize in small and medium-sized bulk vessels, which are difficult to convert to dual-fuel engines, and because they do not have sufficient design personnel and other resources. For the above reasons, the adoption of dual fuel engines in ships built in Japan is currently dominated by LPG carriers and methanol carriers, which can use liquefied gas carried as cargo as fuel, and car carriers and container ships, which have a strong demand from shippers and ship owners to be environmentally friendly. As a result, in 2021, the percentage of new ships equipped with dual fuel engines reached 20% worldwide, while in Japan it was only 1%.

b. Fuel used in dual fuel engines

Dual fuel engines use fuel oil in combination with other fuels. Dual fuel engines using LNG, LPG, methanol, or ethane as the other fuel are also now commercially available, However, dual fuel engines using LPG, methanol, or ethane are only used as propulsion engines for ships transporting cargo (LPG carriers, methanol carriers, and liquefied ethylene gas carriers), while LNG is used in dual fuel engines for general commercial vessels.

Although LNG has a smaller environmental impact than heavy fuel oil, carbon dioxide emissions are unavoidable, so it is considered a bridge until new alternative fuels emit zero greenhouse gases. While dual fuel engines fueled by ammonia or hydrogen are currently under development, no consensus has been reached on which fuel will be the mainstay of the next generation.

c. Low-pressure type and high-pressure type

LNG-fired (fueled by LNG; same applies hereinafter) dual fuel engines include the "high-pressure type" and the "low-pressure type," depending on the pressure of the fuel injected into the cylinder. Both are used as propulsion engines for merchant ships.

The initial cost of the high-pressure type is high because (1) peripheral equipment such as compressors to boost fuel pressure must be compatible with high-pressure, and (2) the exhaust system requires a nitrogen oxide removal device because nitrogen oxides (NOx) are easily generated due to the characteristics of the combustion method, although it does have high fuel efficiency and low running costs.

On the other hand, the advantages of the low-pressure type include the low initial cost because, unlike the high-pressure type, expensive peripheral equipment is not required, and the fact that boil-off gas can be used as fuel by boosting the pressure. The disadvantage is the occurrence of methane slip, in which unburned methane (the main component of natural gas) is discharged into the exhaust.³

For large LNG carriers, the need to reduce the use of fuels containing boil-off gas is relatively low, since it is necessary to make effective use of the boil-off gas generated in large quantities from the LNG carried as cargo as fuel. As a result, in evaluating engines, initial cost tends to be more important than fuel efficiency, and the low-pressure type, which can easily reduce ship construction costs, is widely used. On the other hand, with regard to general merchant ships, which have been adopting dual fuel engines mainly due to environmental concerns, many users of such vessels were highly critical of the high-pressure type, which offers superior environmental performance and fuel efficiency. However, users and others were of the opinion that environmental performance is evaluated based on the reduction of greenhouse gas emissions for the entire ship, not the engine alone and that depending on the ship type and ship design, the lowpressure type may be able to keep the overall greenhouse gas emissions relatively low even if methane slip generation is taken into account.

c) Engine size

The larger the cylinder (combustion chamber) in which fuel combustion takes place, the more fuel can be burned at one time and the more energy can be obtained through combustion, thus increasing engine output. For this reason, various 2-stroke engines with different cylinder diameters are manufactured, and engine size is generally expressed in terms of cylinder diameter. The inside diameter of an engine cylinder, expressed in centimeters, is called the "bore."

Vessels are equipped with an engine of the appropriate bore size 4to

³ To address this problem, a device called Intelligent Control by Exhaust Gas Recycling (ICER) is being introduced to reduce methane slip and improve fuel economy by recirculating exhaust gases back into the engine and reusing them as fuel.

⁴ Even with a smaller bore size, a larger output can be secured by increasing the number of cylinders, but the bore size according to the ship design is generally fixed. When selecting an engine to be

achieve the required output. For ocean-going ships that sail long distances and have large hulls, engines with 50 bores or more (hereinafter referred to as "large 2-stroke engines") are used. For coastal ships and small oceangoing ships, engines with less than 50 bores (hereinafter referred to as "small 2-stroke engines") are used.

B. Characteristics of 2-stroke engine supply

a) Manufacture and sale of engines based on a license agreement

a. Relationship between licensors and Japanese marine engine manufacturers

The 2-stroke engines manufactured and sold worldwide are products based on licenses from either MAN Energy Solutions ("MAN"), Winterthur Gas & Diesel ("WiNGD"), or Japan Engine Corporation ("Japan Engine").

All of the marine engine manufacturers producing 2-stroke engines in Japan are licensees (or sublicensees) of MAN, W i nGD, or Japan Engine, except for Japan Engine, which is its own licensor.

b. Engine characteristics by brand

(a.) Heavy fuel oil engine

In interviews with users and other parties, many were of the opinion that the technology for heavy fuel oil engines is mature and that there is no noticeable difference in performance among brands.

On the other hand, looking at the worldwide market share of heavy fuel oil engines, MAN-brand engines account for about 80%. It was pointed out in interviews with users and others that many businesses provide maintenance services for MAN brand engines due to the large number of vessels in which they are equipped. Vessels equipped with MAN brand engines that have this advantage are highly regarded in the used-vessel market.

(b.) Dual fuel engine

As for LNG-fired engines, which are the main type of dual fuel engine,

installed on a ship, consideration is given to the appropriate combination of bore size and number of cylinders in order to achieve the required output for the ship. In some cases, consideration is given to whether to adopt an engine with a larger bore size but a reduced number of cylinders or an engine with a smaller bore size but an increased number of cylinders.

MAN currently supplies high-pressure engines and W i nGD supplies low-pressure engines. The high-pressure and low-pressure types each have the characteristics described in (a)(c) above, and the differences in the methods employed by licensors lead to product differentiation among the licensee marine engine manufacturers.

c. Scope of licensee business

The license agreement for 2-stroke engines contains provisions regarding the regions in which the licensee may sell and supply engines. According to the provisions, the scope of sales of licensed products by Japanese marine engine manufacturers is limited to Japan and its outlying areas. Shipbuilding companies located in the outlying areas of Japan are small and medium-sized enterprises that build coastal ships for use in Japan and are usually not users of 2-stroke engines. Therefore, 2-stroke engines from Japanese marine engine manufacturers are sold exclusively within Japan. In addition, license agreements between licensors and licensees. Based on the above, in principle, only domestic marine engine manufacturers can sell 2-stroke engines to domestic users.

On the other hand, the license agreement between the licensor and the domestic or foreign licensee also provides that if the licensee receives inquiries from customers outside the licensed area, the licensee may make sales to such customers by obtaining individual permissions from the licensor. In response to questions from the JFTC, MAN, the licensor, responded that a licensee who receives an inquiry from a customer outside the licensed area may sell the engine directly to such a customer without the involvement of any third party, including the licensor.

b) Technology and equipment required to manufacture 2-stroke engines

Since the licensor is responsible for the development of the 2-stroke engine, the licensee marine engine manufacturer does not need to develop the engine. However, design personnel, etc., are required in order for the marine engine manufacturer to provide the necessary design for manufacturing based on the design drawings provided by the licensor.

⁵MAN has also completed development of a low-pressure engine, and will be able to supply both highpressure and low-pressure types in the future.

In terms of facilities, (1) a large 2-stroke engine has a height equivalent to a 4-story building (about 15 meters) and therefore the manufacture of such an engine requires the construction of a building that is tall enough for assembly work and that can support heavy equipment such as a crane used for assembly and removal. (2) It is also necessary to install a facility called a "surface plate" for the assembly and trial operation of the engine and to provide instruments for use in post-assembly trial operations, fuel storage facilities and piping facilities required for fuel supply during trial operations.

c) Type of manufacture of 2-stroke engines

The production of 2-stroke engines is on a made-to-order basis following orders received from customers. Each time an order is received, some of the parts for the ordered model are brought to the surface plate for production. Many different models can then be made using standard equipment. However, the size and fuel type of engines that can be manufactured are limited by the size of the surface plate and ancillary equipment. In addition, from the viewpoint of work efficiency, the manufacturing schedule is designed to continuously manufacture products of an approximate size of ship that is expected to be manufactured on that surface plate in terms of equipment layout. On the other hand, two surface plates for 60-bores may be used to produce an 80bores engine, for example.

C. Suppliers of 2-stroke engines

Marine engine manufacturers that manufacture 2-stroke engines in Japan can be roughly divided into two groups: those whose predecessors were marine engine manufacturing divisions of heavy engineering shipbuilding companies that exclusively built large ocean-going ships, and those who started business for the purpose of supplying marine engines to

⁶The size and strength of the surface plate are factors that limit the size of the marine engine that can be manufactured. In addition, the larger the size, the greater the output, so another limiting factor is whether the water power meter and cooling water excess capacity used for commissioning can handle the output level.

In terms of fuel type, a surface plate that has no piping connection to an LNG supply facility cannot manufacture an LNG-fired dual fuel engine, for example, and it is therefore limited to heavy fuel oil engines.

general shipbuilding companies that build coastal ships or small oceangoing ships. The former often deals with large 2-stroke engines and the latter with small 2-stroke engines.

In addition, Company A and Company B are the only companies with sales results for large 2-stroke dual fuel engines.

An overview of the major marine engine manufacturers producing large 2-stroke engines is provided below.

a) Hitachi Zosen

Hitachi Zosen is Japan's second largest marine engine manufacturer after Company A. It is the only company in Japan that holds both MAN and W i nGD licenses, but in recent years it has not produced W i nGD engines and is recognized by users and others as a supplier of MAN brand engines.

As for dual fuel engines, the company has a lineup of high-pressure LNG-fired dual fuel engines, but has not yet received any orders.

b) Company A

It is the largest manufacturer of marine engines in Japan, licensed by MAN to manufacture and sell MAN-branded engines.

During the booming shipbuilding market in the early 2000s, while other domestic marine engine manufacturers were taking a backwardlooking approach to facility expansion, Company A expanded its facilities and established a supply system that could meet the increasing demand for engines. It has a greater capacity than its competitors. In addition, Company A is actively engaged in the commercialization of products incorporating new technologies, including being the first Japanese marine engine manufacturer to produce an LNG-fired dual fuel engine, and it is currently developing the world's first ammonia-fired dual fuel engine.

In April 2023, Company A took over a part of Company B's marine engine business (manufacturing and sales of large 2-stroke engines, etc.).

c) Company B

Company B is a marine engine manufacturer licensed by W $i\,$ nGD to produce engines under the W $i\,$ nGD brand.

With the group's technological capabilities, it has a history of commercializing products that incorporate new technologies and is a key

player among W i nGD's licensees, including helping develop W i nGD's dual fuel engine. However, due to the small production capacity and lack of design personnel, the market share of large 2-stroke engines remains at approximately 5%, and the company is not in a position to make capital investments in the future. Under these circumstances, Company B transferred a part of its marine engine business (manufacturing and sales of large 2-stroke engines, etc.) to Company A in April 2023, as described in (a) above.

- D. Demand for 2-stroke engines and the type of trade
 - a) 2-stroke engine users

The users of 2-stroke engines are shipbuilding companies. However, since the performance and quality of the engine directly affect the fuel efficiency and environmental performance of the ship, and the after-sales service system of the manufacturer affects the stable operation of the ship, the selection of the engine is very important not only for the shipbuilding company that purchases the engine but also for the shipowner who procures the ship equipped with the engine. Therefore, when shipbuilding companies select engines, they also consult shipowners, and the shipowners' preferences have a significant impact on the selection of marine engines.

b) Selection process

Two types of ships built by shipbuilding companies:

(1) those for which the shipbuilding company designs the ship in advance ("standard ship design") and conducts sales activities with the shipowner based on the standard ship design;

(2) those for which the shipbuilding company receives an inquiry from the shipowner and then designs the ship from scratch based on the shipowner's requirements.

Depending on which ordering method is used, the process by which a marine engine is selected varies.

Since the safety and reliability of an engine depends not only on the structure of the engine but also on the manufacturing quality of the marine engine manufacturer, in selecting an engine, the manufacturing track record of the marine engine manufacturer is important in addition to the price, as described below.

a.-(1)

(1) is often used for unspecified shippers under charter contracts based on transportation needs and in the ordering process for bulk carriers and tankers with generalized ship specifications.

When shipbuilders develop a standard ship design, they select the brand and type of engine to be installed. Standard ship designs are created for vessels for which a certain number of orders are expected to be received. Marine engine manufacturers conduct sales activities to ensure that their engines (engines of other brands with which they have licensing agreements) are included in the specifications of the standard ship designs in order to increase the likelihood of future engine orders.

The actual order from the shipbuilder is placed after the new shipbuilding contract is signed and the ship order is confirmed. The shipbuilder and the marine engine manufacturer negotiate the price again and conclude a sales contract for the engine. If the engines used in the standard ship design specifications are MAN-brand engines for which there are multiple licensees in the country, the shipbuilder will select a supplier from among the multiple licensees at this time.

b.-②

(2) is often employed when ordering container vessels procured by liner container ship enterprises and vessels engaged in transportation for specific shippers (such as large LNG carriers, iron ore carriers, and chip carriers).

Multiple vessels of the same specification may be ordered for some projects, mainly container vessels, and marine engine manufacturers can

⁷At the same time as selecting the brand to be used in the standard ship design, optional engines (manufacturers) may be selected according to the shipowner's requirements, but many Japanese shipbuilders lack the design resources necessary to prepare multiple design drawings, and only a limited number of shipbuilders have engines available as options from the outset.

When shipbuilders conduct sales activities based on standard ship designs, shipowners may request the use of engines that are not considered standard specifications (rebranding). In such cases, the shipbuilder will present a delivery schedule that takes into account the cost required for the design change and the extended manufacturing time required for the design change, and will discuss with the shipowner whether to use a standard engine or another engine.

expect to receive orders for multiple engines if their engines are used in the first order for the first vessel in such a project. On the other hand, in the case of (2), the shipowner takes the initiative in establishing ship specifications, and in many cases, the shipowner specifies the marine engine manufacturer.

When a marine engine manufacturer is selected, the shipbuilder informs the marine engine manufacturer of the decision. However, as in (1), the actual order from the shipbuilder is placed after the newbuilding contract for the vessel is signed.

c) Price decision method

As mentioned in b) above, the engine order is placed after the ship construction contract is signed. Therefore, the ship price is determined first, and the price of the engine to be installed in the ship is determined through price negotiations between the shipbuilder and the marine engine manufacturer after the ship price is determined.

The shipbuilder calculates the ship price by estimating the assumed engine price and incorporating it into the construction cost, referring to the actual price of the same type of engine procured in the past (in addition to the estimated price submitted by the marine engine manufacturer when developing the standard ship design if the standard ship design was formulated).

E. Impact of tighter environmental regulations on supply and demand for large 2-stroke engines

As mentioned in A. b) a., above, demand for dual fuel engines is increasing worldwide as environmental regulations are tightened. Demand for dual fuel engines is expected to grow in Japan as well.

On the other hand, when manufacturing dual fuel engines, in addition to the combustion tests using fuel oil, which have been conducted for fueloil-fired engines, it is necessary to conduct combustion tests using LNG and other fuels. This increases the surface plate occupation time for engine assembly and trial operation. As a result, the concern is that the growing demand for dual fuel engines will reduce the production capacity of marine engine manufacturers.

Therefore, strengthening the production system for marine engines is

an important issue in the sense of maintaining Japan's maritime industry. The Ministry of Land, Infrastructure, Transport and Tourism (MLIT) has designated 2-stroke engines as a specified critical product under the Act on the Promotion of Ensuring National Security through Integrated Implementation of Economic Measures (Act No. 43, 2022). With the goal of "ensuring a stable production system for 2-stroke marine engines with an annual capacity of 6 million horsepower by 2025" (MLIT, "Policies for Ensuring a Stable Supply of Marine Parts," December 28, 2022), support will be provided for the installation of equipment by enterprises to build stable engine production systems to accommodate the increased use of gas fuel.

(2) Merchant ships

A. Merchant ship overview

a) Coastal and ocean-going ships

Merchant ships that transport passengers and cargo include oceangoing ships, which operate on foreign routes, and coastal ships, which operate on domestic routes.

(1) Ocean-going ships navigating the open sea must conform to international conventions established by the International Maritime Organization in terms of ship structure and equipment, whereas coastal ships are limited to the waters of the adjacent sea area and are not required to meet international conventions. They differ from ocean-going ships in terms of hull structure, etc.

(2) Because of their long transport distances, ocean-going ships emphasize the transportation of as much cargo as possible on a single voyage and have large hulls, whereas coastal ships, which are used only for domestic cargo transport, have relatively small hulls.

Major domestic and foreign shipbuilders build ocean-going ships, while domestic small and medium-sized shipbuilders build coastal ships. The Imabari Shipbuilding Group builds ocean-going ships and ferries that are used exclusively for navigation in coastal waters. For this reason, the following section discusses ocean-going ships, and, in addition to this, ferries are discussed to the extent necessary.

b) Merchant ship types

There are various types of merchant ships, depending on the type of object to be transported and the method of transportation.

The following seven ocean-going merchant ships were built by the Imabari Shipbuilding Group in the five years from 2009 to 2021.

(1) "Bulk vessels" that transport various resources such as iron ore, coal, grain, etc. in large quantities without packaging.

(2) "Container ships" in which internationally standardized containers containing cargo are loaded in the cargo holds or on the deck of the ship for transportation.

③ "Tankers," in which the hold is a tank and liquid cargoes such as crude oil, refined petroleum products, and chemicals are transported in large quantities without being put into containers.

④ "Car carriers" that specialize in transporting self-propelled cargo such as automobiles and construction machinery.

(5) "LNG carriers," which are tankers that transport LNG.

(6) "LPG carriers," which are tankers that carry LPG liquefied by pressurizing butane, propane, etc.

(7) "Ferries" that transport passengers, private cars, and cargo vehicles (trucks and trailers) over long distances.

c) Merchant ship size

Merchant ships come in a variety of ship designs of the same type, and vessels are used according to the volume of goods to be transported and the size of the facilities at the port of call.

There is no clear definition of the designation or range of ship types, although some designations for ship types derive from the main routes and modes of operation on which ships of that type are used. $\[Begin{bmatrix}8\\8\\\end{array}$

Examples of the designations and ranges of typical ship designs for bulk carriers are shown in Table 1 below.

⁸ The designation of the ship type depends on the type of ship. For example, tankers used to transport crude oil with a deadweight tonnage of 200,000-300,000 DWT (see footnote 9 below) are called "VLCC" (Very Large Crude Oil Carrier), while tankers used to transport petroleum products such as gasoline and kerosene are called MR (Medium Range; less than 55,000 DWT), "LR1" (55,000-79,999 DWT), and "LR2" (80,000 DWT or more). The large tankers used to transport LPG are called "VLGC" (Very Large Gas Carriers). These designations are not used for ships other than tankers.

There is no officially defined range of ship design. For example, among Capesize vessels, very large iron ore carriers exceeding 200,000 DWT may be distinguished and called VLOC (Very Large Ore Carriers), while those larger than Panamax that can pass through the Panama Canal before the 2016 expansion project may be collectively called over-Panamax.

Case 6 Imabari Shipbuilding Co., LTD./Hitachi Zosen Corporation

Case 6 Imabari Shipbuilding Co., LTD./Hitachi Zosen Corporation

Name	Scope	Characteristics	
Capesize	100,000 DWT ⁹ or more	Large ships that navigate the Cape of Good Hope because they are unable to pass through the Panama Canal	
New Panamax (maximum size of ship that can pass through the Panama Canal)	From 80,000 to about 100,000 DWT	Vessels that can pass through the Panama Canal after its expansion in 2016	
Panamax (maximum size of ship that can pass through the Panama Canal)	From 65,000 to about 80,000 DWT	Vessels that can pass through the Panama Canal before the expansion in 2016.	
Handymax	From 40,000 to about 65,000 DWT	Ships large enough to enter	
Handy	From 10,000 to about 40,000 DWT	world	

Table 1 Typical bulk ship designs

e) Ships built by Imabari Shipbuilding Group

The 17 ship types and ship designs (hereinafter referred to as the "17 items") that the Imabari Shipbuilding Group built in the five years from 2009 to 2021 include bulk carriers (5 items), container carriers (5 items), tankers (2 items), car carriers (2 items), LNG carriers (1 item), LPG carriers (1 item) and a ferry.

B. Overview of the merchant marine manufacturing and sales business

In addition to domestic shipbuilding companies, including the Imabari Shipbuilding Group, there are a number of Korean and Chinese shipbuilding companies that are engaged in the merchant ship manufacturing and sales business.

After design drawings are prepared, ships are built largely through the following processes: (1) Steel cutting and forming, (2) small and

⁹ Abbreviation for Dead Weight Tonnage. Loading weight tonnage. Refers to the maximum loading capacity as the weight of cargo that a vessel can carry. Weight includes all cargo, passengers, crew, fuel, ballast, food, etc.

medium assembly, ③ block assembly, ④ pre-outfitting, ⑤ loading, and ⑥ aft outfitting.

A ship is built by assembling the blocks manufactured in (3) at a facility called a "dock" (5) and then attaching the necessary equipment and facilities to the hull at the wharf (6), according to the type of ship. Thus, the main production facilities used in the construction of any ship type are the dock and wharf, and the same production facilities are used for the construction of various ship types.

However, since the structure of the hull and the internal structure of a ship differs depending on the ship type, the design staff at shipbuilders must acquire skills to create design drawings for different types of ships, which generally takes several years of preparation time. Since the shape of the blocks that make up the hull of each type of ship and the equipment and facilities installed on the ship differ, the work content, workload, and skills required of the workers in the block fabrication and outfitting processes differ for each type of ship.

In addition, because the hulls are built by assembling blocks at the dock, the shipbuilding company is limited to the size of the dock (the size of the vessel that can be accommodated in the dock) in terms of the type of vessel it can manufacture. Furthermore, because different ship designs require different amounts of work and time to build, and because process management becomes more complicated when various ship designs are built separately, shipbuilders are encouraged to take orders for a series of ship types and ship designs in which they excel, so that they can reduce production costs through efficient production and offer competitive ship prices.

In view of the above circumstances, shipbuilding companies that manufacture multiple types of ships have multiple docks, and by preestablishing the ship types and ship designs for manufacturing at each dock to a certain extent, they are able to achieve both diversification and efficiency in terms of ship type and ship design.

C. Demand for merchant ships and the type of trade

Domestic users (shipowners) of merchant ships include shipping companies (ocean carriers) that provide marine transportation services, ship lessors (shipowner companies) that own vessels for the purpose of leasing or reselling them to shipping companies, and enterprises that own vessels as a means of transporting cargo they sell or purchase themselves (shippers).

When these users place orders for vessels, they obtain quotations from multiple shipbuilding companies without regard for whether it is a domestic or foreign shipbuilding company and then select the shipbuilding company from which the order is to be placed. For ferries, however, order opportunities are limited because the demand is mainly for the replacement of existing aging ships. Users select suppliers from shipbuilding companies in Japan.

When an increase in the volume of marine cargo movement is expected due to an upturn in the economy, or when long-term transportation contracts from shippers are obtained, shipping companies and shipowners place orders for vessels to secure the necessary transportation capacity.

In terms of ship ordering patterns, for example, container ships are used for liner shipping (i.e., ships calling at ports on regular days of the week to provide transportation services) with a fleet of vessels that have a certain transportation capacity. Therefore, in order to form a new fleet to coincide with the opening of new routes or to renew the fleet of vessels to increase the fleet size to meet increased route demand, lot orders of several vessels at one time are common and often exceed 10 vessels. Other types of vessels are also ordered in lots, including cases in which tankers are procured to transport crude oil or LNG produced from newly developed oil fields, for example.¹⁰

Usually it takes more than two years from the delivery of the ship to delivery, and this delivery period is rarely extended even for lot orders.^[1] For this reason, orders for large lot orders of ship types are mainly placed by large shipbuilders that have numerous docks and can build multiple vessels in parallel. This difference in the way users place orders for different types of vessels is one factor that contributes to the different

¹⁰On the other hand, bulk carriers are often operated in the form of tramp vessels that are rented out by shippers when the need arises to carry cargo. Demand for new shipbuilding is generated by shipping companies and others who buy additional vessels to fill the shortage in response to transportation needs, so lot orders are rarely placed.

¹¹Container vessels often have rather short delivery times, as vessels are procured in accordance with plans for new liner service routes, etc.

rosters of shipbuilders depending on the type of vessel.

2. Scope of goods

(1) Large 2-stroke engines

A. Substitutability with large 4-stroke engines

a) Demand substitutability

Users of large 2-stroke engines are shipbuilding companies that build ocean-going ships with large hulls.

2-stroke engines are used exclusively for propulsion, while 4-stroke engines are used for power generation. The use of 4-stroke engines as propulsion engines is limited to small and medium-sized vessels such as coastal ships. 4-stroke engines are not used as propulsion engines for large vessels such as ocean-going ships.

Therefore, there is no demand substitutability between large 2-stroke engines and large 4-stroke engines.

b) Supply substitutability

Since 2-stroke and 4-stroke engines differ in the dimensions and weight of the engine and its components, and their respective power outputs and speed ranges differ significantly, the equipment required for machining, assembly, and test operation is also different.

Therefore, there is no supply substitutability between large 2-stroke engines and large 4-stroke engines.

c) Summary

Large 2-stroke engines and large 4-stroke engines constitute a different scope of goods.

B. Substitutability between heavy fuel oil and dual fuel engines

a) Demand substitutability

The function of propulsion for ships is the same for both heavy fuel oil and dual fuel engines.

However, as described in 1. (1) A. a) a., above, it is difficult to install dual fuel engines depending on the ship type and ship design. In such cases, ship owners and shipbuilders can only choose heavy fuel oil engines. In the

case of ships for ship owners who have a preference for engines with a smaller environmental impact, dual fuel engines are the engine of choice.

Thus, demand substitutability between dual fuel engines and heavy fuel oil engines is limited.

Note that there are two types of dual fuel engines: low-pressure and high-pressure. As described in 1 (1) A. b) c., above, these two different fuel supply methods have their own pros and cons. Shipowners and shipbuilders decide which of these to adopt based on a comprehensive assessment of the compatibility and performance of the ship type and ship design in which the engine is to be installed. Therefore, demand substitutability is recognized.

b) Supply substitutability

The dual fuel engine is a heavy fuel oil engine to which a device for refueling with LNG or other fuel is added. There is no significant difference in terms of the manufacturing technology for the engine itself. However, while marine engine manufacturers can manufacture such engines using available design drawings and other materials from the heavy fuel oil engines that they have been manufacturing for some time, manufacturing the dual fuel engines that have emerged in recent years requires design personnel who can create design drawings for manufacturing by based on the design drawings provided by the licensor. New facilities such as fuel tanks and compressors are also needed to supply LNG and other fuels for commissioning the manufactured engines.

Therefore, supply substitutability between heavy fuel oil and dual fuel engines is not recognized.

c) Summary

Heavy fuel oil and dual fuel engines constitute a different scope of goods.

At present, the sales volume of dual fuel engines in Japan is very small, but the number of vessels equipped with dual fuel engines is expected to expand in the future, and it is possible to envision a market for the manufacture and sale of dual fuel engines.

C. Substitutability between engines of different sizes

Both heavy fuel oil and dual fuel engines come in a variety of sizes, and users of both types of engines select the appropriate size of the engine to achieve the required output for the vessel they intend to build. However, to date, only a few sizes of dual fuel engines have been manufactured and sold in Japan. Whether the market for dual fuel engines is delineated by size does not affect the consideration of competitive issues.

For this reason, substitutability between engines of different sizes will be considered only for heavy fuel oil engines.

a) Demand substitutability

Users select the appropriate size engine to achieve the output required for the ship to be built. While a certain degree of substitutability is recognized between engines of adjacent sizes, there is no substitutability between engines of non-adjacent sizes.

b) Supply substitutability

Marine engines are manufactured according to the specifications of the engines ordered, and some parts are brought to the surface plate where they are assembled to make various types of engines. The size of the engine that can be manufactured is limited by the size of the surface plate and ancillary facilities.

Specifically, enterprises can be divided into those that manufacture engines of sizes larger than 50 bores and those that manufacture engines of sizes smaller than 50 bores, with 50 bores as the border. From the results of interviews with competing enterprises, etc., it is recognized that it is impossible for a business specializing in the manufacture of engines with less than 50 bores to manufacture engines with 50 bores or more due to restrictions on building space, strength, surface plates, and ancillary equipment. In addition, most marine engine manufacturers that produce 2-stroke engines with less than 50 bores are limited by licensing agreements to producing and selling only up to 50 bores. Therefore, there is no supply substitutability between heavy fuel oil engines smaller than 50 bores and heavy fuel oil engines larger than 50 bores.

c) Summary

Heavy fuel oil engines with less than 50 bores and heavy fuel oil

engines with 50 or more bores constitute a different scope of goods. For this reason, the scope of goods for heavy fuel oil engines is defined within the scope of heavy fuel oil engines with 50 bores or more (hereinafter referred to as "heavy fuel oil engines (50 bores or more)"), which are included in the large 2-stroke engines that are the subject of this action.

D. Summary

Based on the above, in this case, the scope of goods relating to the manufacture and sale of large 2-stroke engines was defined as "dual fuel engines" and "heavy fuel oil engines (50 bores or more)".

(2) Merchant ships

A. Demand substitutability

Merchant ships come in a wide variety of types and models, depending on the type of object to be transported and the method of transportation.

Demand substitutability between types of merchant ships is not recognized because the equipment fitted to the hull of each ship type varies due to the different chemical and physical characteristics and loading configurations depending on the cargo and because users select the type of shop according to the cargo to be transported.

With regard to ship design, users also select ships of a size that meets the required loading capacity and facility constraints on the route, so that demand substitutability among ship designs is also limited.

B. Supply substitutability

As described in 1. (2) B., above, supply substitutability between ship types is considered to be limited because the design of the hull, the equipment and facilities required for the ship, and the work involved in the outfitting process to install such equipment and facilities differ among ship types.

Also, in addition to the possible facility limitations when building different designs of ships, shipbuilding companies are trying to reduce construction costs by increasing efficiency by taking orders for a series of ships of the type and model in which they excel. In many cases, it is difficult for shipbuilders to receive orders for specific ship types and ship designs that they have never built before, even if short-term or spot demand is expected for the ship type or design in question.

Therefore, supply substitutability among the various ship designs is also considered to be limited.

C. Summary

In light of the above, in the field of manufacturing and sales of merchant ships, it is appropriate to define a different scope of goods for each ship type and model. In this case, the 17 items that the Imabari Shipbuilding Group built in the five years from 2009 to 2021 were each defined as a scope of goods.

3. Geographic range

(1) Large 2-stroke engines

Since the license agreement stipulates that the scope of sales of 2-stroke engines by Japanese engine manufacturers is limited to Japan and the outlying areas, and since Japan is not included in the license area of licensees outside Japan, Japanese shipbuilders, who are domestic users of large 2-stroke engines, basically procure their engines from Japanese engine manufacturers.

Based on the above, the geographic range of dual fuel engines and heavy fuel oil engines (50 bore or more) was defined as "all regions of Japan."

(2) Merchant ships

Major shipbuilders building merchant ships are concentrated in three countries: Japan, Korea, and China. These domestic and foreign shipbuilders have the entire world as their sales territory, and they sell merchant ships at virtually the same price in their entire global sales territory.

When ordering a ship, users of merchant ships, excluding ferries, select the shipbuilding company after obtaining quotations from multiple shipbuilding companies without regard for the country or region in which the shipbuilding company is located or whether it is a domestic or foreign shipbuilding company.

On the other hand, the demand for ferries is mainly for replacements for existing aging ships, and the supply of such vessels is provided by Japanese domestic shipbuilders. Therefore, it is unlikely that users will place orders with overseas shipbuilders even if ship prices rise slightly.

Based on the above, in this case, the geographic range for each of the 17

items, excluding ferries, was defined as "worldwide" and the geographic range for ferries was defined as "all regions of Japan."

Part IV Impact of this action on competition

The Imabari Shipbuilding Group purchases heavy fuel oil engines (50 bores or more) from Hitachi Zosen for use in the merchant ships it builds.

Imabari Shipbuilding Group has not purchased dual fuel engines from Hitachi Zosen, but may purchase dual fuel engines from HZME after this action.

Therefore, this action constitutes a vertical business combination with the upstream market for dual fuel engines and heavy fuel oil engines (50 bores or more) and the downstream market for 17 items.

1. Status of the Parties

(1) Upstream market

As stated in Part III 1 (1) c) a. above, Hitachi Zosen has no track record of receiving orders for dual fuel engines. However, Hitachi Zosen's product lineup for large 2-stroke engines includes dual fuel engines, and Hitachi Zosen is also competing for sales of dual fuel engines. Sales of dual fuel engines by HZME may also expand in the future. From the viewpoint of a more careful examination, it will be considered that the safe-harbor criteria for a vertical business combination are not met.

The market share based on the total order volume of heavy fuel oil engines (50 bores or more) for the five years from 2009 to 2021 is shown in Table 2 below and does not meet the safe-harbor criteria for a vertical business combination.

Table 2 Market share of heavy fuel oil fired engines (50 bores or more)(Total volume of orders received from 2009 to 2021)

Ranking	Company name	Market share
1st place	Company A and	
	Company B	Approx. 75%
2nd place	Hitachi Zosen	Approx. 15%
3rd place	Company C	0-5%
4th place	Company D	0-5%
5th place	Company E	0-5%
Total amount		100%

|--|

(2) Downstream market

Of the 17 items built by Imabari Shipbuilding Group during the five years from 2009 to 2021, the market share for "Neopanamax (large) container ships" based on the total volume built during the five years from 2009 to 2021 is shown in Table 3 below. The safe-harbor criteria for a vertical business combination are not met.

The market share of the Imabari Shipbuilding Group based on the total construction volume of "Ferries" for the five years from 2009 to 2021 is approximately 10%, but the market share of other groups is unknown. Since the HHI is unknown, it shall be considered that the safe-harbor criteria for a vertical business combination is not met.

All of the 15 items other than the above two items meet the safe-harbor criteria for vertical business combinations.

		····)
Ranking	Company name (country of location)	Market share
1st place	Company F (Korea)	Approx. 30%
2nd place	Imabari Shipbuilding Group	Approx. 30%
3rd place	Company G (China)	Approx. 15%
4th place	Company H (Korea)	Approx. 10%
5th place	Company I (China)	Approx. 10%
6th place	Company J (Taiwan)	0-5%
7th place	Company K (China)	0-5%
	Total amount	100%

Table 3 Market share of Neopanamax (large) container ships(Total volume of construction from 2009 to 2021)

2. Substantial restraint of competition based on unilateral conduct

(1) Market closure and exclusivity issues in downstream markets

- A. Input closure
 - a) Container ship Neopanamax (large)

The Imabari Shipbuilding Group has an approximately 30% share of the market for Neopanamax (large container ships), which is a major order item for the Imabari Shipbuilding Group. There are also concerns that the Parties may refuse to supply such items due to the possibility that the Imabari Shipbuilding Group will be incentivized to exclude competitors and the possibility that, due to the high buying power of the Imabari Shipbuilding Group, the Parties may be able to earn greater profits than they would lose by refusing to supply the items.

However, as stated in Part III 1. (1) b) a. (c.), above, Japanese engine manufacturers, including Hitachi Zosen, supply large 2-stroke engines only to Japan (and its outlying regions). Hitachi Zosen has supplied large 2-stroke engines in the past only to domestic shipbuilding companies. Therefore, if HZME were to refuse to supply, etc., the scope of impact would be limited to Japan. As shown in Table 3 in 1. (2) above, all shipbuilding companies that have supplied Neopanamax (large) container ships for the five years from 2009 to 2021, except for the Imabari Shipbuilding Group, are overseas shipbuilding companies. These competitors would not be affected by HZME's refusal to supply dual fuel engines and heavy fuel oil engines (50 bores or more). Therefore, HZME does not have the ability to foreclose the input.

b) 16 items except Neopanamax (large) container ship

An examination shall now be made as to whether it is recognized that the issues of closure or exclusivity of the market may arise due to a refusal to supply, etc. by HZME with regard to 16 of the 17 items (hereinafter referred to as "16 items") other than the Neopanamax (large) container ship.

Even today, most of Hitachi Zosen's heavy fuel oil engines (50 bores or more) used for the 16 items are sold to the Imabari Shipbuilding Group. Even if HZME were to refuse to supply such engines, the impact would be limited in scope. Of the ongoing customers of Hitachi Zosen, Company L is the only shipbuilding company that does not have a business joint relationship with either the Imabari Shipbuilding Group or Hitachi Zosen. In recent years, Company L has switched from Hitachi Zosen to other manufacturers for engines to be included in its standard ship designs. The main supplier for L will continue to be the other manufacturer. In light of this situation, even if HZME refuses to supply the engines, it is difficult to imagine that it would affect the procurement of heavy fuel oil engines (50 bores or more) by shipbuilding companies other than the Imabari Shipbuilding Group.

As for dual fuel engines, as stated in 1. (1) above, Hitachi Zosen has not received any orders to date, and there are no shipbuilding companies that have used Hitachi Zosen as a supplier of dual fuel engines. Therefore, even if HZME refuses to supply the engines, etc., it will not affect the procurement of dual fuel engines by shipbuilding companies other than the Imabari Shipbuilding Group. Even if the demand for dual fuel engines expands in the future, as stated in Part III 1. (1) b) a. (a.), above, marine engines are manufactured under license, and there is no exceptional recognition regarding the superiority of dual fuel engines manufactured by HZME, meaning that shipbuilding companies can choose the products of other companies. As stated in Part III 1. (1) b) a. (c.), above, in the case of marine engines licensed by MAN, licensees who receive inquiries from customers outside the licensed area are allowed to sell the engines directly to such customers, leading to passive sales in response to inquiries from users. Therefore, there is a recognition of import pressure. Given this fact, it is difficult to imagine that HZME's refusal to supply dual fuel engines would affect the procurement of dual fuel engines by shipbuilding companies other than the Imabari Shipbuilding Group.

Therefore, HZME would not have the capacity for input foreclosure for the 16 items.

c) Summary

Based on the above, there is no recognition that input foreclosure would create a closure or exclusivity problem in the upstream market.

B. Obtaining confidential information

It is conceivable that this action could lead to the Imabari Shipbuilding Group gaining access through HZME to information concerning the specifications and development of other shipbuilding companies in competition with regard to each of the 17 items.

However, the content of this information is limited to areas related to engine selection and does not extend to ship design, dock availability, and other information needed to place an order for a new ship.

In addition, information can be obtained regarding only shipbuilding companies with whom transactions with HZME may occur, i.e., domestic shipbuilding companies. Competition with overseas shipbuilding companies is not affected. Furthermore, as stated in A. b) above, the domestic shipbuilding companies to which Hitachi Zosen supplies heavy fuel oil engines (50 bores or more) are limited to a few enterprises.

In light of the above, it is not recognized that the acquisition of confidential information regarding competing enterprises in the downstream market of the Imabari Shipbuilding Group would have an excluding effect on those competing enterprises. Also, there is no recognition that the issue of market closure and exclusivity would arise in the downstream market.

(2) Market closure and exclusivity issues in upstream markets

A. Customer closure

An examination shall be made as to whether the issue of the closure or exclusivity of the upstream market would arise if the Imabari Shipbuilding Group refuses to purchase, etc., dual fuel engines or heavy fuel oil engines (50 bore or more), which are in the upstream market. Although there are 17 items in the downstream market, dual fuel engines and heavy fuel oil engines (50 bores or more) are used not only in the 17 items but also in various types of merchant ships. Enterprises competing with HZME will not lose opportunities for trading if they have opportunities to receive orders from shipbuilding companies in the overall merchant ship market. Therefore, in this examination, the possibility of selling dual fuel engines and heavy fuel oil engines (50 bores or more) in the downstream market for merchant shipbuilding shall be considered.

Imabari Shipbuilding's annual demand for large 2-stroke engines exceeds Hitachi Zosen's current supply capacity. Since the Imabari Shipbuilding Group will not be able to procure all of the large 2-stroke engines used in the construction of its merchant ships from HZME, it will maintain certain business relationships with marine engine manufacturers other than HZME. Also, in addition to the fact that marine engine manufacturers other than HZME have opportunities to trade with shipbuilders other than the Imabari Shipbuilding Group for dual fuel engines and heavy fuel oil engines (50 bores or more) if HZME's supply to the Imabari Shipbuilding Group increases, and if Hitachi Zosen has trouble supplying heavy fuel oil engines (50 bores or more) to its former

shipbuilding customers, those shipbuilding companies would likely switch to suppliers other than HZME. For these reasons, the Imabari Shipbuilding Group would not have the ability to customer foreclosure.

Therefore, there is no recognition that customer foreclosure would create a closure or exclusivity problem in the upstream market.

B. Obtaining confidential information

This action may lead HZME, through the Imabari Shipbuilding Group, to obtain specifications and other information from other marine engine manufacturers in competition with regard to dual fuel engines and heavy fuel oil engines (50 bores or more) sold in the downstream market for the 17 items.

As stated in Part III 1. (1) b) a. (a.) above, marine engines are manufactured under license, and there is no difference in the engine output (the amount of work extracted from the engine) itself if the engines are built under the same license. The output of the engines is publicly known, as it is listed in the product catalogs issued by the licensee marine engine manufacturers.

On the other hand, since part of the energy extracted from the fuel is lost through engine cooling and exhaust, the net work rate (fuel consumption) that is ultimately extracted as the power to propel the ship can vary depending on the capabilities of the equipment attached to the engine and the method of operation. In addition to fuel efficiency, there are other differences, such as exhaust gas performance and layout, that reflect the technology and expertise of each marine engine manufacturer.

The information provided by marine engine manufacturers to shipbuilding companies, which are the users, includes not only confidential business information such as quoted prices and model numbers but also confidential technical information as described above. The concern is that the competitiveness of other marine engine manufacturers would be diminished if HZME, through Imabari Shipbuilding, is able to obtain and advantageously utilize confidential information from competing marine engine manufacturers.

3. Substantial restraint of competition through coordinated conduct

(1) Ease of coordinated conduct in downstream markets

It is conceivable that this action will enable the Imabari Shipbuilding Group, through HZME, to obtain information such as procurement prices of dual fuel engines and heavy fuel oil engines (50 bores or more) from other domestic shipbuilding companies that are competing in the respective markets for the 17 items.

However, the Imabari Shipbuilding Group is only able to obtain information such as prices and model numbers that HZME has indicated to other shipbuilding companies. Since the price of marine engines does not account for such a large proportion of the total cost of shipbuilding, and since the specifications and performance of a ship are affected by various factors other than the engine model number, even if Imabari Shipbuilding Group obtains such information, there is no recognition for the expectation that the Imabari Shipbuilding Group and other shipbuilding companies would be able, with a high degree of certainty, to act in a coordinated manner in their respective markets for the 17 items, or that this will make it easier for them to adopt coordinated conduct.

Therefore, it is not recognized that this action will result in a substantial restraint of competition in the downstream market through coordinated conduct.

(2) Ease of coordinated conduct in upstream markets

It is conceivable that this action may enable HZME to obtain confidential information, such as information on the prices of other marine engine manufacturers, through the Imabari Shipbuilding Group.

If HZME were to allocate the majority of its production capacity to the Imabari Shipbuilding Group, the volume of sales to other shipbuilding companies would be limited, and HZME's position in the market for the supply of marine engines to shipbuilding companies other than the Imabari Shipbuilding Group would not be significant. In addition, as stated in 1(1)(a)(c) of 3, above, even though imports of products from foreign marine engine manufacturers into Japan are limited, it is believed that there is a certain degree of import pressure given that imports themselves are not restricted by license agreements.

There are currently three influential enterprises in the domestic market for heavy fuel oil engines (50 bores or more), Company A, Company B, and Hitachi Zosen. Once the business combination of Company A and Company B described in Part III 1. (1) c) b. and c., above, is implemented, the number of enterprises will be limited to two companies, the combined Company A and Company B, and HZME. Since HZME's production capacity may be strengthened in the future and it may exert competitive pressure on Companies A and B, there is a concern that the information concerning other marine engine manufacturers obtained by Imabari Shipbuilding will be shared with HZME, which will facilitate the adoption of coordinated conduct among marine engine manufacturers.

Part V Proposal of Remedies by the Parties

In the course of the review of this action, Imabari Shipbuilding proposed the following remedies.

(1) Imabari Shipbuilding shall be obligated not to disclose to HZME, or use for any other purpose, any confidential information obtained in connection with transactions relating to marine engines with marine engine manufacturers.

(2) Executives and employees of the Imabari Shipbuilding Group who have access to such confidential information and who have contact with HZME shall pledge not to disclose such confidential information to HZME or use it for any other purpose, and that any act in violation thereof shall be grounds for disciplinary action, etc.

(3) Information management measures shall be taken to prevent executives and employees of the Imabari Shipbuilding Group who do not need access to confidential information from accessing the confidential information.

(4) Executives and employees of the Imabari Shipbuilding Group who concurrently serve as officers of HZME, and executives and employees of the Imabari Shipbuilding Group who are seconded to HZME, shall not be from the Procurement Department (including those who belonged to the Procurement Department within the past one year) that is responsible for Group marine engine procurement operations. The relevant executives and employees shall make the same pledge as described in (2) above.

(5) Members participating in meetings with the purpose of collaboration between the Imabari Shipbuilding Group and HZME shall not be from the Procurement Department (including those who belonged to the Procurement Department within the past year), except in the case of meetings to discuss joint procurement. The members of the meetings shall make the same pledge as described in (2) above. (6) The status of implementation of the above measures shall be reported to the Fair Trade Commission once a year for a period of five years after the implementation of this action.

Part VI Assessment of the Remedies Proffered

Based on the remedial measures proffered, it would be impossible for HZME to obtain competitively important confidential information through the Imabari Shipbuilding Group. JFTC believes that HZME will not use the confidential information to take any actions to its own advantage as a result of this action. The problems described in Part4 2. (2) A and 3. (2), above, concerning obtaining confidential information would therefore be eliminated.

In view of the above, based on the remedies proffered by Imabari Shipbuilding, it is not recognized that this action will substantially restrain competition in a particular field of trade, either through unilateral conduct by the Parties or through coordinated conduct with competing enterprises.

Part VII Conclusion

Based on the implementation of the remedies proffered by Imabari Shipbuilding, it is not recognized that the action in question could substantially restrain competition in any particular field of trade.

Case 7 Integration of Microsoft Corporation and Activision Blizzard, Inc.

I. Parties Group

Microsoft Corporation is a company headquartered in the U.S. that is engaged primarily in the PC operating system (OS) provision business. Activision Blizzard, Inc. is a company headquartered in the U.S. that is engaged primarily in the game development and publishing business. In these investigation results, the terms in the left column of the table below will be stated as set forth in the right column.

Left column	Right column
Microsoft Corporation	Microsoft
Group of companies already linked together with Microsoft as	Microsoft Group
the ultimate parent company.	
Activision Blizzard, Inc.	Activision
Group of companies already linked together with Activision as	Activision Group
the ultimate parent company.	
Two companies combining Microsoft and Activision	Parties
Group of companies with Microsoft and Activision combined	Parties Group

II. Overview of the present case and relevant provisions of law

In the present case, the Parties Group plans to integrate Microsoft and Activision by share acquisition and merger (hereinafter referred to as the "**Transaction**").

The relevant provisions are Article 10 and 15 of the Antimonopoly Act.

III. Background of the JFTC Review, etc.

1. Background of the JFTC Review

The Parties made public their plan for the Transaction on January 19, 2022, and after that day, they voluntarily submitted written opinions contending that they did not consider that the Transaction would not substantially restrain competition and the relevant materials to the Japan Fair Trade Commission ("JFTC"). Upon the request of the Parties Group, the JFTC exchanged opinions with the Parties Group on several occasions.

The JFTC carefully examined the contents of the written opinions and materials, and conducted interviews with competitors and customers. In addition, the JFTC carefully examined the set of materials that were actually used at various meetings such as board of directors meetings whose submission was requested by the JFTC to the Parties Group, as well as the Parties Group's internal materials pertaining to
competition analysis regarding the Transaction.

Subsequently, on March 10, 2023, the Parties Group submitted notifications of the plan concerning the Transaction in accordance with the relevant provisions of the Antimonopoly Act. The JFTC accepted the notifications and commenced Phase 1 review. Based on the notifications of the plan and written opinions and materials submitted by the Parties Group, as well as the result of interviews with competitors and customers and economic analysis, the JFTC proceeded with the review of the competitive impact of the Transaction. In addition, the Transaction was also reviewed by overseas competition authorities and the JFTC exchanged information with the UK Competition and Market Agency, the European Commission, the Korean Fair Trade Commission, the Australian Competition and Consumer Commission and the U.S. Federal Trade Commission in the course of the review.

2 Seeking information and comments from third parties

This case is a business combination with many interested parties in complex markets in which major changes are expected. For this reason, the JFTC sought information and comments concerning the Transaction from third parties between June 16-July 15, 2022. This resulted in various information and comments being submitted by businesses and individuals, and the JFTC considered this information and comments when conducting its review of the Transaction.

3 Viewpoint of Review of the Transaction and Summary of the Result of the Review The Microsoft Group, in addition to producing and selling OS software for PCs (Windows) and game consoles¹ (Xbox), also is in the business of developing and publishing PC, game console, and mobile games, and it sells and distributes games on the online stores it owns and operates (Microsoft Store and Xbox Store). It also conducts other businesses such as the business of providing cloud services (Microsoft Azure²) and a digital advertising business, among others.

The Activision Group conducts development and publishing business for PC, game console and mobile games, and in addition to selling and distributing games on the online store it owns and operates (Battle.net), it supplies games for the game

¹ Game consoles, such as Xbox Series X/S of Microsoft Group, Play Station 5 of Sony and Nintendo Switch of Nintendo, are hardware exclusively used for playing games.

² Microsoft Azure provides IaaS and PaaS platform cloud services via the Internet. IaaS (infrastructure as a service) is a service that creates an entire infrastructure environment such as CPU, OS, storage, hardware and network environment in a virtualized environment and provides it via the Internet, which enables users to expand storage, etc. without psychically increasing on-premises servers itself. PaaS (platform as a service) are services that provide an environment for operating applications via the Internet, and can be used for development of application software, among other things.

consoles and the like of the Microsoft Group, Sony Interactive Entertainment LLC. ("Sony"), and Nintendo Co., Ltd. ("Nintendo"). Of the games provided by the Activision Group, the Call of Duty series is particularly popular.

Based on the above, the JFTC intensively reviewed a horizontal business combination of the game development and publishing business and the game sales and distribution business in which the Parties Group is in a competitive relationship, and also intensively reviewed a vertical business combination based on the relationship of the Microsoft Group game platform provision business, game sales and distribution business, and cloud gaming service provision business with the Activision Group game development and publishing business. The JFTC also intensively reviewed a conglomerate business combination based on the relationship between the OS provision business of the Microsoft Group and the game development and publishing business.

Figure 1: Outline of types of business combination in the present case



With respect to the Transaction and data accumulation, the JFTC concluded that the Transaction would have no impact on competition as the data acquired through the Parties' Corporate Groups' services does not contain information for specific categories, and even compared to competitors, is not expected to offer a competitive advantage to the Parties' Corporate Groups with respect to data volume, scope or collection frequency.

As a result of the review, as will be explained in Section IV through VIII, the JFTC concluded that the Transaction would not substantially restrict competition.

IV. Outline of products and services, etc.

- 1 Business of providing game platforms such as game consoles
 - (1) Outline of game platforms

Consumers normally need to use a game platform such as a game console, PC, or mobile device (smartphone, tablet) to play a game. Of these, mobile devices generally do not possess the computing power or memory capacity of PCs and game consoles, so compared to PC and game console games, games for mobile devices have a lower level of graphics and sounds, and their in-game available functions are more limited. In the past, game consoles had lower computing capacity compared to PCs, but the latest game consoles contain similar CPUs to PCs, meaning there is almost no difference in the graphics and the sound, etc. of games for PCs and game consoles.

In the Parties Group, the Microsoft Group manufactures and sells the game console Xbox Series X/S (released November 10, 2020).

Game platform providers install in their own platform OSes (see (2) below) for each platform equipped with functions to allow games to be played on that platform.

(2) Outline of OS installed on a game platform

An OS is software that provides basic functions commonly used by most application software, including games, and manages the overall computer system. As to OS for PCs and mobile devices, OS providers develop OSes and license them for free or for a fee to other PCs and mobile devices manufacturers. On the other hand, as to OS for game consoles, the game console manufacturer itself develops its own OS and installs that game console OS that it has developed itself only in its own game consoles.

The Microsoft Group develops OS for PC and game console. It installs PC OSes in its own PCs and licenses its PC OSes to other PC manufacturers, but installs its game console OS only in its own game consoles.

- 2 Outline of game development and publishing business, etc.
 - (1) Game development

When developing a game, game developers use game development tools (including game engine, audio and video middleware, etc. and other tools) to design, program and test games. Features provided by game development tools include 2D and 3D rendering engines³, physics engines for collision detection and collision response, sound, script, memory management,

³ Software components that process image data and generate specific animation, etc.

localization support, etc. Developing games that can be played on each platform requires the use of game development tools provided by game platform providers and OS providers⁴, and in practice, the Microsoft Group enters into game development license agreements with game developers and provides game development tools for Windows and Xbox.

The Parties Group develops various PC, game console, and mobile games. The following are examples of game titles developed by the Microsoft Group.

<PC and game console games>

- Minecraft (sandbox game⁵)
- Forza Horizon (racing game)
- Halo (action shooting game)

<Mobile games>

- Fallout Shelter (simulation)
- The Elder Scrolls: Blades (action role playing game)

The Activision Group also develops various PC, game console, and mobile games. The following are examples of game titles developed by the Activision Group.

<PC and game console games>

- Call of Duty (action shooting game)
- Overwatch (action shooting game)
- <Mobile games>
- Candy Crush (puzzle game)
- Hearthstone (role-playing deck-builder game)
- (2) Game publishing

Game publishers sell games that they themselves have developed or that they have commissioned an external game developer to develop ("**Third-Party Developer**") in the form of media such as physical cartridge and compact disc ("a packaged product") at electronics retail stores and manage licenses for digital distribution to consumers via an online store, and also advertise and market games.

When selling a game that the game publisher has developed by commissioning to a Third-Party Developer, the game publisher and the Third-Party Developer

⁴ There exist OS providers for game console such as the Microsoft Group, Sony, Nintendo, etc., and OS providers for PC and OS providers for mobile such as the Microsoft Group, Apple Inc., Google LLC, etc.

⁵ Sandbox games are games in which no specific goal to reach or task to complete is given, and the user plays by freely collecting items and arrange them, etc. within the game space.

execute a development and publishing agreement, and royalties stipulated in the agreement are paid to the Third-Party Developer.

The Microsoft Group and the Activision Group both develop their own games as above (called a "first-party game") and also publish games developed by Third-Party Developers.

Some games developed and published by the Microsoft Group are sold and distributed as games exclusively for the Xbox (exclusive title⁶), but most of the games developed and published by the Microsoft Group are sold and distributed as games that can be played on games consoles, etc. of other companies. Some PC games developed and published by Activision are distributed solely on Battle.net, but the majority are distributed on online stores of other companies.

(3) Relationship between game development and game publishingAs explained in (2) above, game publishers may themselves develop games, and major game publishers usually own a game developer.

In the past, when sales were dominated by packaged products, small and medium-sized Third-Party Developers which sold games without going through game publishers faced manufacturing and marketing limitations. However, with sales by digital distribution now becoming mainstream, since sales are possible at a lower cost compared to packaged products, there are more so-called indie games that are sold by Third-Party Developers without going through game publishers.

- 3 Game sales and distribution business
 - (1) Outline of game sales and distribution business

In the past, games had been sold at physical electronics retail stores, etc. in the form of Packaged Products, but are recently sold as electronic data by digital distribution methods such as download via online stores⁷, digital distribution with free basic play but paid additional features, and fixed-rate subscription services. Recently, in addition to the sale and digital distribution of the main game as a Packaged Product, expanded game content and items are

⁶ Titles unique to the Microsoft Group include Forza Horizon 5 (released 2021) and Halo Infinite (released 2021).

⁷ In addition to the method of purchasing the game on and downloading it from the online store operated by the game console providers, etc., there is the method of purchasing a digital download code sold by a physical store, entering it at the online store operated by the game console providers, etc., and downloading the game.

increasingly sold as downloads.

The sale of Packaged Products requires the equipment to manufacture physical media and inventory storage locations, etc., whereas with digital distribution, electronic data can be directly uploaded to an online store, and the game user can download or stream it from there. The three types of digital distribution are outright purchase distribution, multi-game subscription service, and freemium model, which are summarized below.

Outright purchase	Outright purchase distribution allows users to choose the
distribution	game they wish to purchase, and by paying the fee for
	that game, save the game from the network to a device
	(storage) and play it. As game play uses the game files saved
	on the device, once downloaded, the game can be played
	without any Internet access, but the device requires memory
	storage capacity to save the downloaded game.
	The outright purchase service is a specific charge system where the user pays a fee for each game, etc. purchased.
	PC games are generally dominated by outright purchase distribution by third parties who handle the products of an OS provider, a game developer/publisher, and multiple game developers/publishers. Game console games are generally dominated by outright purchase distribution by game console providers.
Multi-game	Multi-game subscription services allow users to pay a
subscription service	monthly or annual set fee and in return access games
	that they like from a catalogue that includes the latest
	games with no specific time restriction. Multi-game
	subscription service games are distributed by the user
	downloading the game from a network and saving it onto a
	device and playing it, or by streaming the game that they
	want to play from the Cloud while connected to the Internet.
	Multi-game subscription services for each platform are
	generally provided by game console providers, operating
	system providers, and game developers/publishers.

The freemium model basically is providing games at a			
zero upfront fee to users, but with limitations such as in-			
game advertising, and some restricted features within the			
game. Depending on the game, the purchase of in-game items			
may be required to play the game more comfortably. In other			
cases, the additional content is purely cosmetic such as for			
game characters. Mobile games are generally dominated			
by the distribution of freemium games by OS providers.			

Of the Parties Group, the Microsoft Group owns and operates the online stores Microsoft Store and Xbox Store, and digitally distributes various PC and game console games by outright purchase, multi-subscription service and freemium. There is no registration fee for Microsoft Store and Xbox Store, and Microsoft Store can be accessed by PC app or web browser, while Xbox Store can be accessed by PC app, web browser, and Xbox. The Microsoft Group also offer the multi-game subscription service Xbox Game Pass, comprising three different plans (Game Pass Ultimate, PC Game Pass, Console Game Pass) depending on the scope of usable platforms and the features. Of these, Game Pass, as well as a multi-player⁸ subscription service (Xbox Live Gold) and cloud gaming service (Xbox Cloud Gaming), enabling users to seamlessly share the same game on multiple platforms by accessing an app or web browser for cloud gaming service games⁹.

The Activision Group owns and operates the online store Battle.net which offers only PC First-Party Games and digitally distributes games from various genres by outright purchase and freemium model. Registration for Battle.net is free, and can be accessed by PC app and web browser¹⁰.

(2) Cloud gaming service

When a game is downloaded onto a platform such as a game console, etc., the game file is accessed on a remote server, a local digital copy of the game created, stored, and transferred to the platform such as the game console on which it will be played. Normally the game can be played only on the platform

⁸ A feature for online competition with other users who can connect to the Internet.

⁹ Xbox Cloud Gaming is only provided as a service included in Game Pass Ultimate, and not as a separate service. Users can play Xbox Cloud Gaming games by connecting a controller to a mobile device using Bluetooth, or for games with a touch interface, by touch operation without connecting to a controller.

¹⁰ Battle.net can be accessed from mobile apps, but features are limited to social features such as chat among players.

it was downloaded to. By contrast, on a cloud gaming service, basically the game is run on a remote server and data such as game images and music, etc. will be streamed to the platform of the user through the Internet, with the game saved on the cloud rather than the platform itself. This offers cloud gaming service users the benefit of playing the game without waiting for it to download, and not using the memory capacity of the device to play the game. Also, cloud gaming service users now can play PC games and game console games on platforms such as low end PCs and mobile devices, etc. with lower computing power and graphic capabilities, permitting playing by seamlessly sharing the same game data on multiple types of platforms.

Due to faster Internet speeds, in addition to cases where cloud gaming services that have emerged in recent years are offered as a standalone service, there are cases where they are packaged together with a multi-game subscription. The Japanese cloud gaming market is expanding, and may show significant growth and change in the future.

4 Network effect in markets surrounding game-related businesses

For game platform provision businesses and game distribution and sale businesses, the more users (consumers) use a product (game console, etc.) or service (games distribution service), the more incentives game developers/publishers have to provide diverse game contents. In the same way, the more diverse game contents are offered, the more attractive these products and services become to users, and a market with a so-called two-way indirect network effect is conceivable. For this reason, the above indirect network effect also must be taken into consideration when examining competitive impacts on markets surrounding game-related businesses.

V. Definition of a particular field of trade

- 1 Game platform (PC, game console, mobile device) provision business
 - (1) The scope of product and service
 - A Demand substitutability

Game platforms are divided into three types: PCs, game consoles, and mobile devices. Although the three types of platform have in common the fact that they are needed to play games, in addition to having differences in performance, functions, and operability, in response to these differences, there are differences in playable games. For this reason, it is conceivable that game-playing consumers use the three types differently to some extent. This means that demand substitutability between the different types of game platforms is limited.

B Supply substitutability

Although there are business operators such as the Microsoft Group that manufacture multiple types of game platforms, the technology and expertise, etc. required for the manufacture of each type of platform differ, and it is not easy to switch from the manufacture of a specific type of platform to the manufacture of another platform category.

This means that no supply substitutability is found between the different types of game platforms.

C Summary

From the above, no substitutability is found between differing types of game platform.

The Microsoft Group manufactures and sells PC and game console as game platforms. As set forth in Section IV-1(2), for PCs, OS providers develop the OS and license it to other PC manufacturers, and the OS developed by the Microsoft Group is supplied to other PC manufacturers. It is conceivable that the status of the Microsoft Group in PC provision business has limited impact on competition in the market of PC provision business because there are many competitors who have higher market shares than the Microsoft Group in PC manufacturers. On the other hand, as set forth in Section VII– 5(2), it is presumed that the Microsoft Group has high market share in the OS for PCs market, with respect to PCs, OS provision business is thought to be affected by this case. since Therefore, the scope of game platform products and services will be defined as the "Game Console Provision Business," and the OS provision business will be examined in 2 below.

(2) Geographic scope

Most domestic users purchase each type of platform through online sales at the Japanese website of each type of platform manufacturer, etc. or sales at a physical electronics retail store in Japan. Accordingly, it is conceivable that the range in which Japanese users shop around for each type of platform is basically limited to Japan. Thus, the geographic scope of each type of platform is defined as "Japan."

- 2 OS provision business
 - (1) The scope of product and service
 - A Demand substitutability

OSes loaded on game platforms are developed exclusively for each type of platform according to the performance, functions and operability of each type of platform as in 1(1) above. Accordingly, for the manufacturers of each type of platform who are the users, no demand substitutability is found between OSes for different types of platforms.

B Supply substitutability

The application software controlled by an OS differs depending on the performance, functions and operability of each type of platform as in 1(1) above, and as programming, etc. is required for such control, different technology and expertise is required for the development of OSes for different types of platforms. Accordingly, no supply substitutability is found between OSes for different types of platforms.

C Summary

From the above, no substitutability can be found between OSes for different types of platforms.

Since the Microsoft Group develops and supplies OSes for PCs, the scope of products and services is defined as the "PC OS Provision Business."

(2) Geographic scope

PC OS providers including the Microsoft Group supply PC OSes globally, and global users indiscriminately purchase PC OSes from global PC OS providers. Given the nature of OS products and services, there are no transport costs, etc., and there is little difference in licensing by country.

For this reason, the geographic scope of PC OS Provision Business is defined as "worldwide."

3 Game development and publishing business

- (1) Scope of product and service
 - A Game development and game publishing businessAs mentioned in Section IV-2(3) above, when sales of Packaged Products

were the norm, facilities for the manufacture of Packaged Products and expertise for securing sales routes was required when selling games, so it was normal for small and medium-sized game developers to sell games via game publishers in order to secure manufacturing costs and expertise. However, in recent years, the ability to sell games via digital distribution has increased the supply from developers themselves to businesses that own and operate online stores and multi-game subscription service providers.

Further, as mentioned in Section IV-4 above, businesses that own and operate online stores and multi-game subscription service providers consider not only the games published by game developers, but also games sold by small and medium-sized game developers without going through game publishers as a substitute option from the perspective of offering an extensive lineup, and are purchasing a wide-range of games from such developers.

Accordingly, substitutability can be found between games published by game publishers and games sold by game developers without going through game publishers, and the scope of products and services in this case is defined as the "Game Development and Publishing Business" for both of the game development business and game publishing business.

- B Substitutability between games for different types of platform (PC, game console, mobile device)
 - (A) Demand substitutability

The Microsoft Group's online store and multi-game subscription service provides PC and game console games, but normally, with respect to games for differing types of platforms, the users that are business operators that own and operate online stores and multigame subscription service providers basically provide online stores and multi-game subscription services that are for one type of platform, based on the demand of the consumer who is the ultimate user.

Therefore, there is only limited demand substitutability between games for PC, games consoles, and mobile devices.

(B) Supply substitutability

As set forth in Section IV-1(1) above, there is now almost no

difference in graphics and sound, etc. performance for the latest game consoles and PCs in terms of the purpose of playing games, and there is common expertise for the development of PC games and game console games. In practice, the same game is often developed for both PC and game console. In the development and publishing of a game, a game that was developed for a specific category of platform is sometimes ported so that it can be played on another type of platform. Although the porting of a game requires work and cost such as rewriting of programing language, graphic adjustments, and acquisition of license agreements for game development, etc., it is possible to do with less investment than creating a game from scratch. Porting is often undertaken between PCs and game consoles, which as mentioned above have little difference in performance, and between the different models of game consoles.

Therefore, a certain level of substitutability of supply can be found between PC games and game console games.

On the other hand, as mentioned in Section IV-1(1) and 3(1) above, compared to mobile games, PC games and game console games make use of more advanced graphics and sound, etc., and premised on being sold mainly by outright purchase, have complicated operability and contents. Mobile games are often developed with lower-level graphics and sound compared to PC games and game console games, and often have a simpler touch user interface and contents based on generation of revenue through the freemium model and touch operability.

Thus, there is little shared expertise between PC games and game console games on the one hand, and mobile games on the other, and it is difficult for PC game and console game developers/publishers to develop and provide mobile games without incurring substantial added costs and risks, and by the same token, it is difficult for mobile developers/publishers to develop and provide PC games and game console games without incurring substantial added costs and risks.

Therefore, there it is conceivable that there is only limited supply substitutability between games for mobile devices and games for PCs and game consoles.

C Substitutability between games of different genres

Games are sometimes divided into different genres based on story development, operation method, or the like. Game genres include action, adventure, role playing games, sports, strategy, etc., and some games combine aspects from multiple genres. The consumer that is the end user generally does not play only games within a specific range of genres, but alternates between playing games from multiple genres. This means that the users who are business operators that own and operate online stores and multi-game subscription service providers, from the perspective of securing an extensive lineup based on consumer demand, consider all genres of games as alternative choices, and procure games from a wide range of genres.

Therefore, demand substitutability can be found between games of different genres.

D Substitutability between games of different types

Other than by genre, games can be divided by type based on development and marketing costs, the complexity of their content, and the like. Game types include AAA and casual, etc., with AAA games generally having been developed with a large budget and personnel cost over a long period of several years and are sold for use on multiple types of platforms. By contrast, casual games have relatively simple operation methods and user interfaces, etc., and the budget and personnel costs for development are low. Game type differentiation is based on factors such as development and marketing cost scale, game contents, as well as the number of units sold and name recognition, and the differentiation is fluid and unclear. The consumer who is the ultimate user generally does not play only games of a specific type, but alternates between playing various types of games. This means that the users who are business operators that own and operate online stores and multi-game subscription service providers, from the perspective of securing an extensive lineup, consider all types of games as alternative options from the perspective of offering an extensive lineup, and procure broad types of games.

Therefore, demand substitutability can be found between different types of games.

E Summary

From the above, substitutability can be found between games of different genres and different types. Conversely, as there is a certain extent of supply substitutability between PC games and game console games as mentioned in B(B) above but only limited demand substitutability between games for different types of platform as mentioned in B(A) above, the scope of products and services is defined as the "PC Game Development and Publishing Business," "Game Console Game Development and Publishing Business," and "Mobile Game Development and Publishing Business," and "Mobile Game Development pressure were examined as adjacent markets with respect to the "PC Game Development and Publishing Business," and "Game Console Game Development and Publishing Business."

(2) Geographic scope

The contents and features of games provided to users are shared in many countries, so the geographic market definition could be set as "worldwide." However, the provision of a game requires localization such as language, etc. for each country, and the tastes of users of each country differ, with the best-selling titles in each country differing¹¹ by game annual sales. For example, even for Activision Group's Call of Duty, which is software with high global popularity, there are numbers of games in Japan that are more popular. In fact, even companies that conduct business worldwide have different market shares by country or region.

For this reason, the geographic scope is defined as "Japan" from the perspective of examining the effect on Japanese users in particular.

- 4 Game sales and distribution business
 - (1) Scope of product and service
 - A Substitutability of Packaged Product sales and digital distribution
 - (a) Demand substitutability

Comparing Packaged Products to digital distribution, the benefits

¹¹ On this point, according to unit sales data for home-use video game software in 2022 released by the Kadokawa Ascii Research Laboratories as an example, the top 10 titles were as follows. Activision Group's global hit game software Call of Duty Modern Warfare II (released October 28, 2022) does not make the top 10. 1. Pocket Monster Scarlet / Violet, 2. Splatoon 3, 3. Pokémon Legends Arceus, 4. Kirby and the Forgotten Land, 5. Nintendo Switch Sports, 6. Mario Kart 8 Deluxe, 7. Minecraft, 8. Mario Party Super Stars, 9. Super Smash Bros. Ultimate, 10. Elden Ring.

of digital distribution for the consumers that are users are said to include the ability to immediately obtain something when they think they want to purchase it, and the simplicity of transportation and not needing a storage place. On the other hand, a benefit of Packaged Products is said to be not putting pressure on device storage. Considering these differences, it is possible that to a certain extent, users use Packaged Products and digital distribution for different purposes.

Therefore, the substitutability of demand for Packaged Products and digital distribution is thought to be limited.

(b) Supply substitutability

As stated in of Section IV-3(1) above, sales of Packaged Products require that a system be arranged, such as the securing of facilities for the manufacturing of physical media and places for storage of inventory. On the other hand, while digital distribution is thought not to require securing of facilities for the manufacturing of physical media and places for storage of inventory, it requires the expertise necessary for processing related to digital content (processing to prevent illegal copying, etc.) and the like. Therefore, it is possible that supply substitutability cannot be found.

- B Substitutability between game sales and distribution for different types of game platforms (PCs, game consoles, and mobile devices)
 - (a) Demand substitutability

The consumers who are users purchase games for the game platforms that they own, and therefore there is no substitutability of demand for game sales and distribution for game platforms that they do not own. While there are consumers who own multiple types of game platforms, as well as consumers who purchase new platforms, as stated in 3(1)B(b) above, there are differences in performance, functions, and operability among the three types of platforms, and there are differences in the games that are playable corresponding to these differences, so it is thought that consumers who play games to some extent use the three types of platforms for different purposes.

Therefore, the substitutability of demand between game sales and

distribution for different types of platforms is limited.

(b) Supply substitutability

In online stores and multi-game subscription services for each type of platform, it becomes necessary to newly develop, improve, etc. the distribution management systems, applications, etc. for the respective corresponding digital files, and therefore it is not easy to develop and provide games for online stores and multi-game subscription services for each type of platform without incurring substantial added costs and risks.

Therefore, the substitutability of supply between game sales and distribution for different types of platforms is limited.

- C Substitutability of different distribution methods (outright purchasetype, multi-game subscription service, freemium model)
 - (a) Demand substitutability

There are three different distribution methods for the digital distribution of games: the outright purchase-type, the multi-game subscription service, and the freemium model. As these respectively have the special characteristics described in of Section IV-3(1) above, consumers are thought to use each service selectively considering these special characteristics.

Therefore, the substitutability of demand among the outright purchase-type, the multi-game subscription service, and the freemium model is thought to be limited.

(b) Supply substitutability

If a game distribution business provider wishes to use a distribution method that it has not previously used, it would be necessary to, for example, manage the distribution period for games in the catalog of a multi-game subscription service, or have systems for *gacha* or other in-game purchases and systems for displaying in-game advertising under the freemium model, making necessary new development, improvement, etc. of distribution management systems and applications, etc.

Therefore, the substitutability of supply among the outright

purchase-type, the multi-game subscription service, and the freemium model is thought to be limited.

D Summary

Based on the above, substitutability cannot be found between sales of Packaged Products and digital distribution, and the substitutability between sales and distribution for different types of platforms and between different distribution methods is limited.

The Parties Group provides both PC games and game console games through respectively outright purchase-type distribution and a multigame subscription service and freemium model. Of these, with regard to the freemium model, the market position of the Parties Group is low, and the impact of the Transaction on competition is considered to be minor, the scope of products and services is defined as the "PC Game Outright Purchase-Type Distribution Business," "Game Console Game Outright Purchase-Type Distribution Business," "PC Multi-Game Subscription Service Provision Business," and "Game Console Multi-Game Subscription Service Provision Business."

(2) Geographic scope

In most countries, games share contents and functions provided to users, so the geographic scope can be thought of as "worldwide." On the other hand, the supply of games requires localization for languages, etc. in each country, and as described in 3(2) above, there are differences in the lineup of top titles in terms of annual sales volumes of games in each country, the preferences of users in each country vary, and even business providers who have developed their business worldwide have different market shares in different countries and regions.

Therefore, particularly from the standpoint of considering the effect on consumers in Japan, "Japan" is defined as the geographic scope.

5 Cloud gaming service provision business

(1) Scope of product and service

As described in Section IV-3(2) above, cloud gaming services are provided as stand-alone services, and there are also services provided in combination with multi-game subscription services, such as the Game Pass provided by Microsoft Group; therefore, Cloud Gaming Services and Multi-Game

Subscription Services can be thought to be within the same scope of product and service. However, Cloud Gaming Services have only been introduced in recent years, the market size within Japan is growing, and further growth and transformation is expected in the future. Therefore, from the standpoint of a more careful examination, "Cloud Gaming Services" are defined as a separate market from "Multi-Game Subscription Services."

Furthermore, Cloud Gaming Service users are able to play games compatible with a Cloud Gaming Service regardless of the game platforms they own, so long as it is a game platform that is capable of connecting to the Internet, as described in Section IV-3(2) above. Thus, there is no need to define Cloud Gaming Services as separate markets for each type of platform.

Therefore, the scope of product and service is defined as the "Cloud Gaming Service Provision Business."

(2) Geographic scope

When game data processed on the cloud is sent to user platforms, a gap in time between the user's input and the image on the screen will arise if it takes a long time to send the data. In general, if the data center used for sending data is located within the country, the data sending time will be shorter in comparison to using a cloud server overseas. Therefore, Cloud Gaming Service Provision Business providers establish data centers in each country/region and provide Cloud Gaming Services to users in the countries/regions where those data centers are established. In practice, the lineup of business providers in each country/region is different.

Therefore, "Japan" is defined as the geographic scope.

VI. Applicability of safe harbor standards to a particular field of trade

As noted in Section III-3 above, as forms of business combinations that may create competition concerns due to the Transaction, the JFTC examines it as falling under horizontal, vertical, and conglomerate business combinations, as provided in Table 1 below. The market shares for Lines 1 through 5, 8, and 11 of Table 1 below fall under the safe harbor standards¹² for horizontal and vertical business combinations as shown in

¹² The "Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combinations" (May 31, 2004, Japan Fair Trade Commission), Section IV-1(3) states that ordinarily it cannot be understood for a horizontal combination of enterprises to substantially restrain competition in a particular field of trade if (i) the Herfindahl-Hirschman Index (which is an index that represents market concentration and is the sum of the squared market share of each business operator in a particular field of trade;

Table 2 through Table 7. On the other hand, while it is difficult to ascertain exact market shares for Lines 6, 7, 9, 10, and 12 of Table 1 below, for reference, estimate values, etc. are as provided in Table 8 through Table 10.

As the market shares for Lines 6, 7, 9, 10, and 12 of Table 1 below do not fall under the safe harbor standards for vertical and conglomerate business combinations, we analyze whether the Transaction would substantially restrain competition in Section VII below.

hereinafter the "HHI") after the merger is not more than 1,500, (ii) the HHI after the merger is more than 1,500 but not more than 2,500 while the increment of the HHI is not more than 250, or (iii) the HHI after the merger is more than 2,500 while the increment of the HHI is not more than 150. Also, Section V-1(2) and Section VI-1(2) of the same Guidelines states that ordinarily it cannot be understood for a vertical and conglomerate combination of enterprises to substantially restrain competition in a particular field of trade if (i) the market share of the company group after the business combination is not more than 10% in all of the particular fields of trade relevant to the company group, or (ii) the HHI is not more than 2,500 and the particular fields of trade relevant to the company group (such criteria are called "safe harbor criteria").

Form of Business Combination		Product/Service	Safe Harbor Status
Horizontal	1	PC Game Development and Publishing Business	0
Business	2	Game Console Game Development and Publishing	0
Combination		Business	
3		Mobile Game Development and Publishing	0
		Business	
	4	PC Game Outright Purchase-Type Distribution	0
Business		Business	

		Upstream Market	Downstream Market	
Vertical Business Combination	5		PC Game Outright Purchase-Type Distribution Business (M, A)	Ο
	6	PC Game Development and Publishing Business (M, A)	PC Multi-Game Subscription Service Provision Business (M)	×
	7		Cloud Gaming Service Provision Business (M)	×
	8		Game Console Game Outright Purchase- Type Distribution Business (M)	0
	9 G D	Game Console Game Development and	Game Console Multi- Game Subscription Service Provision Business (M)	×
	10	Publishing Business (M, A)	Cloud Gaming Service Provision Business (M)	×
	11		Game Console Provision Business (M)	0

Conglomerate Business	12	PC Game Development and Publishing Business	PC OS Provision
Combination		(M, A)	Business (M)

* (M) is a business conducted by Microsoft Group, (A) is a business conducted by Activision Group.

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Tahle	21 PC	Game	Develo	nment ar	nd Pu	hliching	Rusiness	Market	Shares	in	202113
I abic	2 1 U	uame	Develo	phienear	iu i u	DIISIIIIA	Dusiness	Market	Shares.	111	2021

Ranking	Company Name	Market			
		Share			
1	Company A	Approx. 20%			
2	Company B	Approx. 10%			
3	Company C	0 – 5%			
4	Microsoft Group	0 - 5%			
5	Company D	0 – 5%			
6	Company E	0 – 5%			
7	Company F	0 – 5%			
8	Company G	0 – 5%			
12	Activision Group	0 - 5%			
_	Others	Approx. 55%			
	Total 100%				
Combined Market Share/Ranking: 0 – 5% / #4					
HHI after the Transaction (Maximum): 589.7					
HHI incremental: 5.9					

¹³ Stated in units of 5%, such as 32.5% to under 37.5% being shown as "Approx. 35%." Therefore, the totals do not necessary add up to 100. Same below.

Ranking	Company Name	Market			
		Share			
1	Company H	Approx. 35%			
2	Company I	0 – 5%			
3	Microsoft Group	0 - 5%			
4	Company J	0 - 5%			
5	Company K	0 – 5%			
6	Company L	0 – 5%			
7	Company M	0 - 5%			
8	Activision Group	0 - 5%			
_	Others	Approx. 60%			
	Total 100%				
Combined Market Share/Ranking: 0 – 5% / #3					
HHI after the Transaction (Maximum): 1,142.9					
	HHI incremental: 1.7				

[Table 3] Game Console Game Development and Publishing Business Market Shares in 2021

[Table 4] Mobile Game Development and Publishing Business Market Share in 2021

Ranking	Company Name	Market	
		Share	
1	Company N	Approx. 10%	
2	Company O	Approx. 5%	
3	Company P	Approx. 5%	
4	Company Q	Approx. 5%	
5	Company R	Approx. 5%	
6	Company S	0 - 5%	
7	Company T	0 – 5%	
8	Company U	0 – 5%	
Unknow	Microsoft Group	0 - 5%	
n			
Unknow	Activision Group	0 - 5%	
n			
	Others	Approx. 55%	
	Total	100%	
Combined Market Share/Ranking: 0 – 5% / Unknown			
HHI after the Transaction (Maximum): 449.8			
HHI incremental: 0.2			

Ranking	Company Name	Market		
		Share		
1	Company V	Approx. 30%		
2	Company W	Approx. 25%		
3	Company X	Approx. 15%		
4	Company Y	Approx. 10%		
5	Company Z	Approx. 5%		
6	Company AA	0 - 5%		
7	Microsoft Group	0 - 5%		
8	Company BB	0 - 5%		
9	Activision Group	0 - 5%		
_	Others	0 - 5%		
	Total 100%			
Combined Market Share/Ranking: 0 – 5% / #6				
HHI after the Transaction (Maximum): 2,057.0				
HHI incremental: 5.5				

[Table 5] PC Game Outright Purchase-Type Distribution Business Market Shares in 2021

[Table 6] Game Console Outright Purchase-Type Distribution Business Market Share in 2021

Ranking	Company Name	Market
		Share
1	Company CC	Approx. 50%
2	Company DD	Approx. 50%
3	Microsoft Group	0 - 5%
4	Company EE	0 - 5%
	Total	100%
	HHI: 4,804.6	

[Table 7] Game Console Provision Business Market Share in 2021

Ranking	Company Name	market
		share
1	Company FF	Approx. 70%
2	Company GG	Approx. 30%
3	Microsoft Group	0 - 5%
Total		100%
	HHI: 5,630.0	

VII. Assessment of substantial restraints on competition

- 1 Vertical business combination with PC Game Development and Publishing Business as upstream market and PC Multi-Game Subscription Service Provision Business as downstream market (Table 1, Line 6)
 - (1) Substantial restraints on competition due to unilateral conduct
 - A Parties Group's position

The Parties Group's market share in the "PC Game Development and Publishing Business" is as provided in Table 2 above and falls under the vertical business combination safe harbor standards. While it is difficult to exactly ascertain market shares in the "PC Multi-Game Subscription Service Provision Business" after the Transaction, the market share including game console Multi-Game Subscription Services is provided for reference in Table 8 below. As the exact market share of the Parties Group for the "PC Multi-Game Subscription Service Provision Business" is unknown, we assess it as not falling under the vertical business combination safe harbor standards.

[Table	8]	(For	Reference)	РС	and	Game	Console	Multi-Game	Subscription	Service
Provisi	ble 8] (For Reference) PC and Game Console Multi-Game Subscription Service vision Business Market Shares in 2021									

Ranking	Company Name	market		
		share		
1	Company HH	Approx. 95%		
2	Company II	0 - 5%		
3	Microsoft Group	0 - 5%		
4	Company JJ	0 - 5%		
	100%			
HHI: Approx. 9,414.5				

B Input foreclosure

The JFTC examined the possibility of foreclosure or exclusivity problems in downstream market due to the Parties Group refusing to supply PC games, delaying the time of supply, restricting certain content, etc. to PC Multi-Game Subscription Service Provision Business providers other than the Microsoft Group ("PC Game Supply Refusal").

In upstream market, there are multiple competitors other than the Parties Group that have higher market shares than the Parties Group, and there is a leading competitor with market share of 10% or higher. Furthermore, considering that a shortfall in supply capacity is difficult to

conceive due to the characteristics of distribution in digital format, even if there was a PC Game Supply Refusal by the Parties Group, PC Multi-Game Subscription Service Provision Business providers other than Microsoft Group could procure them from other PC Game Development and Publishing Business providers.

Furthermore, as described in Section IV-4 above, while indirect network effects are thought to work in game-related businesses, the Parties Group has market shares of less than 5% in the PC Game Development and Publishing Business, and it is therefore thought that the position of the Parties Group in the PC Game Development and Publishing Business would have a limited impact on competition in the PC Multi-Game Subscription Service Provision Business market.

Therefore, even considering indirect network effects, the Parties Group has no input foreclosure ability, and therefore it is found that no foreclosure or exclusivity problems would occur in downstream market due to input foreclosure.

C Customer foreclosure

The JFTC examined the possibility of foreclosure or exclusivity problems in upstream market due to Microsoft Group refusing, delaying, obscuring the location of, etc. listings in the game catalog of a PC Multi-Game Subscription Service vis-à-vis PC Game Development and Publishing Business providers other than the Parties Group ("PC Game Listing Refusal").

There are multiple competitors in downstream market. Furthermore, as there are strong business providers in the larger adjacent market of Game Console Multi-Game Subscription Service Provision Businesses, PC Game Development and Publishing Business providers other than the Parties Group are able to handle it through porting as described in Section V-3(1)B. Moreover, there are business providers who are expected to newly enter the PC Multi-Game Subscription Service market.

Considering these factors, Microsoft Group has no customer foreclosure ability because even if Microsoft Group were to conduct a PC Game Listing Refusal, PC Game Development and Publishing Business providers other than the Parties Group could supply to other PC Multi-Game Subscription Service Provision Business providers, etc. Therefore, it is found that no foreclosure or exclusivity problems would occur in upstream market due to customer foreclosure.

(2) Market effects due to sharing confidential information of competitors within Parties Group

Information shared in transactions between PC Game Development and Publishing Business providers and PC Multi-Game Subscription Service Provision Business providers does not include their respective product or service designs or product plans, and the Parties Group is not found to place competitors in upstream or downstream market in a competitively detrimental position by obtaining confidential information of competitors and using such information for the benefit of the Parties Group.

(3) Substantial Restraints on Competition Due to Coordinated Conduct The JFTC examined, due to the Transaction, the possibility of a problem of substantial restraints on competition due to coordinated conduct in the upstream market due to the Parties Group in the upstream market obtaining pricing and other information for sales by other PC Game Development and Publishing Business providers to PC Multi-Game Subscription Service Provision Business providers, through Microsoft Group in the downstream market. Similarly, the JFTC examined the possibility of a problem of substantial restraints on competition due to coordinated conduct occurring due to Microsoft Group in the downstream market obtaining information on fees, etc. paid to the Game Development and Publishing Business providers of other PC Multi-Game Subscription Service Provision Business providers in the downstream market through the Parties Group in the upstream market.

However, as to license fees net of fees paid by PC Multi-Game Subscription Service Provision Business providers to PC Game Development and Publishing Business providers, considering the situations related to the transactions, it is difficult to forecast the pricing information, etc. of competitors, and it is thought that it would not be easy to forecast with high certainty each other's conduct as between the Parties Group and competitors.

Therefore, it is thought that the Transaction would not substantially restrain competition in the PC Game Development and Publishing Business and PC Multi-Game Subscription Service Provision Business through coordinated conduct with the Parties Group's competitors.

- 2 Vertical business combination with the Game Console Game Development and Publishing Business as upstream market and the Game Console Multi-Game Subscription Service Provision Business as downstream market (Table 1, Line 9)
 - (1) Substantial restraints on competition due to unilateral conduct
 - A Parties Group's position

The market shares of the Parties Group in the "Game Console Game Development and Publishing Business" are provided in Table 3 above, and fall under the vertical business combination safe harbor standards. While it is difficult to exactly ascertain market shares in the "Game Console Multi-Game Subscription Service Provision Business" after the Transaction, market shares including PC Multi-Game Subscription Services are shown for reference in Table 8 above. As the exact market shares of the Parties Group in the "Game Console Multi-Game Subscription Service Provision Business" are unknown, we examine them as not falling under the vertical business combination safe harbor standards.

B Input foreclosure

The JFTC examined the possibility of foreclosure or exclusivity problems in downstream market due to the Parties Group refusing to supply game console games, delaying the time of supply, or restricting certain contents to Game Console Multi-Game Subscription Service Provision Business providers other than the Microsoft Group ("Game Console Game Supply Refusal").

In the upstream market, there are competitors other than the Parties Group that have higher market shares than the Parties Group and that are powerful with a market share of 10% or higher. Furthermore, considering that a shortfall in supply capacity is difficult to conceive due to the characteristics of distribution in digital format, even if there was a Game Console Game Supply Refusal by the Parties Group, Game Console Multi-Game Subscription Service Provision Business providers other than the Microsoft Group could procure them from other Game Console Game Development and Publishing Business providers.

Furthermore, as described in Section IV-4 above, while indirect network effects are thought to work in game-related businesses, the market share of the Parties Group in the Game Console Game Development and Publishing Business is less than 5%. Even with regard to the Activision

Group's globally popular game software, the "Call of Duty" series, there are multiple game software titles that are more popular in the domestic market.¹⁴ Therefore, the impact of the position of the Parties Group in the Game Console Game Development and Publishing Business on competition in the Game Console Multi-Game Subscription Service Provision Business market is limited.

Therefore, even considering indirect network effects, the Parties Group has no input foreclosure ability, and it is found that no downstream market foreclosure or exclusivity problems would occur due to input foreclosure.¹⁵

C Customer foreclosure

The JFTC examined the possibility that upstream market foreclosure or exclusivity problems could occur due to Microsoft Group refusing, delaying the time of, or obscuring the place of listings in game catalogs for the Game Console Multi-Game Subscription Service vis-à-vis Game Console Game Development and Publishing Business providers other than the Parties Group ("Game Console Game Listing Refusal").

Multiple competitors exist in the downstream market, and a shortfall in supply capacity is difficult to conceive due to the characteristics of Multi-Game Subscription Service. Furthermore, there are multiple business providers also in the adjacent market of PC Multi-Game Subscription Service Provision Business providers, and it is possible for Game Console Game Development and Publishing Business providers other than the Parties Group to respond through porting as described in Section V-3(1)B.

Considering the foregoing, even if Microsoft Group were to conduct a Game Console Game Listing Refusal, Game Console Game Development

¹⁴ See Footnote 11.

¹⁵ In relation to incentives for input foreclosure pertaining to the Game Console Game Development and Publishing Business, the Parties submitted the results of a critical diversion analysis applying a vertical arithmetic (vertical arithmetic being a calculation of the profits lost from input foreclosures and the profits gained from input foreclosures and a comparison of their size, and critical diversion analysis being a calculation of the rate of consumers switching to the Parties from competitors excluded by input foreclosure in cases where the two profits conflict (critical diversion ratio) and evaluation of the probability of realization, etc.), and the JFTC evaluated the results. While the economic analysis by the Parties was carried out primarily by combining UK and worldwide data, even if a similar economic analysis by the Parties had been carried out using data limited to the Japan market, it is likely that the critical diversion ratio would be higher considering the state of the related markets in Japan, and therefore the possibility of concluding that incentives for input foreclosure would occur was evaluated as being low.

and Publishing Business providers other than the Parties Group would be able to supply other Game Console Multi-Game Subscription Service Provision Business providers, etc. through porting, and therefore Microsoft Group has no customer foreclosure ability.

Therefore, it is found that market foreclosure or exclusivity problems would not occur in upstream market due to customer foreclosure.

(2) Market effects due to sharing confidential information of competitors within the Parties Group

Information shared in transactions between Game Console Game Development and Publishing Business providers and Game Console Multi-Game Subscription Service Provision Business providers does not contain information on the respective product or service designs or product plans, and it is not found that competitors in upstream or downstream markets would be placed in a competitively detrimental position due to the Parties Group obtaining confidential information from competitors and using the information for their own benefit.

(3) Substantial restraints on competition due to coordinated conduct

The JFTC examined, due to the Transaction, the possibility of problems of substantial restraints on competition in upstream market due to coordinated conduct as a result of the Parties Group in the upstream market obtaining information through Microsoft Group in the downstream market on pricing, etc. for sales from other Game Console Game Development and Publishing Business providers in the upstream market to Game Console Multi-Game Subscription Service Provision Business providers. Similarly, the JFTC examined the possibility of problems of substantial restraints on competition in downstream market due to coordinated conduct as a result of Microsoft Group in the downstream market on fees, etc. paid to Game Console Game Development and Publishing Business providers from other Game Console Multi-Game Subscription Service Provision Business providers in the downstream market.

However, as to license fees net of fees paid by Game Console Multi-Game Subscription Service Provision Business providers to Game Console Game Development and Publishing Business providers, considering the situations related to the transactions, it is difficult to forecast the pricing information, etc. of competitors, and it is thought that it would not be easy to forecast with high certainty each other's conduct as between the Parties Group and competitors.

Therefore, it is thought that the Transaction would not substantially restrain competition in the Game Console Game Development and Publishing Business and Game Console Multi-Game Subscription Service Provision Business through coordinated conduct with the Parties Group's competitors.

- 3 Vertical business combination with the PC Game Development and Publishing Business as the upstream market and the Cloud Gaming Service Provision Business as the downstream market (Table 1, Line 7)
 - (1) Substantial restraints on competition due to unilateral conduct
 - A Parties Group's position

The market shares of the Parties Group in the "PC Game Development and Publishing Business" are provided in Table 2 above and fall under the vertical business combination safe harbor standards. On the other hand, while it is difficult to exactly ascertain market shares in the "Cloud Gaming Service Provision Business" following the Transaction, Cloud Gaming Service Provision Business market shares estimated by the Microsoft Group are indicated for reference in Table 9 below. In addition to the exact market share of the Microsoft Group in the "Cloud Gaming Service Provision Business" being unknown, the scale of the Japan domestic market concerning the Cloud Gaming Service Provision Business is growing, and major growth and transformation is possible in the future. Therefore, from the standpoint of a more careful examination, we examine it as not falling under the vertical business combination safe harbor standards.

Ranking	Company Name	Market						
		Share						
1	Company KK	Approx. 90%						
2	Microsoft Group	Approx.						
		10%						
	100%							
		ĺ						

[Table 9] (For Reference) Cloud Gaming Service Provision Business Market Share in 2021

B Input foreclosure

The JFTC examined the possibility of foreclosure or exclusivity problems

in downstream market due to the Parties Group refusing to supply PC games, delaying the time of supply, or restricting certain content, etc. to Cloud Gaming Service Provision Business providers other than the Microsoft Group ("PC Game Supply Refusal").

In the upstream market, there are multiple competitors other than the Parties Group with higher market shares than the Parties Group, and there is a leading competitor with market share of 10% or higher. Furthermore, considering that a shortfall in supply capacity is difficult to conceive due to the characteristics of distribution in digital format, even if the Parties Group were to conduct a PC Game Supply Refusal, Cloud Gaming Service Provision Business providers other than Microsoft Group could procure from other PC Game Development and Publishing Business providers.

Furthermore, as described in Section IV-4 above, while indirect network effects are thought to work in game-related businesses, the market shares of the Parties Group in the PC Game Development and Publishing Business are less than 5%. Therefore, it is thought that the positions of the Parties Group in the PC Game Development and Publishing Business would have a limited impact on competition in the PC Cloud Gaming Service Provision Business market.

Therefore, even considering indirect network effects, the Parties Group have no input foreclosure ability, and it is found that no downstream market foreclosure or exclusivity problems would occur due to input foreclosure.

- C Customer foreclosure
 - (a) Customer foreclosure ability

The JFTC examined the possibility of foreclosure or exclusivity problems in upstream market due to Microsoft Group refusing, delaying, or obscuring the location of, etc. a listing in the game catalog of a Cloud Gaming Service vis-à-vis PC Game Development and Publishing Business providers other than the Parties Group ("PC Game Listing Refusal").

Company KK exists as a competitor in the downstream market, and a shortfall in supply capacity is difficult to conceive due to the characteristics of Cloud Gaming Service. Games can also be played through the method of downloading, and there are leading competitors in the adjacent markets for playing games of outright purchase-type distribution business for various platforms and Multi-Game Subscription Service provision business. Therefore, even if Microsoft Group were to conduct a PC Game Listing Refusal, PC Game Development and Publishing Business providers other than the Parties Group could supply to Cloud Gaming Service Provision Business providers, or outright purchase-type distribution business providers, etc.

Considering the foregoing, it is thought that Microsoft Group has no customer foreclosure ability. However, to be sure, we also examine the incentives for customer foreclosure in (b) below because this market has active innovation and is expected to grow and transform further in the future, as described in Section V-5(1) above.

(b) Customer foreclosure incentives

If, as a result of the Transaction, the profits in (i) below outweigh the losses in (ii) below, Microsoft Group would be found to have incentives to refuse listings, etc. in game catalogs for the Cloud Gaming Service, and market foreclosure or exclusivity problems could occur.

(i) The profits from Microsoft Group refusing listings, etc. in game catalogs for the Cloud Gaming Service vis-à-vis PC Game Development and Publishing Business providers other than the Parties Group to reduce the PC game sales of competing PC Game Development and Publishing Business providers and increase the PC game sales of the Parties Group

(ii) The losses from the reduction in users (consumers) of the Cloud Gaming Service provided by the Parties Group due to Microsoft Group refusing listings, etc. in game catalogs for the Cloud Gaming Service vis-à-vis PC Game Development and Publishing Business providers other than the Parties Group

As stated in Section IV-4, there is a relationship in which Cloud Gaming Services become more attractive to consumers as more games are offered in the game catalogs on those Cloud Gaming Services (indirect network effects). Furthermore, the market share of Activision Group in the PC Game Development and Publishing Business is less than 5%.

Considering the foregoing, it is thought that Microsoft Group conducting refusal of listing, etc. against competing PC Game Development and Publishing Business providers would greatly diminish the attractiveness of the Microsoft Group Cloud Gaming Service, and would lead to the loss of Microsoft Group Cloud Gaming Service users to the Cloud Gaming Services of competitors, as well as to other distribution methods such as outright purchasetype distribution in which strong competitors are present, and that the losses from this would exceed the profits in (i) above.

Therefore, incentives are not found for Microsoft Group to conduct customer foreclosure, and no market foreclosure or exclusivity problems could occur.

(2) Market effects due to sharing confidential information of competitors within the Parties Group

Information shared in transactions between PC Game Development and Publishing Business providers and Cloud Gaming Service Provision Business providers does not contain information on product or service designs or product plans, and it is not found that competitors in upstream or downstream markets would be placed in a competitively detrimental position due to the Parties Group obtaining confidential information from competitors and using the information for their own benefit.

(3) Substantial restraints on competition due to coordinated conduct

The JFTC examined, due to the Transaction, the possibility of a problem of substantial restraints on competition due to coordinated conduct in the upstream market due to the Parties Group in the upstream market obtaining pricing and other information for sales by other PC Game Development and Publishing Business providers in the upstream market to Cloud Gaming Service Provision Business providers through Microsoft Group in the downstream market. Similarly, the JFTC examined the possibility of a problem of substantial restraints on competition due to coordinated conduct occurring in the downstream market due to Microsoft Group in the downstream market obtaining information on fees, etc. to the PC Game Development and Publishing Business providers from other Cloud Gaming Service Provision Business providers in the downstream market through the Parties Group in the upstream market.

However, as to license fees net of fees paid by Cloud Gaming Service Provision Business providers to PC Game Development and Publishing Business providers, considering the situations related to the transactions, it is difficult to forecast the pricing information, etc. of competitors, and it is thought that it would not be easy to forecast with high certainty each other's conduct as between the Parties Group and competitors.

Therefore, it is thought that the Transaction would not substantially restrain competition in the PC Game Development and Publishing Business and Cloud Gaming Service Provision Business through coordinated conduct with the Parties Group's competitors.

- 4 Vertical business combination with Game Console Game Development and Publishing Business as upstream market and Cloud Gaming Service Provision Business as downstream market (Table 1, Line 10)
 - (1) Substantial restraints on competition due to unilateral conduct
 - A Parties Group's position

The market shares of the Parties Group in the "Game Console Game Development and Publishing Business" are provided in Table 3 above, and fall under the vertical business combination safe harbor standards. On the other hand, while it is difficult to exactly ascertain market shares in the "Cloud Gaming Service Provision Business" after the Transaction, the market shares in the Cloud Gaming Service Provision Business estimated by the Microsoft Group are indicated for reference in Table 9 above. In addition to the exact market share of the Microsoft Group in the "Cloud Gaming Service Provision Business" being unknown, the Japan domestic market for the Cloud Gaming Service Provision Business is growing, and major growth and transformation is forecast in the future. Therefore, from the standpoint of a more careful examination, we examine it as not falling under the vertical business combination safe harbor standards.

B Input foreclosure

The JFTC examined the possibility of foreclosure or exclusivity problems in downstream market due to the Parties Group refusing to supply game console games, delaying the time of supply, or restricting certain content, etc. to Cloud Gaming Service Provision Business providers other than the Microsoft Group ("Game Console Game Supply Refusal").

In the upstream market, there are competitors other than the Parties Group with higher market shares than the Parties Group, and leading competitors with market shares of 10% or higher. Even with regard to the Activision Group's globally popular game software, the "Call of Duty" series, there are multiple game software titles that are more popular in the domestic market.¹⁶ Moreover, considering that a shortfall in supply capacity is difficult to conceive due to the characteristics of distribution in digital format, even if the Parties Group were to conduct a Game Console Game Supply Refusal, Cloud Gaming Service Provision Business providers other than Microsoft Group could procure from other Game Console Game Development and Publishing Business providers. Therefore, the Parties Group has no ability to conduct input foreclosure.

Therefore, it is found that no market foreclosure or exclusivity problems would arise in downstream market due to input foreclosure.

C Customer foreclosure

(a) Customer foreclosure ability

The JFTC examined the possibility that upstream market foreclosure or exclusivity problems could occur due to Microsoft Group refusing, delaying the time of, or obscuring the place of listings in game catalogs for the Cloud Gaming Service vis-à-vis Game Console Game Development and Publishing Business providers other than the Parties Group ("Game Console Game Listing Refusal").

Company KK exists as a competitor in the downstream market, and a shortfall in supply capacity is difficult to conceive due to the characteristics of Cloud Gaming Service. Games can also be played through the method of downloading, and there are leading competitors in the adjacent markets for playing games of outright purchase-type distribution business for various platforms and Multi-Game Subscription Service provision business. Therefore, even if Microsoft Group were to conduct a Game Console Game Listing Refusal, Game Console Game Development and Publishing Business providers other than the Parties Group could supply to

¹⁶ See Footnote 11.

other Cloud Gaming Service Provision Business providers, or outright purchase-type distribution business providers, etc.

Considering the foregoing, it is thought that Microsoft Group has no customer foreclosure ability. However, to be sure, we also examine the incentives for customer foreclosure in (b) below because this market has active innovation and is expected to grow and transform further in the future, as described in Section V-5(1) above.

(b) Customer foreclosure incentives

If, as a result of the Transaction, the profits in (i) below outweigh the losses in (ii) below, Microsoft Group would be found to have incentives to conduct refusal of listings, etc. in game catalogs for the Gaming Service, and market foreclosure or exclusivity problems would occur.

(i) The profits from Microsoft Group conducting refusal of listings, etc. in game catalogs for the Cloud Gaming Service against Game Console Game Development and Publishing Business providers other than the Parties Group to reduce the game console game sales of competing Game Console Game Development and Publishing Business providers and increase the game console game sales of the Parties Group

(ii) The losses from the reduction in users (consumers) of the Cloud Gaming Service provided by the Parties Group due to Microsoft Group conducting refusal of listings, etc. in game catalogs for the Cloud Gaming Service against Game Console Game Development and Publishing Business providers other than the Parties Group

As stated in Section IV-4, there is a relationship in which Cloud Gaming Services become more attractive to consumers as more games are offered in the game catalogs on those Cloud Gaming Services (indirect network effects).

Furthermore, the market share of Activision Group in the Game Console Game Development and Publishing Business is less than 5%, and even with regard to the Activision Group's globally popular game software, the "Call of Duty" series, there are multiple game
software titles that are more popular in the domestic market.¹⁷

Considering the foregoing, it is thought that listing refusals, etc. by Microsoft Group against competing Game Console Game Development and Publishing Business providers would greatly diminish the attractiveness of the Microsoft Group Cloud Gaming Service, and would lead to the loss of Microsoft Group Cloud Gaming Service users to the Cloud Gaming Services of competitors, as well as outflows to other distribution methods such as outright purchase-type distribution offered by strong competitors, and that the losses from this would exceed the profits in (i) above.

Therefore, incentives are not found for Microsoft Group to conduct customer foreclosure, and no market foreclosure or exclusivity problems would occur.

(2) Market effects due to sharing confidential information of competitors within the Parties Group

Information shared in transactions between Game Console Game Development and Publishing Business providers and Cloud Gaming Service Provision Business providers does not contain information on product or service designs or product plans, and it is not found that competitors in upstream or downstream market would be placed in a competitively detrimental position due to the Parties Group obtaining confidential information from competitors and using the information for their own benefit.

(3) Substantial restraints on competition due to coordinated conduct

The examined, due to the Transaction, the possibility of a problem of substantial restraints on competition due to coordinated conduct in the upstream market due to the Parties Group in the upstream market obtaining pricing and other information for sales by other Game Console Game Development and Publishing Business providers in the upstream market to Cloud Gaming Service Provision Business providers through Microsoft Group in the downstream market. Similarly, the JFTC examined the possibility of a problem of substantial restraints on competition due to coordinated conduct occurring in the downstream market due to Microsoft Group in the downstream market obtaining information on fees, etc. to the Game Console

¹⁷ See Footnote 11.

Game Development and Publishing Business providers from other Cloud Gaming Service Provision Business providers in the downstream market through the Parties Group in the upstream market.

However, as to license fees net of fees paid by Cloud Gaming Service Provision Business providers to Game Console Game Development and Publishing Business providers, considering the situation related to the transactions, it is difficult to forecast the pricing information, etc. of competitors, and it is thought that it would not be easy to forecast with high certainty each other's conduct as between the Parties Group and competitors.

Therefore, it is thought that the Transaction would not substantially restrain competition in the Game Console Game Development and Publishing Business and Cloud Gaming Service Provision Business through coordinated conduct with the Parties Group's competitors.

- 5 Conglomerate business combination of PC Game Development and Publishing Business and PC OS Provision Business (Table 1, Line12)
 - (1) Competition restraint mechanisms

The mechanisms for restraints on competition (theories of harm) due to the conglomerate business combination of the PC Game Development and Publishing Business and PC OS Provision Business are as shown in the following diagram. In other words, with regard to the following diagram, the JFTC examined the possibility of market foreclosure or exclusivity occurring in the PC Game Development and Publishing Business due to Microsoft Group blocking connections with PC OSes or reducing the mutual connectivity with PC OSes vis-à-vis PC Game Development and Publishing Business providers other than the Parties Group ("OS Blocks") ((3) below).

Furthermore, the JFTC examined the possibility of market foreclosure or exclusivity occurring in the PC OS Provision Business due to the Parties Group blocking connections with PC games or reducing the mutual connectivity with PC games vis-à-vis PC OS Provision Business providers other than Microsoft Group ("Optimization Refusal") ((4) below).

Moreover, the JFTC examined the possibility of confidential information of competitors being shared within the Parties Group, placing the competitors in a competitively detrimental position if the Parties Group use it for their own benefit, and possibility of market foreclosure or exclusivity problems occurring due to the same ((5) below).



[Diagram] Overview Diagram of Competition Restraint Mechanisms (Theories of Harm) in the Conglomerate Business Combination

(2) Parties Group's position and competitor's situation

Market shares of PC Game Development and Publishing Business within Japan are as provided in Table 2 above. While it is difficult to exactly ascertain market shares for PC OSes in the global market, estimated values for reference are as indicated in Table 10 below.

Therefore, we examine it as not falling under the conglomerate business combination safe harbor standards.

Ranking	Company Name	Market
		Share
1	Microsoft Group	Approx.
		75%
2	Company LL	Approx. 15%
3	Company MM	0 – 5%
	Others	Approx. 10%
Total 1009		
HHI: Approx. 5,748.0		

[Table 10] (For Reference) PC OS Market Share in 2022

(3) Examination of foreclosure and exclusivity of the PC Game Development and Publishing Business We examined the possibility of market foreclosure and exclusivity that could occur in the PC Game Development and Publishing Business due to Microsoft Group conducting OS Blocks against PC Game Development and Publishing Business providers other than the Parties Group to enable games to be played on PCs using the PC OSes provided by Microsoft Group ("Microsoft Group OS Blocks").

- A Ability
 - (a) Market share situation

While the market share of Microsoft Group in PC OSes in the global market is unknown, an estimated value is provided in Table 10 above, and it is presumed that Microsoft Group has a high market share in this market.

(b) Competitive pressure from competitors and adjacent markets As explained in (a) above, based on the market share situation, it is generally thought that Microsoft Group OS Blocks could have a major impact on third-party PC Game Development and Publishing Business providers. However, there are competitors in the PC OS market. Furthermore, because there are multiple leading competitors in the adjacent game console provision market, thirdparty PC Game Development and Publishing Business providers can also port PC games to game consoles, and in addition to actually developing the same games for both PCs and game consoles, porting between PCs and game consoles is also frequent.

Therefore, competitive pressure is found from competitors and adjacent markets.

(c) Conclusion

Because of the foregoing, it is thought that Microsoft Group does not have the ability to cause market foreclosure or exclusivity problems by conducting OS Blocks.

Since it is presumed that the Microsoft Group has an especially high market share in the market for PC OSes as shown in Table 10 above, out of caution, we examine exclusionary incentives in Subsection B below.

B Incentives

If, as a result of the Transaction, the profits in (i) below outweigh the losses in (ii) below, Microsoft Group would be found to have incentives to conduct OS Blocks, and market foreclosure or exclusivity problems would occur.

(i) The profits from Microsoft Group conducting OS Blocks against PC Game Development and Publishing Business providers other than the Parties Group to reduce the PC game sales of competing PC Game Development and Publishing Business providers and increase the PC game sales of the Parties Group

(ii) The losses of the Parties Group from the reduction in users (consumers) of PC OSes provided by the Microsoft Group due to Microsoft Group conducting OS Blocks against PC Game Development and Publishing Business providers other than the Parties Group

On this point, as shown in Table 2 above, the Parties Group have small market shares in the PC Game Development and Publishing Business. Furthermore, as stated in Section IV-4, there is a relationship in which game platforms become more attractive to consumers as more games are offered on those game platforms.

Therefore, it is thought that Microsoft Group conducting OS Blocks against competing PC Game Development and Publishing Business providers would greatly diminish the attractiveness of PCs with Microsoft Group OSes as game platforms for consumers who use PCs to play games, and would lead to the loss of Microsoft Group PC OS users to other PC OSes and the game consoles from strong competitors, and that the losses from this would exceed the profits in (i) above.

Therefore, incentives are not found for Microsoft Group to conduct OS Blocks, and no market foreclosure or exclusivity problems would occur.

C Foreclosure and exclusivity in the PC Game Development and Publishing Business

Due to the foregoing, no possibility is found of foreclosure or exclusivity problems in the PC Game Development and Publishing Business due to the Parties Group conducting OS Blocks after the Transaction.

- (4) Examination of foreclosure and exclusivity of the PC OS Provision Business We examine the possibility of foreclosure or exclusivity occurring in the PC OS Provision Business due to the Parties Group refusing to optimize their games for PC OSes other than Microsoft Group PC OSes to enable PC games to be played on PCs installed with PC OSes that are optimized for those games ("Parties Group Optimization Refusal").
 - A Ability
 - (a) Market share situation

As shown in Table 2 above, the market shares of the Parties Group in the PC Game Development and Publishing Business are less than 5%, there are multiple competitors with market shares higher than the Parties Group, and there are leading competitors with market shares of 10% or greater.

(b) Competitive pressure from competitors and adjacent markets As described in (a) above, based on the market share situation, it is not thought that optimization refusals by the Parties Group could have an impact on third-party PC OS Provision Businesses. Moreover, because there are multiple leading competitors in the adjacent Game Console Game Development and Publishing Business market as shown in Table 3 above, it is also possible to port game console games to PCs.

Therefore, competitive pressure is found from competitors and adjacent markets.

(c) Conclusion

Due to the foregoing, the Parties Group are thought to have no ability to cause market foreclosure or exclusivity problems through optimization refusals.

B Foreclosure and exclusivity of the PC OS Provision Business
Due to the foregoing, no possibility is found of foreclosure or exclusivity
problems occurring in the PC OS Provision Business due to optimization
refusals by the Parties Group after the Transaction.

(5) Possibility of sharing of confidential information of competitors within the Parties Group

When third-party PC Game Development and Publishing Business providers develop games compatible with the PC OSes provided by Microsoft Group, in order to procure game development tools specialized for the PC OSes provided by Microsoft Group, it is necessary to report to Microsoft Group in advance with an overview of the new game development and obtain a license from Microsoft Group for the game development tools. The Parties Group obtaining such information through Microsoft Group and using it for examination of product development against new businesses of competitors in the Game Development and Publishing Business could place the competitors in a competitively detrimental position. However, the information disclosed by such Game Development and Publishing Business providers is limited to game concepts at the initial stage and the like, and such disclosures of information on new game development by Game Development and Publishing Business providers are also provided when development tools are provided by the providers of other game platforms. It is thought that the information obtained by the Parties Group would not contain any particular data that is especially different compared with the information obtained by the providers of other game platforms.

Competitors in the adjacent market of the Game Console Provision Business have a stronger position than the Parties Group in that market, and these strong competitors are also conducting the Game Console Game Development and Publishing Business, making it likely that there would be sufficient restraining influence in the form of competitive pressure from the adjacent market.

Considering this, it is thought that the business capabilities of the Parties Group would not be improved to the extent that competitive pressures would no longer work effectively. Therefore, no market foreclosure or exclusivity problems would occur due to the sharing of confidential information of competitors within the Parties Group.

VIII. Conclusion

The JFTC decided that the Transaction would not substantially restrain competition in any particular fields of trade.

Case 8 Acquisition of stock in The Kanagawa Bank, Ltd. by The Bank of Yokohama, Ltd.

Part I The Parties

The Bank of Yokohama, Ltd. (JCN: 7020001008645) (hereinafter referred to as "The Bank of Yokohama") is a regional bank, and The Kanagawa Bank, Ltd. (JCN: 7020001011062) (hereinafter referred to as "Kanagawa Bank") is a second regional bank, both of which have their head offices in Kanagawa Prefecture and engage in the banking business mainly in Kanagawa Prefecture.

Hereinafter, the group of companies that have already formed a joint relationship with Concordia Financial Group Inc. (JCN: 8010001174710), which is the ultimate parent company of The Bank of Yokohama, is referred to as the "Concordia Group." The Higashi Nippon Bank, Ltd. (JCN: 9010001034913) (hereinafter referred to as "Higashi Nippon Bank"), a second regional bank with its head office in Tokyo, is affiliated with the Concordia Group. The group of companies that have already formed a joint relationship with Kanagawa Bank is referred to as the "Kanagawa Bank Group," and the Concordia Group."

Part II Outline of the case and applicable provisions

The Bank of Yokohama planned to acquire more than 50% of the voting rights relating to stock in Kanagawa Bank (hereinafter referred to as the "Action").

The applicable provision is Article 10 of the Antimonopoly Act.

There are multiple competitive or business relationships among the businesses operated by the Company Group. Of those included in this examination, the following section details the results of the examination of horizontal business combinations in business and non-business lending in five economic regions in Kanagawa Prefecture (Yokohama-Kawasaki, Yokosuka-Miura, the central region, Shonan, and the west region), where the impact on competition was considered to be relatively large.

Part III Particular field of trade

1. Scope of services

The Company Group has a competitive relationship in the banking business.

¹ The Company Group also competes in the fields of deposits, foreign exchange, mutual fund sales, public bond sales, insurance agency, and financial instruments brokerage, all of which have numerous competitive enterprises including banks outside the Company Group (city banks and regional banks with headquarters outside Kanagawa Prefecture), credit unions, and major securities firms.

Based on the arrangement of similar cases of business combination in the past (2), the scope of services was broadly classified into "business loans" that lend funds to enterprises and "non-business loans" that lend funds to general consumers. In the case of the former, in view of the fact that the conditions of the transaction differ depending on the trading partner, the scope of services is further defined as "large and medium-sized companies," "small and medium-sized companies," and "local public entities."

2. Geographic range

(1) Location of stores of the Company Group

The table below shows the number of stores of the Company Group in each prefecture.

	Concordia Group		
	Bank of Yokohama	The Bank of East Japan	Kanagawa Bank
Kanagawa prefecture	170	8	34
Tokyo Metropolitan area	25	55	_
Gunma prefecture	3		—
Aichi prefecture	1	_	—
Osaka Metropolitan area	1		_
Ibaraki prefecture	_	12	—
Saitama prefecture	_	4	—
Chiba prefecture	_	4	_
Tochigi prefecture	_	1	—

Therefore, since Kanagawa Prefecture is the only prefecture where all within the Company Group have stores, this action constitutes a horizontal business combination in Kanagawa Prefecture.

(2) Economic bloc

Financial institutions often visit users to conduct sales activities, which are carried out within a certain area of operation from the store. The area of operation (hereinafter referred to as "economic zone") in this case was set as an area consisting of cities, towns, and villages that can be reached by car or public transportation

² For example, these cases include "Acquisition of stock in Fukuho Bank, Ltd. by The Fukui Bank, Ltd." (Case Study 9, FY 2020) and "Acquisition of stock in The Eighteenth Bank, Ltd. by Fukuoka Financial Group" (Case Study 10, FY 2008).

within 30 minutes to one hour from the store. Since the Company Group is considered to be competing with competing enterprises for business and nonbusiness loans in Kanagawa Prefecture primarily within each of the five economic zones shown in the table below, the geographic range is delineated as each of the five economic zones shown in the table below.

Economic zone		Constituent municipalities
1	Yokohama/Kawasaki area	Yokohama City, Kawasaki City
2	Yokosuka-Miura area	Yokosuka City, Kamakura City, Zushi City, Miura City, Hayama Town
3	Central prefectural area	Sagamihara City, Atsugi City, Yamato City, Ebina City, Zama City, Ayase City, Aikawa Town, Kiyokawa Village
4	Shonan area	Hiratsuka City, Fujisawa City, Chigasaki City, Hadano City, Isehara City, Samukawa Town, Oiso Town, Ninomiya Town
5	Western prefectural area	Odawara City, Minami Ashigara City, Nakai Town, Oi Town, Matsuda Town, Yamakita Town, Kaisei Town, Hakone Town, Manazuru Town, Yugawara Town

Part IV Impact of this action on competition

1. Business loans to small and medium-sized enterprises (SMEs)

All within the Company Group provide business loans to small and mediumsized enterprises (SMEs) in Kanagawa Prefecture. This constitutes a horizontal business combination. The following tables show the market share of business loans to SMEs as of March 31, 2022. In any of the economies in (1) through (4), the HHI after the action is 1,500 or less, thus meeting the safe-harbor criteria for a horizontal business combination. In addition, in the economic zone (5), the HHI after the action is less than 2,500 and the incremental HHI is less than 250, thus meeting the safeharbor criteria for a horizontal business combination.

Ranking	Name of Financial Institution	Market share
1	Concordia Group	Approx. 15%
2	А	Approx. 10%
3	В	Approx. 10%

(1) Yokohama/Kawasaki area

4	С	Approx. 10%
5	D	Approx. 10%
6	E	Approx. 10%
13	Kanagawa Bank	0-5%
	Other	Approx. 30%
Total amount 100%		100%
Combined market share/ranking: Approx. 20%, No. 1		
HHI after integration: Approx. 900		
HHI increment: Approx. 60		

Ranking	Name of Financial Institution	Market share
1	F	Approx. 20%
2	G	Approx. 20%
3	Н	Approx. 15%
4	Concordia Group	Approx. 15%
5	Ι	Approx. 15%
:	:	:
10	Kanagawa Bank	0-5%
Other		Approx. 15%
Total amount 100%		
Combined market share/ranking: Approx. 15%, 3rd		
HHI after integration: Approx. 1,480		
HHI increment: Approx. 30		

(2) Yokosuka-Miura area

(3) Central region

Ranking	Name of Financial Institution	Market share
1	Concordia Group	Approx. 15%
2	J	Approx. 15%
3	К	Approx. 15%
4	L	Approx. 10%
5	М	Approx. 10%
15	Kanagawa Bank	0-5%
Other		Approx. 35%
Total amount 100		100%
Combined market share/ranking: Approx. 15%, No. 1		
HHI after integration: Approx. 1,000		
HHI increment: Approx. 30%		

(4) Shonan area			
Ranking	Name of Financial Institution	Market share	
1	Concordia Group	Approx. 15%	
2	Ν	Approx. 15%	
3	0	Approx. 10%	
4	Р	Approx. 10%	
5	Q	Approx. 10%	
:	:	:	
13	Kanagawa Bank	0-5%	
Other		Approx. 35%	
Total amount 100%			
Combined market share/ranking: Approx. 20%, No. 1			
HHI after integration: Approx. 1,000			
HHI increment: Approx. 60			

(5) Western region

Ranking	Name of Financial Institution	Market share
1	R	Approx. 40%
2	Concordia Group	Approx. 20%
3	S	Approx. 10%
4	Т	Approx. 10%
5	U	Approx. 10%
:		
12	Kanagawa Bank	0-5%
Other		Approx. 15%
Total amount		100%
Combined market share/ranking: Approx. 25%, No. 2		
HHI after integration: Approx. 2,300		
HHI increment: Approx. 20		

2. Lending other than business loans to small and medium-sized enterprises

With regard to loans other than business loans to small and medium-sized enterprises (business loans to large and medium-sized enterprises, business loans to local governments, and non-business loans), there are many competing enterprises, including city banks and credit unions located in Kanagawa Prefecture. In economic zones (1) through (5), the safe-harbor criteria for horizontal business combinations are met.

Part V Conclusion

It was determined that this action did not result in a substantial restraint of competition in the particular field of trade.

Case 9 Acquisition of stock in CCCMK HOLDINGS Co.,Ltd. by Sumitomo Mitsui Financial Group, Inc. and Sumitomo Mitsui Card Company, Limited

Part I The Parties

Sumitomo Mitsui Financial Group, Inc. (JCN: 2010001081053) (hereinafter referred to as "SMFG") is a bank holding company with banks and other entities as its subsidiaries under the Banking Act.

Sumitomo Mitsui Card Company, Ltd. (JCN: 3120001082353) (hereinafter referred to as "SMCC"), a subsidiary of SMFG, is a company engaged in the credit card business.

CCCMK Holdings, Inc. (JCN: 8011001091920)(hereinafter referred to as "CCCMKHD"), a subsidiary of Culture Convenience Club Company, Limited (JCN: 2120001077107) (hereinafter referred to as "CCC"), i is a company engaged in the point alliance business and marketing solution business.

Hereinafter, the group of companies that have already formed a joint relationship with SMFG as the ultimate parent company is referred to as the "SMBC Group" and the group of companies that has already formed a joint relationship with CCC as the ultimate parent company is referred to as the "CCC Group." The SMBC Group and the CCC Group together are referred to as the "Company Group."

Part II Outline of the case and applicable provisions

SMFG and SMCC planned to acquire more than 20% (from 0% to 40%) of the voting rights in the shares of CCCMKHD (hereinafter referred to as the "action"). As a result of this action, CCCMKHD will become a joint investment company between SMBC Group and CCC Group (CCC holds the remaining 60% of voting rights).

The applicable provision is Article 10 of the Antimonopoly Act.

Part III Particular field of trade

1. Summary of services

(1) Database marketing business

The database marketing business mainly analyzes consumer information such as gender, age, and address, as well as data on purchase history, location information, browsing history, etc. It also provides solutions to partner enterprises with the purpose of developing new customers, fostering high-quality customers, approaching dormant consumers, etc.

¹On October 1, 2022, a merger was carried out in which T Point Japan (points business) was the surviving company and CCC Marketing (database marketing business) ceased to exist. The trade name was changed to its present name.

Enterprises engaged in the database marketing businesses are mainly credit card companies and other payment settlement companies, e-commerce site enterprises, and shared point system enterprises that hold member information and member purchase data at member stores, etc. In addition to data collected and accumulated by the database marketing businesses themselves, they also use open data and data provided by other companies for analysis, etc. The services provided by database marketing businesses include the distribution of survey results and targeted advertising based on data analysis, and the provision of customer referral solutions such as sending direct mail and discount coupons.

(2) Credit card business

Credit cards are a cashless payment method that allows for post-payment based on the creditworthiness of the purchaser. The credit card business consists of (1) brand holders who build and provide the core payment systems, set various rules, manage brands, and establish platforms, (2) issuers (credit card issuers) who are granted a license to issue branded cards by the brand holders and actually enter into membership contracts with credit card members to issue and manage credit cards, and (3) acquirers (participating credit card member store contract companies) who are granted a license by the brand holders (acquiring license) to manage branded member stores and that provide various services to member stores, such as advance payment of credit sales proceeds.

Depending on the business model, the same enterprise may be (2) an issuer (credit card issuer) and (3) an acquirer (credit card member store contract company), or (1) a brand holder may operate its own (2) issuing business and (3) acquiring business.

(3) Points business

The points business is a business that grants points to consumers who have registered as members (hereinafter referred to as "members") for the purchase of goods and services, etc. It allows members to apply the points to payments, and to obtain coupons and rewards, etc. (Hereinafter, businesses that provide goods and services that are subject to point allocation are referred to as "member stores," and the operating entity of the point business is referred to as the "operating enterprise").

A. Point types

There are various types of point businesses, which can be classified into the following types based on the form of point allocation and the scope of member stores. However, the differences between purchase-allocation type points are

relative and individual points are not necessarily clearly distinguishable.

Points allocated for purchases		Allocated for the purchase itself, regardless of the means of payment
	Original points	Only the company or the group of companies can be the member store (Electronic retail store points, airline frequent flyer miles, etc.)
	Local points	Only enterprises in specific regions are member stores. (Points in shopping malls, points in commercial facilities)
	Shared points	Enterprises in a variety of industries and of various sizes nationwide are member stores
Points allocated for payment		Allocated on the condition that a specific payment method is used, such as a credit card, prepaid method, code payment, etc.

In the case of point allocation at member stores, the above four types of points (proprietary points, local points, shared points, and points allocated for payment) can generally overlap and be given to different types of customers at the same time. On the other hand, it is not usual for multiple brands of points of the same type to be awarded in duplicate.

B. Profit structure of shared point enterprises²

Shared point member stores pay the point resource and point issuance fees, etc. to the managing enterprise, as shown in the figure below.

² See 2-5 of the "Fact-find Investigation for Transactions Related to Shared Point Services" (June 2020, Japan Fair Trade Commission. Hereinafter referred to as "Shared Point Fact-Finding Report").



Figure: Flow of points and costs, etc. in the shared point service (image)

The main revenues of shared point operators include, for example, point issuance fees, franchise fees for shared point services, rental fees for terminals and other equipment (hereinafter referred to as "point issuance fees, etc."), revenues from providing database marketing services to member stores, and revenues from providing database marketing services to third parties other than member stores.

The point source is basically used for point reimbursement and does not generate revenue for the enterprise. 3

Of these, the point issuance fee is the fee that the enterprise obtains from the member store when the member store grants points to the consumer, and is calculated by multiplying a pre-determined rate negotiated between the enterprise and the member store by the cost of the sale involved⁴ or the number of points to be issued.

Revenue from the provision of database marketing services to member stores is revenue from the provision of services such as campaign planning, questionnaire surveys, and support for sending direct mail to member stores for a fee⁵based on data (see D. below) collected through the operation of the shared point service (see (1) above). Revenue from the provision of database marketing services to third parties other than member stores is revenue from services provided to third parties based on data collected through the operation of the

³ See page 9 of the Shared Point Fact-Finding Report.

⁴ Refers to sales in which points are involved, such as member stores awarding points to consumers.

⁵ Some are provided free of charge.

shared point service, such as support for sales strategies related to products offered and support for sending direct mailings.

C. Usage procedures

a) Procedures for using shared points

Consumers register as members to start using the shared point service, present their membership cards to earn points when purchasing goods and services, and then present their membership cards to use the points earned to pay for the purchase of goods and services.

As described in B. above, member stores of the shared point service pay point resources or point issuance fees, etc. to the enterprise after concluding a member store agreement with the enterprise.

b) Procedures for the use of points allocated for payment by credit card

When a consumer applies directly to an issuer (credit card issuer) or through an agent, a credit card is issued after a credit screening process. When credit cards are used, points are awarded according to the amount spent by the monthly settlement date, etc. Points can be used in a variety of ways, but not all stores that accept credit cards accept points in the same way. Points can be used to pay for purchases at certain stores, charged to other payment methods, discounted on credit card bills, or redeemed for gift certificates or other goods. The points can be used to pay for purchases at specific stores.

The source of the points is borne by the issuer (credit card issuer).

c) Point consolidation

To receive and redeem points, customers are required to present a bar code displayed on their point card or smartphone application as proof of membership. For example, by printing a shared point membership number and barcode on the face of a credit card, the functions of purchase-allocation and paymentallocation points may be effectively integrated. In particular, this trend is seen among major shared point enterprises.

D. Data collected in connection with the use of point services

When consumers use point services, their personal information and transaction information on products and services are collected by the enterprises and utilized in the database marketing business.

Specifically, consumers are required to register personal information, such as name, gender, date of birth, address, and telephone number, with the enterprise during the membership registration process to start using the shared point service. When a shared point card is presented at a member store and a transaction is made, the transaction information is transmitted from the member store to the enterprise. The transaction information includes the membership number (ID), transaction date and time, transaction store, transaction amount, transaction details (product, service name, etc.), and the number of points awarded or used. Although the minimum transaction information required for processing when points are allocated to or used by the consumer, such as membership number (ID), transaction date and time, and the number of points granted or used, is transmitted from the member store to the managing enterprise, the specific transaction information to be transmitted is defined in the merchant agreement, and therefore differs between member stores.

In the case of points allocated for payment by credit card, consumers are required to register personal information such as name, gender, date of birth, place of residence, place of work, family structure, occupation, annual income, and payment funds with the issuer (credit card issuer) when they apply for a credit card. When a payment is made using a credit card at a member store, data such as the amount of money spent on the card, time of day, area of use, type of business, etc. are collected as payment data.

The data collected in connection with the use of these point services is hereinafter referred to as "customer data."

2. Scope of services

(1) Database marketing business

Since database marketing is based on a wide variety of data and the services offered are diverse, it is possible to classify the various types of data used for analysis. However, according to user interviews, users alternate the use of various database marketing services according to their purpose and intention. Therefore, demand substitutability is recognized. This means that, in addition to defining the scope of services as "database marketing business," there is another layer of "database marketing business based on customer data."

Below, an examination is made of the "database marketing business based on customer data," with regard to which the action is considered to have a relatively large impact on competition.

(2) Points business

A. Shared point programs with consumers as users

As described in 1. (3) A., above, in general, when looking at the situation where points are awarded at member stores, the four types of points (proprietary points, local points, shared points, and points allocated for payment) can be simultaneously awarded in duplicate at the same time. Therefore, they are not in competition with each other. Of points allocated for purchases, there is also a significant difference in the scope of member stores between proprietary points, local points, and shared points.

Furthermore, there is generally a difference in the conditions and timing of allocation, with proprietary points, local points, and shared points being allocated by presenting a point card, etc., at the time of purchase, regardless of the means of payment, whereas points allocated for payment are calculated and awarded collectively on the credit card settlement date when a specific payment service is used, or when the code payment process is completed.

In addition, in the case of points allocated for payment, consumers may need to perform operations that differ from point allocation, including separately charging the points to the balance of the payment application (conversion of points) when applying the points for the payment of a purchase. Therefore, demand substitutability between shared points and other types of points (e.g., payment allocation points) is limited.

In addition, supply substitutability between shared points and other types of points is limited because it is necessary to acquire a wide range of member stores in order to conduct a shared point business, and it is necessary to develop a system environment that is different from the settlement system, etc. to enable points to be allocated and used when making purchases at such member stores.

Therefore, the "shared point business" shall be distinguished from other types of points and defined as the scope of services.

Payment allocation points are incidentally provided to users as a benefit for using such payment services by service providers that offer specific payment services, such as credit cards. In other words, consumers cannot acquire such points unless they use a specific payment service. For this reason, it is not appropriate to define "payment allocation points" as the scope of services or to define "payment allocation points" together with other points as the scope of services. It is appropriate to consider such points as a secondary service to various payment services.

In addition, as described in 1. (3) C. c), above, there are cases where shared

⁶ Payment allocation points can be further subdivided by specific means of payment, such as credit cards, code payments, prepaid payment instruments, etc. There are differences between each of these in the way they are used and the actual conditions of their use.

point enterprises themselves engage in the business of providing settlement services such as credit cards or form collaborations with credit card enterprises, in which case the same points as shared points may be allocated as payment allocation points at the time of payment. The actual situation when offering shared points in conjunction with various settlement services will be considered when assessing the impact of this action on competition.

B. Shared point business with member stores as users

As described in 1. (3) C. a), above, member stores of the shared point service enter into a member store agreement with the enterprise and receive services from the enterprise for members to use the point service at member stores.

From the perspective of the merchant store, the original points are operated by the merchant store or a group company (in which there is a business relationship between the merchant store and the managing enterprise outside the merchant store group). Also, there is a significant difference between local points and shared points in terms of the scope of merchant stores and the scope of members. Even if the merchant store operates its own points or participates in local points, it is possible to simultaneously allocate shared points, and it would contribute to attracting consumers if points were granted in duplicate with shared points, although each would incur its own costs. As shown in A., above, points allocated for payment are secondary to the provision of various settlement services. Even if shared points are introduced, it is necessary to prepare a variety of payment methods to meet consumer needs. Conversely, even if a payment method that allocates payment points is provided, consumers can be more effectively attracted if shared points are allocated in addition to payment points, even though the cost of each type of point is borne by the consumer. For these reasons, demand substitutability between shared points and other types of points is limited.

In addition, as described in A. above, in order to conduct the shared point business, it is necessary to acquire a wide range of member stores, and it is necessary to develop a system environment that is different from that of the payment system, etc., in order to enable the allocation and use of points at the time of purchase at such member stores. The supply substitutability between shared points and other types of points is therefore limited.

In view of the above, the "shared point business" is distinguished from other types of points and defined as the scope of services.

(3) Credit card business

A. Credit card business with consumers as users

In addition to credit cards, other cashless payment methods used by consumers include code payments and prepaid payment instruments. With regard to credit cards, an annual fee may be charged, and a credit check may be required at the time of enrollment. While code payments can be used free of charge by downloading an app, etc., there may be restrictions on the amount of charge and on one-time usage. Credit cards may be used as the means of payment for code payments, etc., and credit card payments can be used for both in-store and online purchases. Therefore, demand substitutability between credit card payments and other cashless payments is limited.

In addition, credit cards and other cashless payment methods differ greatly in the way they read payment data and the payment systems they use. Supply substitutability is therefore limited.

The services performed by the issuer (credit card issuer) include the provision of payment-allocation point services and supplementary insurance, etc. However, as described in (2) A., above, these are only ancillary services provided by the credit card enterprise to the user, and it is appropriate to consider them as a secondary service to the credit card service.

Therefore, the scope of services shall be defined as "credit card business (issuing business)" to distinguish it from other cashless payment methods.

B. Credit card business with member stores as users

In the credit card business with member stores as users (acquiring business), as with credit card businesses with consumers as users, substitutability between credit cards and other cashless payment methods is an issue. However, member stores need to have a variety of payment methods available to meet consumer needs, and there are also differences in initial costs and payment fees between credit cards and other cashless payment methods (e.g., code payments). Therefore, demand substitutability between credit cards and other cashless payment methods and other cashless payment instruments is likely to be limited.

Furthermore, as noted in A. above, credit cards and other cashless payment methods differ greatly in the way payment data is read and the payment system. Supply substitutability is limited for this reason.

Therefore, the scope of services is defined as "credit card business (acquiring business)" to distinguish it from other cashless payment methods.

3. Geographic range

Since all of the business fields defined in 2., above, are operated in Japan without any particular geographical restriction, and since the prices of services differ greatly from region to region, the geographical scope is defined as "all regions of Japan."

Part IV Impact of this action on competition

The Company Group is engaged in database marketing businesses based on customer data, and this action constitutes a horizontal business combination.

In addition, the CCC Group and the SMBC Group are engaged in the shared point business and credit card business, respectively, and since both businesses are related to the purchase and settlement of goods and services and are interrelated, this action constitutes a conglomerate business combination (product expansion).

The shared point and credit card businesses are two-sided markets with (1) consumers as users and (2) member stores as users. Furthermore, there is a mutual indirect network effect between these transaction areas.

In other words, the more consumers who use the service in transaction area (1), the greater the incentive for member stores to introduce the service in transaction area (2). Conversely, the more member stores that introduce such services in transaction area (2), the greater the incentive for consumers to use such services in transaction area (1).

In light of these market characteristics, the impact of this action on competition will be discussed in 2. and 3., below, with respect to conglomerate business combinations relating to the shared loyalty point business and credit card business for consumers and the shared loyalty point business and credit card business for member stores.

1. Database marketing business based on customer data

(1) Mechanisms of restriction on competition

The SMBC Group conducts the database marketing business based on payment data obtained from its credit card business, while the CCC Group possesses data with different characteristics, namely, purchase data at member stores obtained from its shared point business. It also conducts the database marketing business based on such data (see Part III 1. (3) D. above). After this action, the Company Group plans to develop a marketing business utilizing customer data held by each company.

In the database marketing business, due to the difficulty of obtaining data, securing data held by the company or data used for analysis are important competitive factors. After the action, it will be possible to conduct highly accurate marketing by combining data on credit card settlements held by the Parties and to purchase data at member stores, thereby improving the business capabilities of the

Company Group.

(2) Position of the Parties and conditions of competing enterprises

Since there are many competing enterprises engaged in the database marketing business based on customer data, and the exact market share of the database marketing business based on customer data is unknown, it shall be considered that the safe-harbor criteria for a horizontal business combination are not met.

(3) Competitive evaluation based on data that will be held by the Company Group

After this action, the Company Group will hold a large amount of customer data, including a total of more than 90 million shared point members and paymentallocation point members. The data held by the SMBC Group includes highly sensitive membership information such as member occupations and annual income, as well as settlement data such as the location, date, and time of credit card use and settlement amounts, while the data held by the CCC Group includes membership information such as age, gender, and place of residence, and detailed purchase data such as names and quantities of products purchased by members. Each of them has different characteristics, and the types of data that will be held by the Company Group after this action will increase in a mutually complementary manner.

However, like the Company Group, there are several competing enterprises that operate both shared point and credit card businesses, and these competing enterprises secure large amounts of data through the so-called "economic zones" established by e-commerce platform businesses and cell phone businesses. Comparing the data held by these competing enterprises with the data that will be held by the Company Group, it is considered that the competing enterprises hold a greater amount of more precise and more diverse information, and there is no specific data that is held only by the Company Group.

Therefore, in relation to competing enterprises, there is no business advantage to be gained by utilizing the data that will be held by the Company Group or by other means.

(4) Summary

There are a large number of competing enterprises, including a number of leading competing enterprises that hold a greater amount of more diverse data than that of the Company Group, and it is recognized that the unilateral or coordinated conduct by the Company Group as a result of this action will not substantially restrain competition in the transaction field pertaining to database marketing businesses based on customer data.

2. Shared loyalty point business and credit card business for consumers

(1) Substantial restraint of competition based on unilateral conduct

A. Market foreclosure due to combination supply

After this action, if the Party is to provide shared points in combination with credit cards (including payment-allocation points, etc. as secondary services) to consumers, if issues of market closure and exclusivity arise in either or both of the consumer shared point business and credit card business in the transaction field, it may substantially restrain competition.

The Company Group involved plans to replace both types of points with a new point brand for joint operation via CCCMKHD, while in principle continuing all the current functions of accumulating and using (allocation and redeeming) points in various situations for both shared points and points allocated for credit card transactions.

If the integration of points, both in terms of allocation and redeeming points, is achieved, the business capacity will be strengthened by the integration of the customer bases of both parties.

Even if point integration is not implemented, it is also possible to provide a combination supply, for example, by printing the shared point membership number and barcode on the face of a credit card, effectively integrating the functions of both (card integration), as other enterprises have done.

In addition, it is conceivable that a benefit such as an increase in the point allocation rate will be introduced when consumers choose to receive both shared points and points allocated for credit card transactions when making a purchase at a member store (i.e., an increase in the point allocation rate). If such a combination supply is made, the business capacity of the Company Group will be further strengthened. If such a combined supply of shared points and credit cards is conducted by the Company Group, there will be a decline in the competitiveness of the competitors to the Company Group in either or both of the shared points and credit card businesses. The competing enterprises may then exit the market, or have their restraining power weakened.

In addition, as described in 3. (1) A., below, if, after the action, the Company Group were to combine the supply of shared points and acquiring services and offer preferential treatment such as commission to member stores, etc., there would be an increase in the number of member stores of the Company Group, causing an indirect network effect, which may increase the incentives for consumers to use the services of the Company Group.

In addition, as described in 3. (1) A. c), below, shared point member stores

in particular have a strong tendency toward single homing. Given the mutual indirect network effect between the two transaction fields for consumers and for member stores, if the number of member stores of shared points offered by competing enterprises decreases due to the combined supply by the Company Group, the attractiveness to consumers of the shared points offered by the competing enterprises to consumers would decrease.

Also, as a result of such a combination supply to member stores and the indirect network effect, it is conceivable that there would be a decrease in the competitiveness of competing enterprises to the Company Group in either or both of the shared point business and credit card business for consumers, and that such competing enterprises will exit the market or have their restraining power weakened.

Based on the above, in a) through f) below, an examination will be made as to whether this action will cause market closure and exclusivity issues with respect to the shared points business for consumers and the credit card business.

a) Status of the Parties

The market share of the issuing business is shown in the table below. SMBC Group's market share is approximately 10% and the HHI is as much as approximately 800. Therefore, the safe-harbor criteria for a conglomerate business combination are met. However, the exact market share of the shared point business for consumers is unknown, and therefore, the safe-harbor criteria are not met.

Ranki	Company name	Market share
1	Company A	Approx. 20%
2	SMCC	Approx. 10%
3	Company B	Approx. 10%
4	Company C	Approx. 10%
5	Company D	Approx. 5%
6	Company E	Approx. 5%
7	Company F	Approx. 5%
8	Company G	0-5%
	Other	Approximately 25%
	Total amount	100%

Market share of issuing operations in FY2021

b) Conditions of competing enterprises

In the field of shared point transactions, there are competing enterprises at a scale that is the same as or larger than that of the Company Group.

In addition, as shown in the table above, there are competitors in the credit card (issuing business) transaction field that have a market share that is the same as or larger than that of the Company Group.

In particular, some of these competitors have strong customer bases through their e-commerce platform businesses, cell phone businesses, etc. As described in Part III 1. (3) C. c), above, these competitors are working to increase the level of appeal and convenience by integrating shared points and points allocated for payment, and introducing, for example, rewards that increase the point award rate for users of their own credit cards when making purchases at member stores (online shopping malls). These factors will continue to make these enterprises strong competitors in the market.

c) Status of consumers

In terms of consumer use of shared points, among consumers who own one of the four shared point cards surveyed in the Shared Point Fact-Finding Report, the respective ownership rates range from 40% to 84%. In terms of consumer credit card ownership, the average number of credit cards held by type was 2.1 free cards, 0.4 conditional free cards, and 0.4 paid cards.

Therefore, consumers are in a multi-homing situation for both shared points and credit cards.

d) Entry

There are no laws or regulations that would create barriers to entry in either the shared point or credit card businesses, and the only costs would be for the introduction and operation of systems for managing members and member stores and for the settlement of accounts.

In fact, new entries to the credit card (issuing business) market have been active, and are expected to continue to be active.

On the other hand, in addition to the fact that there have been no new entries into the shared point system, the major shared point system enterprises have already secured a huge number of members. In view of the indirect network effect, in order to enter the shared point system and to have a certain

 ⁷ See "Report on Investigation of Credit Card Transactions" (Japan Fair Trade Commission, April 2022), No. 3-1.

presence in the future, it is necessary to have a very large customer base, as well as the business capacity to acquire customers by combining with other services, etc.

However, in addition to the presence of multiple enterprises with such business capabilities, there are code payment enterprises with large customer bases and overall business capabilities that are planning to enter the shared point business. Therefore, entry pressure is recognized.

e) Competitive pressure from adjacent markets

Shared points can be earned and used in the same store in combination with other points (proprietary points, local points, and points allocated for payment) in some cases, but in most cases, they cannot be earned and used in combination (in stores that are not shared point member stores). In such cases, consumers have to choose whether to purchase a particular product or service at a store where they can earn and use shared points or at a store where they can earn and use only other points. As a result, there is a certain degree of competitive pressure from adjacent markets (services that provide proprietary points, payment allocation points, etc.) with respect to shared points.

On the other hand, although credit cards may be subject to competitive pressure from other cashless payment methods such as code-based payments, as described in Part III 2. (3) A., above, the competitive pressure from code-based payment is limited because of the limitation on the amount of charge and the amount of use per transaction, because credit cards are sometimes used as a means of payment for code-based payment, and because code-based payment can only be used in stores.

f) Summary

With regard to shared points, there are major competing enterprises other than the Company Group. It is also recognized that there is competitive pressure from adjacent markets and entry pressure. With regard to credit cards, there are major competing enterprises other than the Company Group. It is also recognized that there is entry pressure. As shown in c) above, even if the Company Group increases its attractiveness to consumers through the combined supply of shared points and credit cards, it is expected that many consumers will compare, select, and use point services and credit cards other than those offered by the Company Group, taking into consideration factors such as point award rates, campaign implementation, products and services at stores, member points, and a lineup of payment methods. Therefore, even taking into account the effect of the combined supply to consumers and the indirect network effect through the combined supply to member stores as described in A. above, it is recognized that the Company Group does not have the ability for market foreclosure either for shared points or credit cards.

B. Obtaining confidential information

The Company Group plans to integrate the points operated by each one. This can be accomplished by simply linking and integrating their mutual point systems. In addition, the Company Group does not possess competitively important confidential information of the competing carriers, which means that there will be no exchange of confidential information that is important to the competition with competing enterprises.

Therefore, confidential information of competing enterprises shall not be shared within the Company Group.

C. Cessation of potential competition

As described in A. d), above, in the shared point business, assuming the existence of indirect network effects, in order to enter the market and have a certain presence, it is necessary to have a very large customer base and the business capacity to acquire customers by combining with other services, etc.

From the viewpoint of having such a customer base and business capabilities, SMBC Group has approximately 52 million credit card members, of whom approximately 20 million are credit card transaction type points members, etc. On this basis, if the group were to enter the shared point system, it could be a strong competing enterprise to the CCC Group, which has approximately 70 million members. Therefore, this action will cease potential competition to the Company Group with regard to shared points.

However, as described in A, b) and d) above, in the field of shared points transactions, given the existence of prominent competing enterprises who are operating on a scale that is the same as or larger than that of the CCC Group, and the fact that enterprises other than the SMBC Group are expected to be new entries to the market, the potential impact of the cessation of competition due to this action on the competition for shared points is negligible.

D. Summary

In view of the above, there is no substantial restraint on competition in the particular field of trade due to unilateral conduct.

(2) Substantial restraint of competition through coordinated conduct

As stated in (1) B. above, confidential information of competing enterprises will not be shared within the Company Group. Also, as stated in (1) A. above, the Company Group does not have the ability for market foreclosure, and therefore, there will be no substantial restraint of competition in the particular field of trade due to coordinated conduct.

3. Shared point business and acquiring business for member stores

(1) Substantial restraint of competition based on unilateral conduct

A. Market foreclosure due to combination supply

There is a concern that this action may substantially restrain competition in the case that the Company Group combines and supplies the shared point and acquiring businesses to enterprises (specifically, through supply with lower levels of commission, etc. to member stores that contract both services, contract-based combination, or imposing exclusive transaction terms, etc.), leading to the issues of market foreclosure and exclusivity in either or both of the shared points business for member stores and the credit card business.

Regarding the issue of market closure and exclusivity, first, it is possible that the combination supply of such shared points and credit cards by the Company Group will reduce the competitive power of the competing enterprises in either or both the shared points business for member stores and the credit card business, causing such competitors to exit the market or to weaken their restraining power.

In addition, as described in 2. (1) A., above, if, after the action, the Company Group increases the rate at which points are granted to consumers by supplying a combination of shared points and issuing services, the number of consumers of the Company Group's services will increase, and this will have an indirect network effect, which may increase the incentive for member stores to introduce the services of the Company Group.

Such a combination of supply to consumers and the indirect network effects may reduce the competitiveness of competitors of the Company Group in either or both of the common loyalty point business for member stores and the credit card business, causing them to exit the market or have their restraining power reduced.

Based on the above, in a) through f) below, an examination will be made as to whether this action will cause market closure and exclusivity issues with respect to the common loyalty point business for member stores and the credit

card business.

a) Status of the Parties

Since the exact market share of the shared point business for member stores and the acquiring business is unknown, it shall be considered that the safe-harbor criteria for a conglomerate business combination are not met.

b) Conditions of competing enterprises

There are multiple competing enterprises in the shared point transaction field, and although these competing enterprises are inferior to the Group in terms of the number of member stores, they are developing their business on the same or larger scale than the Group in terms of the amount of points issued and the number of members. There are also a number of competing enterprises in the credit card transaction field, including two enterprises that may have a market share of 10% or more.

c) Conditions of member stores

According to the Shared Point Fact-Finding Report, while the shift to multipoint shared point services at member stores has been progressing in recent years, single-homing accounts for 82% of the total as a percentage.

On the other hand, there are some cases (9%) where restrictions are imposed on the introduction of other shared point services, and even when there are preferential contract terms for shared point services, the reality is that they are based on volume discounts rather than exclusive contracts. In addition, although the CCC Group has introduced a prior consent clause, it either gives its consent or changes or deletes the clause itself upon request from the member store. However, according to the Shared Point Fact-Finding Report, most of the businesses that have introduced shared points through single homing have no plans to introduce other shared point services with respect to the running costs (point issuance fees, terminal rental fees, etc.).

As for credit card member store agreements, depending on the brand, it is possible for a member store to sign an agreement with more than one credit card company. In addition, the SMBC Group does not set exclusive terms and conditions in its agreements with its member stores.

Thus, while member stores tend to be single-homing with respect to shared points, there are no particular restrictions based on existing contracts with respect to switching to other shared point services. The same is true with respect to changes in credit card companies in connection with credit card

member store agreements.

d) Entry

As described in 2. (1) A. d), above, there are no laws or regulations that would serve as barriers to entry in either the shared point business or the credit card business.

Similar to the issuing business, new entrants have been active in the acquiring business, and this is expected to continue in the future.

As for shared points, as described in 2. (1) A. d), above, entry pressure is also recognized.

e) Competitive pressure from adjacent markets

While the advantages of the introduction of shared points include differentiation from competing stores and an increase in the number of customers, there are many stores that have not become shared point member stores and have instead introduced proprietary points, local points, or payment services with point-allocation functions, in consideration of the effects to be gained from their introduction and the cost of point sourcing and issuing fees, etc. Therefore, there is a certain degree of competitive pressure from adjacent markets (services offering proprietary points, etc.) for shared points.

On the other hand, with regard to credit cards, stores need to have a variety of payment methods available to meet consumer needs, and the introduction of other payment methods (e.g., prepaid payment methods, code payment, etc.) does not preclude the introduction of credit cards. In particular, since code payments, etc. have restrictions on charge amounts and per-use amounts, and code payments, etc. can only be used in stores, support for credit card payments is considered to be necessary for stores that provide high-value goods and services or that sell online. Therefore, competitive pressures from code payment, etc., are limited.

f) Summary

With regard to shared points, there are major competing enterprises other than the Company Group. It is also recognized that there is competitive pressure from adjacent markets and entry pressure. With regard to acquiring services, there are major competing enterprises other than the Company Group. It is also recognized that there is entry pressure. In view of this, even if the Company Group provides a combined supply of shared points and credit cards, it is expected that many stores will choose point services and acquiring services other than those provided by the Company Group with respect to the needs and convenience of consumers, the effects of introducing such services, the level of fees and other running costs, and other factors.

Therefore, even taking into account the effect of the combined supply to member stores and the indirect network effect through the combined supply to consumers as described in a) above, as well as the fact that there is a strong tendency toward single homing for shared points as described in c) above, it is recognized that the Company Group does not have the ability for market foreclosure for either shared points or credit cards.

B. Obtaining confidential information

As shown in 2. (1) B., above, confidential information of competing enterprises will not be shared within the Company Group.

C. Cessation of potential competition

As stated in 2. (1) A. d), above, in the shared point business, assuming the existence of indirect network effects, in order to enter the market and to have a certain presence, it is necessary to have a very large customer base and the business capacity to acquire customers by combining with other services.

In terms of the existence of such business capabilities, SMBC Group is considered to have the largest market share in the acquiring business, although the exact market share is unknown. The group also operates credit card transaction points with approximately 20 million members. In light of these factors, SMBC Group could be a strong competitor to CCC Group if it were to enter the shared point system. Therefore, this action will cease potential competition to the Company Group with regard to shared points.

However, as stated in A. b) and (d) above, in the field of shared points transactions, given the fact that there are prominent competitors operating on the same or larger scale as the CCC Group and that new entrants from businesses other than the SMBC Group are expected to enter the market, the effect on potential competition due to this action is negligible.

(2) Substantial restraint of competition through coordinated conduct

As stated in (1) b) above, confidential information of competing enterprises will not be shared within the Company Group. Also, as stated in (1) b) above, the Company Group does not have the ability for market foreclosure, and therefore, there will be no substantial restraint of competition in the particular field of trade due to coordinated conduct.

Part V Conclusion

It was determined that this action would not substantially restrain competition in the particular field of trade.