# Major Business Combination Cases in Fiscal Year 2010

June 21, 2011
Japan Fair Trade Commission

For the purpose of ensuring transparency of reviews of the Japan Fair Trade Commission (hereinafter, referred to as “JFTC”) on business combination cases and the purpose of improving predictability of the JFTC’s reviews on case, the JFTC has published “Guidelines to Application of the Antimonopoly Act concerning Reviews of Business Combination (hereinafter, referred to as the “Business Combination Guidelines”)”, in applying Anti-monopoly Act (hereinafter, referred to as “the AMA”) to the JFTC’s reviews on business combinations. In addition, the JFTC has also published the results of the JFTC’s reviews on major business combination cases in each fiscal year.

Also this year, the JFTC officially publishes the results of reviews on major business combination in fiscal year 2010 and provides the data associated with these reviews.

The JFTC sincerely hopes the companies, planning business combinations, to make use of the announced outcomes of the JFTC’s reviews on major business combination cases along with the Business Combination Guidelines.

Major Business Combination Cases in Fiscal Year 2010



(*Note1) The order of the cases in this document complies with the order used in Japan Standard Industry Classification, applied to the products subject to the reviews on business combinations.

(*Note2) Confidential information and competitor names, etc. associated with the parties concerned are not disclosed in respective cases.

(*Note3) Size of market, market shares, levels of HHI after business combinations, and number counts, i.e., the increment, etc., of HHI after business combinations are shown as “approximate figures estimated by the JFTC” based on the calculations according to the documents/materials submitted by the parties concerned (Note that the term “HHI” in this context refers to Herfindahl-Hirschman Index. The same shall be applied hereafter). When it comes to market shares, in principle, these figures are shown at 5% intervals.

## CASE 1 Establishment of a joint venture for producing iron ore by BHP Billiton PLC and BHP Billiton Limited and Rio Tinto PLC and Rio Tinto Limited

### Part I Outline of the Case

In this case, BHP Billiton PLC and BHP Billiton Limited (hereinafter, referred to as "BHP Billiton") and Rio Tinto plc and Rio Tinto Limited (hereinafter, referred to as "Rio Tinto"), each engaged in business of mining and sales of iron ore, etc., planned to establish a joint venture for producing iron ore in West Australia (hereinafter, referred to as the "JV"). The provision of the AMA, applied to the case, is Article 10 of the AMA.

In this JV, BHB Billiton and Rio Tinto planned to commission the control and management of iron ore production business in West Australia to the management company established based on the capital contribution by the parties concerned. As to the expansion of its production capability, when the amount of capital contribution exceeds 250 billion U.S. Dollars and one of the parties concerned wishes expanding its production capability, whereas the other party does not wish it, one of the parties is capable of expanding, by its sole discretion, the production capability (hereinafter, referred to as "unilateral expansion"). Iron ore produced by the JV is generally allocated to each of the parties concerned in the following manners 1 through 4.

1. The management company notifies the both parties of an estimate of the maximum production capability of each term (6 months) with respect to each brand of iron ore.
2. Each party, in response to the notice from the management company of the above 1, notifies the management company of the rates relative to the maximum production capability with respect to each brand of iron ore. (The term "rate" in this context refers to a rate which each party wishes to accept during a specific term).
3. In response to the notice from each of the parties in the above 2, the management company allocates iron ore, according to the given rule(s), with respect to each brand of iron ore. (i.e., when each of the parties wishes accepting iron ore exceeding 50% of its maximum production capability, each party accepts the iron ore corresponding to 50% of the maximum production capability, etc.
4. Regardless of the allocation rates to each of the parties, each party bears 50% of necessary production costs.

### Part II Progress of the Business Combination Review on the JV

In response to the prior consultation on establishment of JV from the both parties concerned, the JFTC commenced its first review on June 1st, 2010 and continued its review. As a result, since the JFTC judged that more detailed scrutiny is necessary for it, the JFTC commenced its second review, on July 16th, 2010. In the course of detailed scrutiny in the second reviews, the JFTC pointed out, on September 27th, 2010, the issues to the both parties that establishment of the JV might be substantially to restrain production/sales business of lump ore and powdered ore of iron ore supplied through global seaborne trade. Since the both parties publicly announced the withdrawal of their plan to establish the JV on October 18th, 2010, without submission of their counter-opinions, the JFTC closed the review concerning the prior consultation.

The following is the JFTC's view on the both parties at the time when the JFTC pointed out the above issues. Therefore, the following view is not the final judgment by the JFTC in response to the submission of their counter opinion.

## Part III Particular Field of Trade

### 1. Product Range

As the iron ore used in producing iron and steel products by blast furnace methods, the goods dealt with between suppliers and users are typically classified into three types:

Lump ore (lump iron ore and directly loaded into blast furnaces)

Powdered ore (powdered iron ore and loaded into blast furnaces after forming lumps called "iron ore sinters" by coagulating them through annealing with limestone, etc.), and

Pellets: (products obtained by mixing fine-powder iron ore with limestone to form ball-shape iron ore and annealing it)

#### (1) Substitutability of Demand

When it comes to the proportion of three types of iron ore loaded into blast furnaces, each steel company generally keeps a given rate which is optimum for iron ore production although there are some differences resulted from characteristics of respective blast furnaces. As to the above proportion, there exist technological/economic restrictions with respect to each type of iron ore. Therefore, it is not easy for respective steel companies to drastically change the above proportion due to huge investments, etc.

In addition, when it comes to the prices of three types of iron ore, quite a lot of differences are found in the levels of three types of iron ore, that is, lump ore, powdered ore, and pellets.

Moreover, as to the fluctuations of iron ore prices, although the trends in fluctuation of three types of iron ore have been generally similar to each other, there are some differences in volatility of these prices. Furthermore, the three types of iron ore (lump ore, powdered ore, and pellets) have been dealt with as different products in the price negotiation between suppliers and users.

In term of users' understanding and behavior, most of the steel companies keep the proportion of three types of iron ore steady, as described above. Therefore, even in a case where the price of one of the three types of iron ore increases 5 to 10% in comparison with the remaining types of iron ore, users think that they do not need to change the rate of use of the iron ore in question to change the above proportion.

(2) Substitutability of Supply

The rate of production of iron ore mined from iron ore mines with respect to each type of iron ore is determined according to the locations or geological characteristics of iron ore deposits. For this reason, it is difficult for iron ore suppliers to drastically change the ratio of respective types of iron ore that can be mined from.

Although it is technically possible to crushing lump ore to convert it to powered ore and pellets under the existing rate of production is possible, such conversion requires additional costs in crushing them, etc. In addition, since the price level of lump ore has been higher than that of powdered ore, such conversion is irrational from the economical point of view. As to powdered ore, although it is technically possible to convert it to pellets, it requires not only costs for crushing powdered ore to produce iron concentrate (raw material for processing pellets) but also an enormous amount of investment for building new pellet plants. In addition, converting powdered ore into lump ore is technically impossible.

Furthermore, iron ore suppliers have been separately dealing with these three types of goods in their production expansion plans and in their longer-term prospects.

In light of the above-described reasons, there is no substitutability of supply among three types of iron ore (the lump ore, powdered ore, and pellets).

(3) Determination of Product Range

As a result of the above-described scrutiny (1) and (2), since there is no substitutability of supply and substitutability of demand among three types of iron ore ("lump ore", "powdered ore", and "pellet"), the product ranges are respectively defined by these types of iron ore. Note, however, that when it comes to the "pellets", the share held by the both parties is low, and the impact resulted from establishment of the JV on competition seems to be negligible. Therefore, the JFTC scrutinized the above-described lump ore and powdered ore.

## 2. Geographic Range

Since iron ore is not mined in Japan, all the iron ore dealt with in Japan is supplied through sea borne trade. When it comes to the iron ore supplied through seaborne trade, it is advantageous for suppliers to sell iron ore to the users near their mines in consideration of their marine transportation costs. On the other hand, it is disadvantageous for suppliers to sell iron ore to the users far from their mines. However, iron ore suppliers do not employ specific policies, such as, they do supply users in a particular region with their iron ore or they do not supply users in the other region with their iron ore. In reality, iron ore suppliers all over the world, supplying it through seaborne trade, basically supply users in any regions with their iron ore.

Moreover, users have been procuring quite a lot of iron ore from the suppliers near their blast furnaces light of the costs for seaborne trade. Basically, iron ore users are capable of selecting a plurality of procurement sources. In reality, the steel companies, operating their business in East-Asia and West-Europe and dependent their procurement on seaborne trade, have been procuring their iron ore from a plurality of suppliers all over the world.

Iron ore suppliers supply users all over the world who procure iron ore through seaborne trade with their goods substantially at the same price level. Actually, price fluctuations of iron ore for East-Asia and for West-Europe are substantially the same. The prices of iron ore dealt with through seaborne trade closely relate with each other all over the world, and discriminated price cannot be found with respect to each region.

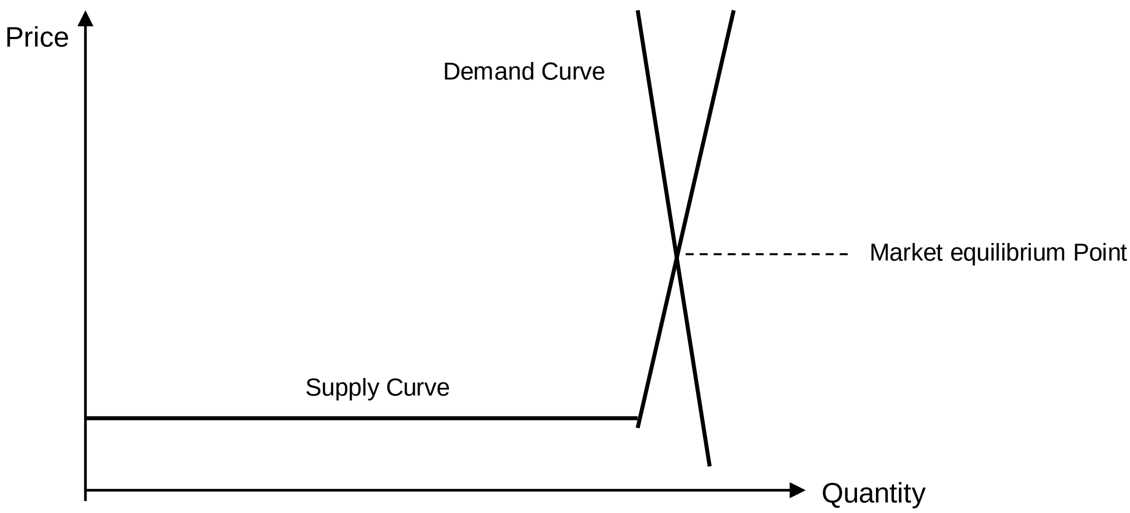
For these reasons, the geographic range is defined by “world seaborne trade market.”

## Part IV Characteristics of Demand Curve and Supply Curve of Iron Ore Market

Production of pig iron by means of blast furnace method requires continuous operation of blast furnaces in order to maintain the production efficiency of pig iron constant, and there is no product that can be substituted for iron ore as a raw material. On the other hand, steel companies, as iron ore users, generally do not change one type of iron ore to the other types of ore for keeping the production efficiency of their blast furnaces constant even in a case where the price of a certain type of iron ore relatively increases. For these reasons, price elasticity of demand with respect to each type of iron ore, i.e., lump ore and powdered ore, is very little. Therefore, its demand curve is thought to show a curve line close to the vertical line shown below.

As to iron ore suppliers, such as, suppliers of lump ore and powdered ore, there are business operators, including the both parties concerned (hereinafter, referred to as "low-cost/large-scale suppliers") capable of supplying large amount of products at low cost. On the other hand, there are business operators, running business with their small-scale mines and at a high marginal cost. Generally, the marginal costs of iron ore suppliers are substantially constant up to their maximum production capability, and low-cost/large-scale suppliers are located on the left side of the supply curve. On the other hand, the operators, running their business with their small mines and at a high marginal cost, are located on the right side of the supply curve.

Prices of lump ore and powdered ore are determined at the point at the intersection of the demand curve and the supply curve. The prices will reach levels equal to those of marginal costs of the suppliers producing products at the point of intersection. (Note that such suppliers are called a "marginal supplier.") Therefore, in determining the price level of iron ore, the important thing is the level of quantity of production by the suppliers (low-cost/large-scale suppliers) located on the left side of the supply curve, such as the both parties concerned.




Part V Impact of Establishment of JV on Competition

1. Impact of Establishment of the JV on Competitive Behavior between the Both Parties Concerned

(1) Allegations of the parties concerned

The both parties alleged as follows after establishing the JV:

a. The JV allows the expansion of their production capability. However, by virtue of existence of the unilateral expansion scheme, the competition between the both parties will be maintained by the expansion of their production capability;

b. When it comes to the quantity of production during each term, each party bears 50% of the costs necessary for iron ore production regardless of the ratio of allocation to respective parties. This causes an incentive to propose the maximum amount of acceptable iron ore, and as a result, the maximum amount of iron ore production will be achieved in most cases; and

c. The sales departments of the both parties are not only independent with each other but also are provided with measures to block off a variety of information. Hence, competition in sales will be maintained.

In response to the above allegations, the JFTC scrutinized the impact, caused by establishment of the JV, on competition of expanding the production capability of the both parties, the impact thereof on determination of their supply quantity during each term (6 months), and the impact thereof on their sales competition, as follows, respectively.

(2) Impact of Establishment of the JV on Competition of Expanding Their Production Capability

a. Determination of expanding the both parties' production capability

It is anticipated that the demand expansion of iron ore will hereafter continue in iron ore market mainly being led by East-Asia, and each of iron ore suppliers will face to determine how much they expand their production capability based on the forecast of future demand.

The low-cost/large-scale suppliers, such as, the both parties concerned, have their own infrastructures, such as, railways, ports, and harbors. In addition, such suppliers have a lot of mines with abundant deposits, with regard to lump ore and powdered ore. Therefore, they are capable of implementing large-scale expansion of their production capability at low costs. Different from small-scale expansion of production capability, large-scale expansion of production capability results in a decline in future iron ore prices in comparison with the case where such expansion is not implemented. However, such a decline in prices also results in a decline in margins of all sales. If the current sales quantity of suppliers is large, such as, that of the both parties, the negative impact of such a price decline on the profit of such suppliers becomes greater as well. Even if such suppliers are capable of greatly expanding their production capability, they have an incentive to control their expansion of production capability within the limit where a significant decline in iron ore prices does not occur.

Note however that the following contingency remains for the low-cost/large-scale suppliers, including the both parties, for example, when and how much do the other large-scale/low cost iron ore suppliers expand their production capabilities. Due to the above reason, greater the number of suppliers, greater contingency they face.

b. Status of Production Capability Expansion of Both Parties in the Past

Demand for iron ore has been greatly increasing from around 2003, and the both parties have been expanding their production capability to some extent. However, the expansion by them did not necessarily correspond to the expansion of iron ore demand. Because if the expansion of production capability is not enough in the phase where iron ore demand is expanding, it is thought that the price level rises. For example, the prices of powdered ore under long-term contracts became approximately 8 times greater during the period between 2003 and 2009, whereby the profit rates of the both parties have also greatly increased. In addition, the both parties have announced their plans for expanding their production capability, however, some of the plans were not implemented as scheduled.

c. Change in Incentive in Their Production Capability Expansion Phase of the Both Parties by the Establishment of the JV

It seems that establishment of the JV does not bring about a discussion on the expansion of production capability based on the self-motivated decision by each of the parties but brings about a discussion on the expansion of production capabilities through negotiations between the both parties.

In addition, when it comes to the expansion of production capability which requires an investment exceeding 250 billion U.S. Dollars, if one of the parties wishes joint expansion of production capability whereas the other party does not wish such expansion, the scheme permits unilateral expansion by one of the parties. However, it is supposed that possibility of actually implementing such expansion is low. That is to say, “unilateral expansion” is permitted only when some sort of difference in views between the both parties is found in terms of “joint expansion”. However, establishment of the JV makes it possible for the both parties to become an enterprise that shares supply characteristics, i.e., brands of iron ore, supply quantity, costs, etc. As a result, it is supposed that the both parties can easily reach agreement on preferable production capability. If forecasts about future demand are greatly different between the both parties, it is supposed that views about preferable production capability between them may differ with each other. However, it is also supposed that the activities following the JV virtually allow their forecasts about future demand to converge on the same level. Furthermore, when one of the parties unilaterally intends expansion, sharing the profit produced from the expansion is always the profit enjoyed by the other party, whereby it is thought that the “joint expansion” performed under the JV is preferable for the parties concerned.

In consideration of the scheme of production capability expansion based on the JV as discussed above, since contingency in terms of the type of expansion at a certain point of time by one of the parties may be eliminated, incentive to intend expansion of production capability by the other party preceding thereto significantly decreases, whereby it is supposed that the both parties concertedly behave for the expansion of production capability.

(3) Impact of Establishment of the JV on Determination of Supply Quantity in Each Term (6 Months)

a. Determination of Supply Quantity by the Both Parties at Present Status and their Past Business Behavior

Since each of the low-cost/large-scale suppliers who deal with lump ore and powdered ore (including the both parties concerned) solely supplies quite a few parts of the total supply in the entire iron ore market, such supplier is capable of indirectly manipulating the total amount of supply in the entire iron ore market by adjusting its supply quantity up to a ceiling of its maximum production capability.

A decrease in supply quantity from their maximum production capabilities allows a negative effect on their profits (that is, (1) a decrease in supply quantity) and a positive effect on their profits (that is, (2) an increase in prices [an increase in margin per unit) for the low-cost/large-scale suppliers (including the both parties). Therefore, it is supposed that the suppliers have incentive to determine their supply quantity so that their profits can be maximized in consideration of (1) the negative effect and (2) the positive effect. Note, however, that since the rest of the other low-cost/large-scale suppliers are also capable of indirectly manipulating the total supply in the entire iron ore market, some contingency remains on whether or not the rest of the other suppliers take some actions to increase their supply quantity in response to a decrease in supply quantity by one of the suppliers. For these reasons, it may function as certain “deterrence” against the decrease in supply quantity behavior.

Up to now, the both parties has not necessarily been making full use of their maximum production capabilities to supply their products but has decreased their iron ore supply in response to the decrease in demand for iron ore.

b. Change in Incentive to Determine the Supply Quantity by the Parties Concerned Associated with the Establishment of the JV

After the establishment of the JV, since the both parties concerned share supply characteristics in terms of brands of iron ore, supply quantity, costs, etc., they can easily agree on their preferable supply quantity with each other. Moreover, contingency on their business behavior will be eliminated because each of the parties is unable to flexibly manipulate its acceptable amount during each term due to this JV. As a result, it is supposed that the both parties are easily capable of concertedly adjusting their supply quantity.

Note that the both parties allege as follows: Since each of the parties equally bear 50% of their production costs in this JV scheme, this scheme functions as the incentive in which each of them proposes the amount of acceptable iron ore to the maximum. Therefore, each of the both parties insists on that they are able to accept half of all the quantity of production notified from the management company of the JV in most phases in determining the supply quantity. In this regard, for maximizing the quantity of production within the JV scheme, it seems to be indispensable for the management company of this JV to have incentive to define the physically possible maximum production capability and to notify the both parties of it. However, since the management company receives only the costs, spent for production, from the both parties, the management company does not have any incentive to gain profits by producing large amount of iron ore, and therefore, the management company does not have any incentive to define the physically possible maximum production capability and to notify the both parties of it. Moreover, other than the reports on demand forecasts received from the parties concerned, the management company is closely related to one another with regard to its capital contribution and its personnel affairs. This means there is a mechanism capable of controlling over the management company by the both parties. For this reason, it is thought that the management company determines the quantity (as its maximum production capability) to be notified to the both parties in line with the both parties' plans and speculations.

(4) Impact of Establishment of the JV on Sales Competition

a. Existing Competition Status between the Both Parties Concerned

Each of the both parties has employed different sales strategies for the competition between them.

b. Change in Incentive of the Both Parties in the Sales phase Associated with Establishment of the JV

(a) Impact unable to flexibly controlling the quantity of production

The amount capable of being accepted by each of the parties during each term (6 months) is determined at the beginning of a term in this JV scheme. For this reason, each of the parties not only understands with each other that each party is unable to increase, for 6 months, the acceptable amount in excess of the predetermined acceptable amount, but also, their counterpart is also unable to increase the acceptable quantity in excess of the predetermined quantity. Conventionally, the following business behavior has been found, that is, one of the parties strongly insists on price hike against users, whereas, the other party does not conforms to the one party and increases the amount of iron ore supply in response to users' requests. However, it is supposed that establishment of the JV makes such business behavior difficult.

(b) Impact Resulted from the Both Parties Handle the Same Brand

It is supposed that establishment of the JV may restrain quality competition between the both parties because the same brands of iron ore can be allocated to the both parties. In addition, since the both parties sell the same brands of iron ore, the interests between the both parties are shared as to what price calculation method should be used under the index system (the term "index system" in this context refers to a system in which indices obtained by indexing transaction prices in a particular market are employed for determination of iron ore. The same shall be applied hereinafter). Therefore, it is thought that incentive for the both parties to urge competitive sales activities drastically decreases in comparison with the period before establishment of the JV.

Especially, after establishment of the JV, the both parties are capable of blending iron ore mined from complementary ore deposits in terms of its quality and characteristics. This means the both parties are concertedly capable of determining as to which types of new products are developed by their iron ore blending. In addition, the both parties shares the same interests as to the price calculation method, which is calculated from the difference in quality, etc. between the existing goods (brands) and the blended goods (brands), under the index system. Therefore, it is supposed that the JV leads the both parties to a more advantageous position in comparison with a case without the JV.

(c) Impact by Sharing Production Costs

Establishing the JV leads to integration of all the production activities involved in lump ore and powdered ore of the both parties, and production costs constituting a majority of total costs in their sales business are shared with the both parties, whereby most of the cost structures in their iron ore business can be shared with the both parties. For this reason, it is supposed that the price levels preferable for the both parties tend to coincide with each other, and the both parties share interests as to what type of price calculation method should be employed under the index system, whereby it is supposed that incentive for each of the parties to conduct competitive behavior decreases in comparison with the period before establishing of the JV.

(d) Overviews

It is supposed that, in consideration of the above (a) through (c), establishing the JV significantly decreases the competitive business behavior by each of the parties in the sales phase.

The both parties allege that since they take measures for blocking-off a variety of information in this JV, their competitive relationship in the sales phase between them can be maintained. However, since establishment of the JV causes the significant decrease in incentive in sales competition, the JFTC thinks that only blocking-off the information associated with sales between the parties does not mean the measures which effectively prevent concerted relationship in their sales phase from being generated between them.

(5) Conclusion

In light of the above-described circumstances, the JFTC concluded that establishment of the JV decrease incentive between the both parties to take competitive business behavior, and as a result, a concerted relationship might be formed between the both parties.

2. Market Share and Competition Status between the Both Parties

(1) Lump Ore

The market share held by Rio Tinto in 2008 was approximately 30 through 35% and is ranked at 1st place, and on the other hand, the market share held by BHP Billiton was approximately 25 through 30% and is ranked at 2nd place. The combined market share held by the both parties is approximately 55 through 60% and is ranked at 1st place. HHI after establishment of the JV is approximately 3,750 through 3,850 and the increment of HHI is approximately 1,750 through 1,850. These figures do not fall within the range of safe-harbors rule, applied to horizontal business combination.

The both parties are low-cost/large scale suppliers who own a lot of mines in Australia which produce high quality lump ore at low costs. In addition, they have not only their own infrastructures but also own a lot of mines with abundant deposits. Since each of the parties mines all the lump ore from deposits in Australia, having similar characteristics, and sells it, the lump ore sold by the both parties is highly substitutable in terms of its quality. In addition, mines owned by the both parties are not only adjacent one another but also their shipping ports are adjacent one another, whereby marine transportation costs required for transporting lump ore to particular destinations are substantially equal between the both parties. The mines owned by the both parties are close to East-Asia which holds most (approximately 80%) of the demand for world seaborne trade market. Therefore, the both party are in an advantageous position in comparison with the other competitors in terms of marine transportation costs. Thus, since the both parties are the peer in terms of products' quality and marine transportation costs and the suppliers substitutable with each other for steel manufacturers, the both parties are the most powerful competitor to one another.

| Rank | Company Name | Market share |
|---|---|---|
| 1 | Rio Tinto | Approximately 30 through 35% |
| 2 | BHP Billiton | Approximately 25 through 30% |
| (1) | Combined Market Shares | Approximately 55 through 60% |

(2) Powdered Ore

The market share held by Rio Tinto in 2008 was approximately 20 through 25% and is ranked at 2nd place, and on the other hand, the market share held by BHP Billiton was approximately 15 through 20% and is ranked at 3rd place. The combined market share held by the both parties is approximately 40 through 45% and is ranked at 1st place. HHI after establishment of the JV is approximately 2,450 through 2,550 and the increment of HHI is approximately 750 through 850. These figures do not fall within the range of safe harbors rule, applied to horizontal business combination.

The both parties are low-cost/large scale suppliers who own a lot of mines in Australia which produce high quality powdered ore at low costs. In addition, they have not only their own infrastructures but also own a lot of mines with abundant deposits for the future. Since each of the both parties mines all the powdered ore from deposits in Australia having similar characteristics and sells it, the powdered ore sold by them are highly substitutable in terms of its quality. Furthermore, mines owned by them are not only adjacent one another but also their shipping ports are adjacent one another, whereby marine transportation costs required for transporting powdered ore to particular destinations are substantially equal between the both parties. The mines owned by the both parties are close to East-Asia which holds most of the demand for the world seaborne trade market. Therefore, the both parties are in an advantageous position in comparison with the other competitors in terms of marine transportation costs. Thus, since the both parties are the peer in terms of products' quality and marine transportation costs and the suppliers substitutable with each other for steel manufacturers, the both parties are the most powerful competitor to one another.

| Rank | Company Name | Market Share |
|---|---|---|
| 2 | Rio Tinto | Approximately 20 through 25% |
| 3 | BHP Billiton | Approximately 15 through 20% |
| (1) | Combined Market Share | Approximately 40 through 45% |

3. Status of Competitors

(1) Lump Ore

The combined market share held by the both parties is approximately 55 through 60%. The market share held by the suppliers following the both parties concerned is just 10 through 15%. The difference between the both parties and the following suppliers is great. When it comes to lump ore, suppliers except the both parties do not have their own mines producing large amount of lump ore at low costs. For this reason, there is no supplier who can be effective deterrence against the both parties.

(2) Powdered Ore

There is only one low-cost/large –scale supplier holding approximately 25 though 30% of powdered ore market share except the both parties. However, the supplier in question is in a relatively disadvantageous position for marine transportation costs to East Asia which is a major iron ore consumption area. In addition, it is supposed that the supplier in question does not to have an enough excess capacity. It can be easy for the supplier in question to assume that establishment of the JV leads to concerted behavior between the both parties in the following aspects, i.e., expansion of production capability, determination of amount of supply during each term, and sales. For these reasons, it is highly possible that incentive for the supplier in question to take concerted actions becomes greater.

4. New Entry/New Expansion by Small-Scale Suppliers

When it comes to iron ore, small-scale suppliers have planned a variety of new entry into the iron ore market and existing small-scale competitors have planned their new expansion. However, among the iron deposits obviously containing iron ore that could be commercially successful, existing low-costs/large-scale suppliers (including the both parties) have already owned iron deposits capable of developing high-quality iron ore at low costs. Suppliers newly entering in the iron ore market can't help but mine and sell lower–quality iron ore or iron ore, which is produced from "costly" mines, for their development. Therefore, it is supposed that such newcomers are in a disadvantageous position for their competition. In light of the actual facts, such newcomers, entered into iron ore market or expanded the amount of supply under the above circumstances, took several years to become profitable in actual cases. Furthermore, not only they expended vast costs for establishing infrastructures, such as, railways, shipping ports, etc., but also they were required to secure considerable amount of working force. These facts reveal that there are barriers in reality for such newcomers. Moreover, there exist barriers in terms of systems, such as, acquisition of approval/license from government authorities. For this reason, it is difficult to plan new entry into the iron ore market, and it is also difficult for existing competitors to consider business expansion. Moreover, since small-scale suppliers do not have their own mines with abundant high-quality iron ore, the scale of such suppliers' new entry and new business expansion might be not only small but also they need to bear high mining costs. For the above reasons, if the both parties limit their amount of iron ore supply, the JFTC assesses that it is difficult for the small-scale suppliers sufficiently compensate for the amount, limited by the both parties, at low costs.

5. Competitive Pressure from Users

As described in the discussion on the shape of demand curve in the above 4, since iron ore is the material indispensable to steel manufacturing with use of blast furnaces, it is impossible for steel manufacturers to use alternative material in place of iron ore.

Moreover, not only a recent shortfall of supply due to a rapid increase in demand for iron ore in East Asia but also supply-side oligopoly allow iron ore suppliers to have the initiative in the negotiation of iron ore pricing system and iron ore prices. Therefore, it is supposed that competitive pressure from users does not function well.

6. Efficiency

The both parties concerned alleged that the purpose of establishing the JV is to integrate iron ore production business in West Australia and this integration allows them to achieve efficiency equivalent to 10 billion U.S. Dollars. Therefore the JFTC scrutinized whether the allegation, made by them, is valid or not.

As to lump ore which is the field to be scrutinized, since the combined market share of lump ore held by the both parties is approximately 55 though 60%, the difference in market shares between the both parties and the suppliers following them is great. In addition, except the both parties, there exists no supplier who owns mines capable of producing large amount of lump ore at low costs. For these reasons, there exists no supplier who can be effective deterrence against the both parties. Therefore, when it comes to lump ore, the JFTC assume that the JV bring about the situation similar to monopoly. As a result, it is supposed that achieving the efficiency, alleged by the both parties, will not bring about competitive behavior by the both parties. For this reason, it is supposed that the efficiency, alleged by them, does not justify the JV.

Furthermore, the JFTC scrutinized the efficiency alleged by the both parties from the following three viewpoints:

“Whether or not the purpose of the JV is only to intend the improvement of efficiency (particularity)”,

”Whether or not improvement of the efficiency is feasible (feasibility)”, and

“Whether or not the improvement of efficiency becomes more conducive to their users (possibility of increasing the users’ welfare)”

The results of scrutiny revealed that none of the particularity, feasibility, and possibility of increasing the users’ welfare can be found due to the following reasons.

(1) Particularity

When it comes to the efficiency alleged by the both parties, it is thought that such efficiency is capable of being achieved by alternative measures which do not restrain competition in comparison with the JV.

a. Sharing Infrastructures

Although the both parties alleged integration of infrastructures in West Australia brings about achieving efficiency, it is thought that the both parties are capable of achieving efficiency equivalent to the JV by sharing their infrastructures through establishment of a company managing and operating their infrastructures, i.e., rail roads and ports owned by each of the parties.

b. Purchase and Sales of Mines and Iron Ore between the Parties Concerned

Mines owned by the both parties are adjacent with each other in Yandi district in West Australia. The both parties allege that business integration in Yandi district allows improvement of their efficiency. However, the efficiency comparable to the JV can be achieved through land-re-adjustment of mining areas owned by each of them through sales and purchases of their mines.

Moreover, the both parties alleges that blending the iron ore mined by them allows using a certain type of iron ore having been treated as wastes, whereby more amount of iron ore can be sold through establishing the JV. However, it is supposed that sales and purchases of iron ore in question between them as necessary achieves the same or similar blending, achieved by the JV, to some degree.

c. Sharing Best Practice

When it comes to the cost reduction through sharing best practice, it is supposed that the best practice achieved by one of the parties is not necessarily the one with special techniques and know-how which are difficult to design by competitors.

(2) Feasibility and Possibility of Increasing User Welfare

The both parties concerned not only allege that an increase in iron ore production and reduction in operational costs allow them to achieve efficiency in excess of 10 billion U.S. Dollars but also allege that standardization of iron ore quality through iron ore blending iron ore achieves an increase in users’ welfare. However, it is doubtful that the JV achieves the above-described efficiency and leads the increase in users’ welfare in light of the following reasons.

a. Increase in Production of Iron Ore

The both parties allege that establishing the JV swiftly makes it possible to supply greater amount of iron ore to iron ore market in comparison with the anticipated amount of production without establishing the JV. However, the production capability expansion plan after establishing the JV, described in the documents submitted by the both parties is far too much in terms of the previous production capability plans having been implemented by them. Hence it is very doubtful that whether or not the submitted plan is actually feasible. Furthermore, other than the plan presented by the both parties, the both parties do not clearly state how demand and supply balance if production capability expansion plan (as alleged by them) is actually implemented by the other suppliers.

b. Reduction in Operational Costs

Feasibility of reducing capital expenditures and operational costs through establishing the JV is not necessarily clear. In addition, even if reduction in capital expenditures is achieved, this means that such expenditures are basically associated with fixed costs and thereby not directly profitable for users.

Moreover, even if reduction in operational costs of the both parties brings about the lowering the left side of demand curve, this does not affect the point at the intersection of demand curve and supply curve. Hence, this does not lead to reduction in prices. Therefore it is supposed that reduction in operational costs does not result in the increase in users' welfare.

c. Standardization of Quality through Blending Iron Ore by the Both parties Concerned

It is supposed that blending the iron ore handled by the both parties may cause possibilities of quality degradation, relative increase in prices, increase in the burden associated with taming iron ore, etc. Therefore it is supposed that standardization of iron ore quality does not bring about users' profit.

7. Assessments based on the Antimonopoly Act

(1) Lump Ore

a. Substantial Restraint of Competition through Unilateral Conduct

(a) Establishing the JV not only brings about the infrastructures owned by the both parties but also bring about coordinated relationship between them each having a lot of mines with abundant deposits in the future. The market share of lump ore held by the both parties in the world seaborne trade market is approximately 55 through 60% and is ranked at 1st place. HHI after the JV is very high to reach approximately 3,750 through 3,850. The increment of HHI is as large as to reach approximately 1,750 through 1850. The market share held by the suppliers following the both parties remains approximately at 10 though 15%, and the difference in market shares between the both parties and the following suppliers is large.

(b) The demand in East Asia region is expected to continuously lead the world's demand. The mines owned by the both parties are located in West Australia and West Australia is close to East Asia which consumes most of iron ore demand. Therefore, the both parties are in an advantageous position for marine transportation costs in comparison with the other competitors. The both parties are not only the peer in terms of iron ore quality and their marine transportation costs but also suppliers who are substitutable for steel manufacturers, respectively. For these reasons, it is important that competition between the both parties be continued. The both parties have been competing to one another by employing different sales strategies down to this day. Under such an environment, forming coordinated relationship between them through establishing the JV has a significant impact on competition of lump ore in the world seaborne trade market.

(c) As discussed in the above (a), the market share by the both parties through establishing the JV is high enough to account for approximately 55 through 60% in the world seaborne trade market of lump ore. The difference between the both parties and the other suppliers in market shares is large. Moreover, the period required for expanding production capability of iron ore is long. For these reasons, it is supposed that if the both parties take specific strategies for restraining competition, such as, strategies reducing the amount of their production, in the phase of determining the amount of production in respective terms or in the phase of determining sales strategies, the other suppliers cannot be effective deterrence against them. Furthermore, the suppliers in question are located far from East Asia in which most of the demand exists, and therefore they are in a disadvantageous position for marine transportation costs in comparison with the both parties. In addition thereto, is supposed that the suppliers in question do not have excess capacity. Moreover, not only a recent shortfall of supply due to a rapid increase in demand for iron ore but also supply-side oligopoly results in a situation where competitive pressure from users does not function. For these reasons, it is supposed that competition of lump ore in the world seaborne trade market is substantially restrained.

(d) It should be noted that the period required for expanding production capability of iron ore is long. When it comes to suppliers capable of playing a role of “effective deterrence” against the both parties in the long term, only the both parties own mines producing a lot of lump ore at low costs, in terms of deposits and costs. The other suppliers do not own such mines, and they are in a disadvantageous position for marine transportation costs, as well. In addition, there exist high barriers to entry for small-scale business operators, such as, actual conditions and present systems. Therefore, it is difficult for such small-scale business operators to newly enter into this field of business or to expand their production capabilities. Therefore, it is quite unlikely that the suppliers other than the both parties implement enough expansion of their production capability if the both parties postpone or suspend expansion of their production capability. For these reasons, there is no supplier who can be “effective deterrence” against the both parties in the long term.

b. Substantial Restraint of Competition through Coordinated Conduct

Since there is no supplier who can be effective deterrence against the both parties in the world seaborne trade market of lump ore, it is not necessary to discuss on the substantial restraint of competition through coordinated conduct between the both parties and the other suppliers.

(2) Powdered Ore

a. Substantial Restraint of Competition through Unilateral Conduct

(a) Establishing the JV brings about not only infrastructures owned by the both parties but also their coordinated relationship between the both parties, each having a lot of mines with abundant deposits in the future. The market share of powdered ore held by the both parties in the world seaborne trade market is approximately 40 through 45% and is ranked at 1st place. HHI after the JV is approximately 2,450 through 2,550. The increment of HHI is as great as to reach approximately 750 through 850.

(b) The demand in East Asia region is expected to continuously lead the world’s demand and the mines owned by the both parties are located in West Australia which is close to East Asia where most of the iron ore demand exists. Therefore, the both parties are in an advantageous position for marine transportation costs in comparison with the other competitors. The both parties are the peer in terms of iron ore quality and their marine transportation costs, and the both parties are suppliers who are substitutable for steel manufacturers, respectively. They have been competing to one another by employing different sales strategies down to this day. Under such an environment, the coordinated relationship between them through establishing the JV brings about a significant impact on competition of powdered ore in the world seaborne trade market.

(c) As discussed in the above (a), the market share held by the both parties through establishing the JV is high enough to account for approximately 40 through 45% in the world seaborne trade market of powdered ore, and there is one strong competitor except the both parties. Mines owned by the competitor in question are not only located far from East Asia in which most of the iron ore demand exists but also in a disadvantageous position in terms of marine transportation costs in comparison with the both parties. In addition thereto, the suppliers in question do not have excess capacity. It should be noted that the period required for expanding production capability of iron ore is long, and it is supposed that the competitor in question does not have excess capacity at present. Therefore it is supposed that when the both parties take strategies for reducing the amount of production, i.e., strategies reducing the amount of their production, in the phase of determining the amount of production in respective terms or in the phase of determining sales strategies, the supplier in question cannot be effective deterrence against them. In addition, since the scale of the suppliers except the both parties is relatively small, they cannot be thought as effective deterrence against the both parties but also they do not have enough excess capacities. Furthermore, not only a recent shortfall of supply due to a rapid increase in demand for iron ore but also supply-side oligopoly results in a situation where competitive pressure from users does not work. For these reasons, it is supposed that competition of powdered ore in the world seaborne trade market is substantially restrained.

(d) It should be noted that the period required for expanding production capability of iron ore is long. When it comes to suppliers capable of playing a role of “effective deterrence” against the both parties in the long term, there is only one supplier who follows them and holds approximately 25 through 30% of market share. However, mines owned by this supplier are located far from East Asia in which most of the iron ore demand is continuously expected, and the supplier is in a disadvantageous position for marine transportation costs in comparison with the both parties. In addition, there exist high barriers to entry for the other small-scale business operators, such as, actual conditions and present systems. Therefore, new entry or new expansion is difficult for such small-scale business operators except a few of them. Therefore, it is quite unlikely that the suppliers other than the both parties implement enough expansion of their production capability if the both parties postpone or suspend expansion of their production capability. For these reasons, there is not supplier who can be “effective deterrence” against the both parties in the long term.

b. Substantial Restraint of Competition through Coordinated Conduct

(a) There exists only one powerful competitor against the both parties when it comes to powdered ore. However, as described in the above A, mines owned by the supplier in question is located far from East Asia in which most of the iron ore demand is continuously expected. The supplier in question is thought to be in a disadvantageous position for marine transportation costs in comparison with the both parties and does not have enough excess capacity. Therefore, the supplier in question can be assessed as not being “effective deterrence” against the both parties.

(b) Even if the competitive supplier described in the above (a) can be “effective deterrence” against the both parties in line with changes in market environment, since it is easily predicted that the both parties conduct coordinated business behavior in respect of the amount supplied by them in each term and sales strategies as a result of establishing the JV. Therefore it is profitable for the supplier who is an “effective competitor” against them to conduct business behavior, such as, limiting its amount of supply coordinately with them and setting out advantageous conditions in the business transactions with steel manufacturers on the premise of such coordinated business behavior. In this way, since coordinated business behavior between the both parties and their competitor allows, to some extent, to manipulate prices, etc., of powdered ore after establishing the JV, it is supposed that competition in the world seaborne trade of powdered ore may be substantially restrained.

(c) It should be noted that, in line with the change in market environment, even if the “effective competitor” as described in the above (a) is capable of playing an “effective deterrence” against the both parties in the long term, that is to say, in respect of production capability expansion, establishing the JV allows coordinated expansion of production capabilities by them. Hence, it is easily forecasted that incentive for expanding their production capabilities decreases. For these reasons, it is supposed that conducting coordinated business behavior is profitable for the supplier who is an “effective competitor” in respect of the expansion of production capabilities. In this way, it is supposed that the both parties and their competitor tend to conduct coordinated business behavior in respect of production capability expansion after establishing the JV.

## Part VI Conclusion

In light of the above circumstances, the JFTC pointed out the problem that establishing the JV may be substantially to restrain competition in a particular field of trade, and in response thereto, the both parties concerned announced revocation of the plan in question.

(Notes) Coordination with Overseas Competition Authorities

The proposed JV was reviewed not only by the JFTC but also by Australian Competition and Consumer Commission, European Commission, German Federal Cartel Office and Korea Fair Trade Commission. After gaining the consent of the both parties, the JFTC exchanged information with these competition authorities in the course of its prior consultation’s review on the proposed JV.

CASE 2 Acquisition of Shares of The Toyo Fibre Co., Ltd.. by Hokuetsu Kishu Paper Co., Ltd.

Part I Outline of the Case

Hokuetsu Kishu Paper Co,, Ltd., engaged in manufacturing and sales of western paper, paper boards or the like, plans stepwise acquisition of all shares of Toyo Fibre Co., Ltd., engaged in manufacturing and sales of vulcanized fiber (*Note 1)and special paper. The provision of the AMA, applied to the case, is Article 10 of the AMA.

(*Note 1) The term "vulcanized fiber" is described in 2(1).

Part II Particular Field of Trade

1. Outline of Product

The product, thought to be in competition between the parties and having a strong impact on competition, is "vulcanized fiber."

(1) Types and Typical Field of Use of Vulcanized Fiber

Vulcanized fiber is an industrial material and manufactured in the following processes: first, fiber base paper is manufactured from cotton pulp or wooden pulp as its raw material by paper machines; next, the fiber base paper undergoes chemical processing; and then the processed fiber base paper further undergoes a layering process, a pressure-bonding process, and a dry-molding process. The vulcanized fiber is excellent in terms of its characteristics, such as, electrical insulation, heart resistance, and toughness.

The typical field of use of vulcanized fiber is as follows: namely, approximately 60% for the electrical insulation material for use in electrical equipment (hereinafter, "field of electrical insulation"), approximately 30% for the base material for use in abrasive discs (*Note 2) (hereinafter, "field of abrasive disc"), and so on. Among them, the field of electrical insulation is further divided into a variety of fields of use, such as, end plates for motors, low voltage fuse links, terminal strips for speakers, arc-extinguishing chambers for breakers, insulating plates of ferrules for fluorescent lights, separators for battery chargers, spacers for AC adapters, and so on.

Furthermore, the vulcanized fiber is mainly classified into four categories as follows:

a. Generic fiber;

b. Heat resistance and water resistance fiber;

c. Flame resistance fiber; and

d. Abrasive fiber.

Each type of fiber has its own specific characteristic and differs in price.

(*Note 2) The term "abrasive disc" in this content refers to disk-shaped and rotating abrasive tools.

(2) Types of Vulcanized Fiber Used in Each Field of Use and its Substitutable Material

As discussed above (1), vulcanized fiber has a variety of fields of use. Different types of vulcanized fiber are used in response to the characteristics or the like required for each intended use. More specifically, when it comes to the field of electrical insulation, a plurality of types of vulcanized fiber, such as, the generic fiber, the heat and water resistance fiber, and the flame resistance fiber, are used in response to the characteristics or the like required with respect to each field of use. Different types of vulcanized fiber may be used for the same field of use in some cases. Materials substituted for such vulcanized fiber differs depending on the characteristics or the like required with respect to each field of use, that is, generic industrial PET, industrial PET with high flame resistance, glass polyester, Bakelite, and so on.

As a result of the use of these substitutable materials, the domestic sales volume of vulcanized fiber has been in a gradual declining trend.

Note, however, that only high toughness abrasive fiber is used for abrasive discs, therefore, there is no other material, capable of being substituted for the abrasive fiber.

2. Determination of Particular Field of Trade

(1) Product Range

As discussed in the above 1(1), vulcanized fiber has been used in plural fields of use, and as discussed in the above 1(2), since different types of vulcanized fiber are used with respect to each field of use, the substitutable materials also differ with each other. In light of the substitutability in terms of its demand, the product range is thought to be determined as follows: vulcanized fiber is further classified into detailed categories with respect to each type or field of use to determine the product range if a material(s) highly substitutable for vulcanized fiber could be found. However, understanding actual status of competition within each of the detailed product ranges after the detailed classification of the product range is not easy due to the restraint of data or the like.

On the other hand, in light of the substitutability in terms of its supply, the businesses, engaged in manufacturing and sales of vulcanized fiber, are capable of supplying any vulcanized fiber for any field of use. In addition, the method of manufacturing different types of vulcanized fiber is very similar with each other. Thus switching types of vulcanized fiber to be manufactured is easy, thereby the substitutability is found in terms of its supply between respective types and fields of use of vulcanized fiber.

For these reasons, the JFTC has reviewed the acquisition of shares in the following manner: “Vulcanized fiber as a whole” is determined as the same product range. With regard to substituting goods different with respect to each field of use, the substituting goods are reviewed as neighboring markets regardless of whether their degree of substitutability is equivalent to the same product range.

(2) Geographical Range

With regard to the geographical range, the JFTC has determined the geographical range as “all over Japan” for the following reasons: Since there is a business practice in terms of its trade that manufacturers bear its transportation costs, no disparity among its users in respective regions could be found. Moreover, there are sufficient distribution hubs for it all over Japan and the distribution system, capable of distributing the vulcanized fiber to all over Japan, has already established.

Part III Impact of the Integration on Competition

1. The Domestic Market Size

The domestic market size of vulcanized fiber in fiscal year 2008 is approximately one billion yen (approximately 1,200 tons).

Only the parties in question are engaged in manufacturing and sales of vulcanized fiber in Japan, and the market share held by the parties becomes 100% after the acquisition of shares. Although vulcanized fiber is manufactured in Germany and China, vulcanized fiber has not been imported up to now. Moreover, although new entry into the domestic market is easy, its possibility is low.

2. Competitive Pressure from Related Markets

When substitute products of vulcanized fiber are defied as related markets by use of it, the competitive pressure from the markets is evaluated as follows;

(1) Field of Electrical Insulation

As discussed in the above Part II1 (1) when it comes to the field of electrical insulation, vulcanized fiber is further classified into a variety of fields of use, such as, the end plates for motors, low voltage fuse links, terminal strips for speakers, arc-extinguishing chambers for breakers, insulating plates of ferrules for fluorescent lights, separators for battery chargers, spacers for AC adapters and so on. Moreover, generic industrial PET, industrial PET with high flame resistance characteristics, glass poly ester, Bakelite, and so on are used as its substitutable materials, with respect to each field of use.

In the field of electrical insulation, there are no special requirements met only by the vulcanized fiber. In addition, thanks to the technological improvement in the other materials, such as, industrial PET or the like, the other materials (such as, the industrial PET or the like) is advantageous not only in terms of their characteristics, such as, electrical insulation, heat resistance, flame resistance, dimension stability, workability or the like, in comparison with vulcanized fiber but also in terms their contribution to reduction in parts size. In addition, industrial PET or the like, manufactured and sold by domestic and overseas chemical manufacturers, is easy to procure in comparison with the vulcanized fiber, which can only be procured from the parties, and thus, the prices of industrial PET has been decreasing. Since the above discussed reasons are highly estimated by its users, vulcanized fiber is gradually replaced by the other materials, such as, industrial PET or the like, in the field where vulcanized fiber has been used as the electrical insulation materials. In addition, not vulcanized fiber but industrial PET is currently chosen, from the beginning, as dominant electrical insulation material in the field of new electric appliances manufactured in the days ahead, and this trend is thought to continue in the future.

(2) Field of Abrasive Disc

Vulcanized fiber is used as a base material of fiber discs by abrasive product manufacturers (that is, direct users of vulcanized fiber), engaged in manufacturing and sales of abrasive products, such as, fiber discs (*Note 3), and there is no material that can be substituted for the vulcanized fiber.

However, it should be noted that ship builders, automobile manufacturers, and so on who are the users of fiber discs (indirect users of vulcanized fiber) are capable of using both the fiber discs and flap discs (*Note 4) in the same field of use, for example, for grinding metal, stone materials, reinforced plastic materials or the like.

The flap disc is excellent in terms of its abrasion durability for long time and is advantageous in terms of its smooth surface finishing. Furthermore, since the price of flap discs is in a decreasing trend, the most demand for fiber discs is replaced by the flap discs, and this trend is thought to continue in the future.

Moreover, quite a few abrasive product manufacturers, engaged in manufacturing and sales of the fiber discs, are also engaged in manufacturing and sales of the flap discs. Therefore, it is thought that switching between the flap discs and the fiber discs is not so difficult.

(*Note 3) The term “fiber disc” in this context refers to an abrasive disc in which vulcanized fiber, formed in a disk-shape, is used as its base material and abrasive grains are adhered on the surface thereof.

(*Note 4) The term “flap disc” (also referred to as a “multi-blade disc”) in this context refers to an abrasive disc in which reed-shaped abrasive cloth is arranged in a radial fashion on the surface of fiber reinforced resin or the like, formed in a disc-shape.

Part IV Assessment from the Viewpoint of the AMA

As discussed in the above Part II2(2), if vulcanized fiber as a whole is determined as the same product range in this case, the market share after the acquisition of shared held by the parties becomes 100%. In addition, the possibility of import of vulcanized fiber in the future is low, and although new entry into the domestic vulcanized fiber market is easy, the possibility thereof is thought to be low.

However, it should be noted that in light of the actual status of competition by regarding substitutable goods with respect to each field of use as the neighboring markets, it is possible to substitute industrial PET or the like for vulcanized fiber in the field of electrical insulation. Switching to the industrial PET that is lighter in weight, excellent in electrical insulation, and cheaper in price, is steadily in progress in line with the ongoing reduction in size and sophistication in functionality of electric equipment. This trend is thought to continue in the future.

Furthermore, although there is no material that can be directly substituted for vulcanized fiber in the field of abrasive disc, the most demand for fiber discs is replaced by the flap discs, having long-life abrasion capacity, and this trend is thought to continue in the future. Therefore, if the parties raise the price of vulcanized fiber or neglect improving its quality, this results in further promotion of switching to industrial PET from vulcanized fiber in the field of electrical insulation. A price increase or stagnating quality of fiber discs, supplied to indirect users, also results in further promotion of switching to flap discs or the like from fiber disc in the field of abrasive discs. Therefore, the possibility of such conduct after the acquisition of shares by the parties seems to be very low.

For the reasons discussed above, the JFTC has concluded that the acquisition of shares may not be substantially to restrain competition in a particular field of trade through their unilateral conduct.

## Part V Conclusion

For the reasons discussed above, the JFTC has concluded that the acquisition of shares may not be substantially to restrain competition in a particular field of trade.

## CASE 3 Integration of Ethylene, etc. Production Business between Asahi Kasei Chemicals Corporation and Mitsubishi Chemical Corporation in Mizushima Area

### Part I Outline of the Case

In this case, Asahi Kasei Chemicals Corporation (hereinafter, referred to as “Asahi Kasei Chemicals”), engaged in manufacturing and sales of chemical products and Mitsubishi Chemical Corporation (hereinafter, referred to as “Mitsubishi Chemical”), engaged in the same line of business planned to establish a limited liability partnership through joint capital investment to integrate manufacturing business of petrochemical basic products, i.e., ethylene, etc., having been respectively conducted by the both parties concerned in Mizushima area through the limited liability partnership. (Note that each of the both parties independently has been conducting sales business of producing petrochemical basic products after the integration in question.)

Since the integration in question had a possibility of forming combination relationship between the both parties through the joint capital investment, the JFTC reviewed the integration as the one through which the combination relationship might be formed.

### Part II Particular Field of Trade

The product, which is thought to have a significant impact on competition among the petrochemical basic products as the target of the integration, was isoprene. Isoprene is mainly used for raw material of isoprene rubber, etc., and there is no other substitutable material. For these reasons, the “product range” was defined by “isoprene.”

When it comes to isoprene, there is no restriction on transportation, and isoprene can be sold and procured all over Japan by using ships, etc. For these reasons, the geographic range was defined by “all over Japan.”

Since the both parties concerned manufactured and sold, by themselves or through their affiliated companies, a variety of derivative products (*Note) from petrochemical basic products, as their raw material, the JFTC reviewed the impact of their integration of business on competition in the derivative products market, as well.

(*Note) The term “derivative products” in this context refers to “intermediate products” produced from petrochemical basic products and used as raw material for manufacturing end products, i.e., plastic products, synthetic fibers, synthetic rubbers, etc. For example, the derivative products produced from ethylene, as raw material, includes polyethylene, vinyl chloride, etc.

## Part III Impact of the Integration on Competition

### 1. Isoprene

#### (1) Market Share

The combined market share held by the both parties concerned is approximately 25% and is ranked at 1st place after the integration in question. In addition, HHI after the integration is approximately 1,700. The increment of HHI is approximately 300. These figures do not fall within the range of safe-harbor rule, applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 2 | Mitsubishi Chemical | Approximately 15% |
| 5 | Asahi Kasei Chemicals | Approximately 10% |
| (1) | Combined market share of the Both Parties Concerned | Approximately 25% |

#### (2) Status of Competitors

There is a plurality of powerful competitors which hold market shares in excess of 10%.

#### (3) Competitive Pressure from Users.

In comparison with the amount of domestic isoprene supply, the amount of its demand is less. In addition, it is easy for users to change suppliers. These circumstances allow users to afford to strongly and proactively negotiate with the both parties.

For these reason, it seems that there is Competitive Pressure from users.

#### (4) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed that the integration of business in question might not be substantially to restrain competition in a particular field of trade through unilateral business behavior by the both parties or through coordinated business behavior by the both parties and the other competitors.

### 2. Derivative Products

Integration of manufacturing of petrochemical basic products, as raw material of derivative products, through the limited liability partnership by the both parties may bring about a coordinated relationship between the both parties in the derivative products market. However, the manufacturing costs of raw material for the derivative products assumed to be shared through the integration only occupy a part of the manufacturing costs of derivative goods manufactured/sold by the group consisted of the both parties. Therefore, the possibility that such manufacturing costs are immediately reflected in the prices of derivative products seems to be low. Furthermore, it may be difficult for the both parties to presume the details of derivative products business to one another based on the information obtained from operations of the limited liability partnership owned by the both parties.

Therefore the JFTC assessed the integration of business in question might not cause a coordinated relationship between the both parties in the derivative products market.

Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the integration might not be substantially to restrain competition in a particular field of trade.

CASE 4 Integration of Bottle-Use PET Resin Business between Mitsui Chemicals, Inc. and Teijin Chemicals Ltd.

## Part I Outline of the Case

In this case, Mitsui Chemicals, Inc. (hereinafter, referred to as “Mitsui Chemicals”), engaged in manufacturing and sales of chemical products and Teijin Chemicals Ltd. (hereinafter, referred to as “Teijin Chemicals”), engaged in the same line of business planned to establish a co-parent company to integrate bottle-use polyethylene terephthalate resin (hereinafter, referred to as “bottle-use PET resin” and the same shall be applied hereafter.) business. The provisions of the AMA, applied to the case, are Article 10 and Article 16 of the AMA.

## Part II Particular Field of Trade

### 1. Product Range

Bottle-use PET resin is used as raw material of vessels in which beverages or the like are filled. Bottle-use PET resin is classified into two types, that is, “PET resin for use in heat-resistant bottles” and “PET resin for use in non-heat-resistant bottles.” The difference between them is characterized by the characteristics of PET bottles molded by bottle manufacturers who are the users of bottle-use PET resin and characterized by the method of filling beverages by beverage manufacturers who are the users of PET bottles or business operators filling beverages into PET bottles.

PET bottles molded with PET resin for use in heat-resistant bottle (hereinafter, referred to as a “heat-resistant bottle”) is used by filling heated beverages into them. Such bottles are not only capable of accommodating heated liquid but also capable of sterilizing beverages and bottles at the same time. On the other hand, PET bottles molded with PET resin for use in non-heat-resistant bottle (hereinafter, referred to as a “non-heat-resistant bottle”) are unsuitable for filling heated liquid. When beverages are filled in such types of bottles, beverages that have already been sterilized in advance are filled into such types of bottles that have also been sterilized in advance in room temperature under antiseptic conditions. Such method is called as “aseptic filling.” Introducing equipment necessary for aseptic filling requires considerable equipment investments. For this reason, only a limited number of beverage manufacturers have introduced such equipment.

Bottle manufacturers who are the direct users of bottle-use PET resin are capable of supplying both types of bottles, that is, heat-resistant bottles and non-heat-resistant bottles in response to the orders placed by beverage manufacturers. Therefore substitutability between PET resin for use in heat-resistant bottles and PET resin for use in non-heat-resistant bottles is dependent on the plans of beverage manufacturers. For this reason, there is no substitutability between heat-resistant bottles and non-heat-resistant bottles except a part of beverage manufacturers who have already introduced aseptic filling equipment. Therefore, it is not judged that there is sufficient substitutability between PET resin for use in heat-resistant bottles and PET resin for use in non-heat-resistant bottles both of which are raw material thereof.

Hence, the product range is defined by “PET resin for use in heat-resistant bottles” which competes between the both parties, in this business integration.

2. Geographic Range

There is no restriction on transportation when it comes to PET resin for use in heat-resistant bottles, and PET resin for use in heat-resistant bottles is sold all over Japan. Therefore the geographic range is defined by “all over Japan.”

Note, however, that some users have been dealing import-products in place of domestic products. For this reason, the JFTC regarded the above-described import-products as “import.”

Part III Impact of the Integration on Competition

1. Market Share

The market size of PET resin for use in heat-resistant bottles in 2009 was approximately 43 billion Japanese Yen. The combined market share held by the both parties as a result of this business integration is approximately 45% and is ranked at 1st place. In addition, HHI after this business integration is approximately 3,200, and the increment of HHI becomes 1,000. Thus these figures do not fall within the range of safe-harbor rule applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 1 | Mitsui Chemicals | Approximately 30% |
| 4 | Teijin Chemicals | Approximately 15% |
| (1) | Combined Market Share | Approximately 45% |

2. Status of Competitors

(1) Powerful Competitors

There is a plurality of powerful competitors each of which holds a market share in excess of 10%.

(2) The Number of Competitors

There exist four or more competitors.

(3) Excess Capacities of Competitors

Since the utilization rates of manufacturing facilities owned by these competitors are approximately 80%, it is supposed that each competitor has a certain degree of excess capacity.

3. Import

It is supposed that there is no specific circumstance, i.e., transportation costs, that functions as import barriers. Although import-products have a flaw in that efficiency of molding bottles by the import-products is low, bottle manufacturers use the import-products and domestic products on a case-by-case basis in consideration of the differences in prices and quality of both products. As a result thereof, the rate of import-products is gradually increasing in the domestic supply quantity of domestic PET resin for use in heat-resistant bottles.

For these reasons, it is supposed that there is a certain degree of import pressure.

4. Entry

There exists no significant difference between the manufacturing process of PET resin for use in heat-resistant bottles and that of PET resin for use in non-heat resistant bottles. For this reason, business operators who manufacture PET resin for use in non-heat-resistant bottles are capable of entering in the field of manufacturing PET resin for use in heat-resistant-bottles without the need of large scale equipment investment.

In consequence, it is supposed that there is a certain degree of entry pressure.

5. Competitive Pressure from Related Markets

As described in the above Part II1, it is difficult to assume that there is sufficient substitutability between PET resin for use in heat-resistant-bottles and PET resin for use in non-heat-resistant-bottles. Therefore, it is difficult to assume that the both products share the same product market. However, it is also possible to suppose that PET resin for use in non-heat-resistant-bottles with low prices serve as “competing goods” against PET resin for use in heat-resistant-bottles for the following reasons:

(1) Major beverage manufacturers have already introduced aseptic filling

equipment, and

(2) It is possible for some beverage manufacturers who have not yet introduced aseptic filling equipment can outsource aseptic filling to the business operators, engaged in filling beverages into bottles.

For these reasons, it is supposed that there is a certain degree of competitive pressure from Related Markets.

6. Competitive Pressure from Users

Bottle manufactures who are the users of PET resin for use in heat-resistant bottles have been subjected to strong competitive pressure from beverage manufacturers due to fierce price competition among beverage manufacturers. This circumstance brings about fierce competition among bottle manufacturers, as well.

In addition, for the purpose of maintaining stable supply, bottle manufacturers keep their business transactions with a plurality of bottle manufacturers producing PET resin for use in heat-resistant bottles. For this reason, bottle manufactures are easily capable of changing types of resins which they need.

Therefore, it is supposed that there is a certain degree of competitive pressure.

7. Assessment from the Viewpoint of the AMA

In light of the above-described circumstances, the JFTC assessed that the business combination in question might not be substantially to restrain competition in a particular field of trade through unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the business combination in question might not be substantially to restrain a particular field of trade.

## CASE 5 Acquisition of shares of Showa Aluminum Powder K.K. by Toyo Aluminium K. K.

### Part I Outline of the Case

Toyo Aluminium K.K. (hereinafter, referred to as “Toyo Aluminium”), engaged in manufacturing and sales of a variety of aluminum products plans to acquire all shares of Showa Aluminum Powder K. K. (hereinafter, referred to as “Showa Aluminum”) (hereinafter “the proposed acquisition of shares”), engaged in manufacturing and sales of aluminum paste (*Note), through the proposed acquisition of shares. The provision of the AMA, applied to the case, is Article 10 of the AMA.

(*Note) “Aliminum paste” is a thin, scale-like aluminum pigment made from fractured-and-polished fine aluminum powder or foil

### Part II Particular Field of Trade

1. Outline of the Products

(1) Aluminum Paste

Aluminum paste includes products, the main raw material of which is fine powder having fine granules (hereinafter “high-brightness product”) and products, the main raw material of which is coarse powder (hereinafter “general-purpose product”).

The high-brightness products are glossy by virtue of its fine granules. This allows the high-brightness products to be used mainly in coating materials for automobiles and home electric appliances for which excellence in design or the like is of significance.

On the other hand, the general-purpose products are matte due to its coarse granules. This allows the general-purpose products to be used mainly in coating materials for machinery parts, structures, and vessel’s body for which excellence in functionality, such as, corrosion protection effect is of significance.

In addition, both the products, that is, the high-brightness products and the general-purpose products, are supplied to users, including coating material manufacturers and ink manufacturers, through their distributors.

Typically, the users purchase aluminum paste from multiple manufacturers to manufacture coating materials or ink and sell them to end users, including automobile manufactures, home electric appliance manufacturers, printing firms, boat builders or the like.

When it comes to the high-brightness products and the general-purpose products, the domestic market size of aluminum paste is on a declining trend due to the influence caused by switching to the products without use of aluminum paste, other than the influence due to the decrease in sales of end products and coating materials following the economic downturn.

(2) Aluminum Powder

Aluminum powder is high purity aluminum granules and used as a raw material for aluminum paste. There are two types of aluminum powder, that is, fine powder used as a raw material for the high-brightness products of aluminum paste, and coarse powder used as a raw material for the general-purpose products of aluminum paste.

The coarse powder is produced in the course of manufacturing the fine powder.

The domestic market size of aluminum powder is on a declining trend due to the decrease in domestic demand for aluminum paste.

2. Definition of Particular Field of Trade

Since the parties are engaged in manufacturing and sales of aluminum paste, the proposed acquisition of shares has an aspect of horizontal business combination.

On the other hand, since Toyo Aluminium in the parties is engaged in manufacturing and sales of aluminum powder which is a raw material for aluminum paste, the proposed acquisition of shares also has an aspect of vertical business combination. For this reason, the JFTC reviewed the proposed acquisition of shares from each aspect.

(1) Horizontal Business Combination

a. Product Range

Sales prices of the high-brightness aluminum paste products are approximately three to five times higher than those of the general-purpose aluminum paste products. Therefore, typically, users do not use one of the products as an alternative for the other.

For this reason, each of the high-brightness products and the general-purpose products of aluminum paste that are competitive between the parties are defined as a particular field of trade.

b. Geographic Range

When it comes to the aluminum paste, the geographical range is defined as nationwide because of the following reasons: Both the high-brightness products and the general-purpose products have no constraints on transportation; there is no difference in products purchasable by users depending on domestic areas; and suppliers of aluminum paste operate the business nationwide or the like.

(2) Vertical Business Combination

a. Product Range

With regard to the relationship between aluminum powder (upstream-product) and aluminum paste (downstream-product), the high-brightness products are manufactured from fine powder as its raw material, and it is unable to manufacture the high-brightness products from coarse powder in place of fine powder.

Moreover, typically, the general-purpose products are manufactured from coarse powder as its raw material. Therefore, it is possible to manufacture products equivalent in quality to the general-purpose products by using fine powder. However, since the sales prices of fine powder are approximately three to five times higher than those of coarse powder, fine powder is not used as a raw material for the general-purpose products.

For the above reasons, the product range is determined in the following manner: Fine powder is defined as the upstream-market and the high-brightness products are defined as the downstream-market, while on the other hand, coarse powder is defined as the upstream-market and the general-purpose products are defined as the downstream-market.

b. Geographical Range

Since both the fine powder and coarse powder as the upstream-market have no constraints on transportation and there is no difference in products purchasable by aluminum paste manufacturers, as their users, depending on the domestic areas, the geographical range is determined as “ all over Japan.”

Part III Effect of the Proposed Acquisition of Shares on Competition

1. Horizontal Business Combination

(1) Market Share

The market size of the high-brightness products is approximately 2,000 tons. On the other hand, the market size of the general-purpose products is approximately 3,000 tons.

The tables below shows the market shares based on respective manufacturers’ sales volume with regard to the high-brightness products and the general-purpose products.

The total market share based on their sales volume and the rank order of the parties, resulted from the proposed acquisition of shares, is approximately 55% and is ranked at the first place in the high-brightness product market (HHI after the proposed acquisition of shares is approximately 3,700 and the increment of HHI is approximately 600.). On the other hand, the total market share based on their sales volume and the rank order of the parties, resulted from the proposed acquisition of shares, is approximately 75% and is ranked at the first place in the general-purpose product market (HHI after the proposed acquisition of shares is approximately 6,200 and the increment of HHI is approximately 1,700.). Thus, these figures do not fall under the safe harbor rules applied to horizontal business combination.

[High-brightness products]

| Rank | Company Name | Market Share |
|---|---|---|
| 1 | Toyo Aluminium | Approximately 50% |
| 4 | Showa Aluminum | Approximately 5% |
| (1) | Combined Market Share | Approximately 55% |

[General-purpose products]

| Rank | Company Name | Market Share |
|---|---|---|
| 1 | Toyo Aluminium | Approximately 60% |
| 3 | Showa Aluminum | Approximately 15% |
| (1) | Combined Market Share | Approximately 75% |

(2) Status of Competitors

When it comes to the high-brightness products, there is not only one strong competitor having approximately 30% market share but also a competitor having approximately 10% market share.

In addition, when it comes to the general-purpose products, there is one strong competitor having approximately 25% market share.

Both the parties and the competitors have sufficient excess capabilities with regard to the high-brightness products and the general-purpose products.

(3) Competitive Pressure from Users

The prices of aluminum paste for both the high-brightness products and the general-purpose products are typically determined based on negotiations between aluminum paste manufacturers and users. The price of aluminum paste tends to decrease in line with the downward trend in aluminum ingot price. Therefore, it is assumed that a certain degree of competitive pressure from users works.

(4) Import

a. High-brightness Products

Up to now, import of the high-brightness products remains at a part of the market share. It is assumed this is because of the following reasons: Namely, when selecting high-brightness products, users and end users are more likely to regard excellence in design. According to our interview, the quality of products manufactured by Chinese manufactures is lower than that of the domestic manufacturers. Moreover, when it comes to the products by manufacturers in Europe and in the U.S., domestic delivery systems remain insufficient.

On the other hand, our interviews also reveal that some users think technological progress boosts the quality of Chinese manufacturers' products to the quality comparable to those of domestic manufacturers. Such users consider switching to the Chinese manufacturers' products in the future.

Actually, some Japanese coating material manufacturers running their business in China use the Chinese manufacturers' products in their local factories. Therefore, there is a certain possibility that domestic users using the Chinese manufacturers' products in their domestic factories increase.

However, in light not only of the users who do not give the imported products high marks but also of overseas manufacturers who are not necessarily willing to break into the Japanese market, it is difficult to assess that competitive pressure from import works.

b. General-Purpose Products

Up to now, the general-purpose products have not been imported.

According to our hearings, it is assumed this is because of the following reasons: Namely, although the Chinese manufacturers' products are cheaper in prices than the domestic manufacturers' products, the difference in both prices is not so great to justify the active use of the Chinese manufacturers' products when taking concerns about unstable quality into consideration. When it comes to the products by the manufacturers in Europe and in the U.S., transportation costs are high relative to the product prices.

On the other hand, our hearings also reveal that some users consider switching to the Chinese manufacturers' products given that the concerns about unstable quality are resolved. Therefore, there is a certain possibility that import of the Chinese manufacturers' products is initiated depending on the future market environment.

However, in light not only of the users who do not give the imported products high marks but also of overseas manufacturers who are not necessarily willing to break into the Japanese market, it is difficult to assess that competitive pressure from import works.

(5) Entry

Since the domestic demands for both the high-brightness products and the general-purpose products are on a declining trend, it is assumed that possibility of new entry into the domestic market is low due to the difficulty in obtaining profit.

(6) Competitive Pressure from Related Market

There exists no related market with regard to the high-brightness products.

When it comes to the general-purpose products, our interviews reveal that switching to epoxy-based coating materials that are more excellent in durability than the coating materials using aluminum paste and switching to the coating materials having colors blending in with scenery and without use of aluminum paste are recently ongoing in the field where anticorrosion effect is indispensable with the coating materials using aluminum paste. Therefore, it is assumed that a certain degree of competitive pressure from related market works depending on its use.

(7) Financial Conditions of the Parties

Showa Aluminum that is one of the parties manages to run its business with constant financial supports from its parent company after around 2007 due to the deterioration in its financial conditions caused by the decrease in domestic demand or the like. Showa Aluminum has been suffering from a capital deficiency since the year-end settlements of account in the fiscal year 2008, and now, Showa Aluminum has excess debt and considerable improvement is not seen in terms of its profitability.

Moreover, our interviews reveal that possibility of finding any manufacturers capable of rescuing Showa Aluminum with business combination is low except Toyo Aluminium, among the domestic and overseas manufacturers.

2. Vertical Business Combination

Toyo Aluminium manufactures fine powder and coarse powder in its factories. However, Toyo Aluminium does not sell them to the other aluminum paste manufacturers. In addition, Toyo Aluminium procures the fine powder from the domestic and overseas manufacturers because Toyo Aluminium is unable to procure all the necessary amount of fine powder for its business with self-manufacture.

Since SHOWA ALUMINUM does not manufacture aluminum powder for its business but procures the necessary aluminum powder from the domestic and overseas manufacturers.

After the proposed acquisition of shares, it is presumed that Showa Aluminum procures a part of its aluminum powder demand, from Toyo Aluminium.

(1) Refusal of Raw Material Supply by Toyo Aluminium to Business Operators Other Than Showa Aluminum

Since Toyo Aluminium does not sell both the fine powder and the coarse powder to the other aluminum paste manufacturers at present, the proposed acquisition of shares does not cause difficulty for the other aluminum paste manufacturers in procuring the fine powder and the coarse powder.

(2) Refusal of Raw Material Procurement by Showa Aluminum from Business Operators Other Than Toyo Aluminum

Toyo Aluminium procures the fine powder from the domestic and overseas manufacturers because Toyo Aluminium is unable to procure all the necessary amount of fine powder for its business with self-manufacture. Therefore, it is unlikely that Toyo Aluminium supplies a large amount of fine powder to Showa Aluminum after the proposed acquisition of shares.

In addition, fine powder is in use other than the manufacturing of aluminum paste for high-brightness products, and the amount of fine powder procured by Showa Aluminum is less than the volume of transaction in the entire fine powder market.

Coarse powder is also in use other than the manufacturing of aluminum paste for general-purpose products, and the amount of fine powder procurement by Showa Aluminum is less than the volume of transaction in the entire coarse powder market.

For the above-described reasons, it is unlikely to assume that the propose acquisition of shares causes difficulty for the other aluminum paste manufacturers except for Toyo Aluminium in securing suppliers for the fine powder and the coarse powder.

Part Ⅳ Assessment under the AMA

1. Horizontal business combination

(1) High-brightness Products

With regard to high-brightness products, the total market share of the parties after the proposed acquisition of shares will be approximately 55% (the first place in the industry). On the other hand, there is a strong competent competitor in the industry in question, and both of the parties and the competitor have sufficient excess capabilities. Moreover, there is a certain degree of competitive pressure from users. In addition thereto, Showa Aluminum substantially has excess debt and is unable to get finance for working capital, so that it is highly possible that Showa Aluminum will withdraw from the market in the near future. While there is very little chance that finding a company, capable of rescuing Showa Aluminum by business combination and having less impact on competition than that by business combination by Toyo Aluminium. For the above reasons, the JFTC concluded that the parties will not be substantially to restrain competition in a particular field if the parties and their competitors are engaged in unilateral conduct or engaged in coordinated conduct with its competitor(s).

(2) General-purpose Products

With regard to general-purpose products, the total market share of the parties after the proposed acquisition of shares will reach approximately 75% (the first place in the industry). On the other hand, there is a strong competitor in the industry in question, and both of the parties and the competitors have sufficient excess capabilities. Moreover, there is a certain degree of competitive pressure from users and there is competitive pressure from related market depending on the intended use of the general-purpose products. In addition thereto, Showa Aluminum substantially has excess debt and is unable to get finance for working capital, so that it is highly possible that Showa Aluminum will exit from the market in the near future. While there is little chance that there exist companies, capable of rescuing Showa Aluminum by means of business combination and having less effect on competition than that by the business combination by Toyo Aluminium. While there is very little chance of finding a company, capable of rescuing Showa Aluminum by means of business combination and having less impact on the market than that by business combination by Toyo Aluminium. For the above reasons, the JFTC concluded that the parties will not be substantially to restrain competition in a particular field even if the parties are engaged in unilateral conduct or are engaged in coordinated conduct with its competitor(s).

2. Vertical Business Combination

As discussed in the above Part III 2. the JFTC concluded that the parties may not be substantially to restrain competition in a particular field because it is assumed that the problem of closure or exclusivity in markets may not be caused by the proposed acquisition of shares.

## Part V Conclusion

For the reasons disclosed above, the JFTC has concluded that the proposed acquisition of shares may not be substantially to restrain competition in a particular field of trade.

CASE 6 Integration of Management between Nippon Game Card Corporation and Joyco Systems Corporation

Part I Outline of the Case

In this case, the integration of management was planned between Nippon Game Card Corporation (hereinafter, referred to as “NGC”), engaged in business in relation to prepaid card system, and Joyco Systems Corporation (hereinafter, referred to as “Joyco”), engaged in the same line of business, to establish a holding company through a joint share transfer to integrate their management. The provision of the AMA, applied to the case, is Article 15-3 of the AMA.

Part II Particular Field of Trade

1. Product Range

Prepaid card systems for use in gaming machines refer to management systems which manage sales of pachinko-halls, etc. (*Note), based on information recorded on prepaid cards (IC cards are mainly used at present) when pachinko-game players enjoy games with pachinko gaming machines and reel-type gaming machines (what is called “pachi-slo,” that is “pachinko-type slot machine”).

The system comprises a variety of equipment including a prepaid-card-type ball-lending-apparatus provided between gaming machines or a prepaid-card-type medal-lending-apparatus provided between gaming machines, a computer for managing the amount of sales, and so on. Manufacturers of prepaid card systems for use in gaming machines (hereinafter, referred to as “system manufacturers”) sell prepaid card systems for use in gaming machines by integrating a variety of necessary equipment at users’ requests.

Moreover, these systems include two types of prepaid cards, that is, a “third-party issuance type” card and a “self-issuance type” card, depending on the difference in issuers of prepaid cards. The “third-party issuance type” card is a prepaid card issued by a system manufacturer, and the balance recorded on the prepaid card held by a game player is protected by laws even in a case where pachinko-halls, etc. go bankruptcy. The “self-issuance type” card is a prepaid card issued by pachinko-halls, etc., and in many cases, the balance recorded on the prepaid card held by a game player is not protected in a case where pachinko-halls, etc. go bankruptcy. In addition, transparency in managing the amount of sales of pachinko-halls has been required. When it comes to the “transparency”, the “third-party issuance type” card is more transparent in managing the amount of sales of pachinko-halls in comparison with that of the “self-issuance type” card owing to the reason that the amount of expenses by game players must be settled between the system manufacturers and Pachinko-halls, etc. in the “third-type issuance” card.

Although there are some differences between them, the both types are equivalent as prepaid card systems for use in gaming machines for pachinko-halls, etc. as the user of these systems. Therefore, the both types are substitutable with each other.

For these reasons, the product range is defined by “prepaid card systems for use in gaming machines.”

(*Note) The term “pachinko-halls, etc.” in this context refers to gambling halls provided with pachinko gaming machines (that is, gambling halls only provided with pachinkos and gambling halls provided with both pachinkos and pachi-slos) and gambling halls provided only with pachi-slos.

2. Geographic Range

System manufacturers operate their business all over Japan. Pachinko halls, etc., which are their users, procure their systems from domestic system manufacturers. Hence, the geographic range is defined by “all over Japan.”

Part III Impact of the Integration on Competition

1. Market Share

(1) Method of calculating Market Share

Each system manufacturer causes pachinko halls, etc. to introduce its systems and causes them to pay usage fees for the system, so that each system manufacturer is able to obtain profits continuously. Each of the system manufacturers always knows the ongoing status of their competition by searching the number of pachinko-halls, etc. which have already introduced their systems. For this reason, when it comes to the market shares, it should be adequate to make a calculation according to the number of pachinko-halls, etc., having introduced certain types of systems.

(2) Market Share

In terms of the size of the domestic market of prepaid card systems for use in gaming machines in fiscal year 2009, approximately 11,000 pachinko-halls, etc. have introduced the systems. In other words, approximately 85% of all domestic pachinko-halls, etc. has already introduced prepaid card system for use in gaming machines. The combined market share of the parties concerned after the integration in management is approximately 50% and is ranked at 1st place. HHI after the integration is approximately 3,400, and the increment of HHI is approximately 800. Therefore, these figures do not fall within the range of safe-harbor rule, applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 1 | NGC | Approximately 40% |
| 4 | Joyco | Approximately 10% |
| (1) | Combined Market Share | Approximately 50% |

2. Status of Competitors

There is a plurality of powerful competitors whose market shares exceed 10%.

Moreover, each of the system manufacturers processes the data associated with the amount of sales of pachinko-halls, having introduced their systems, by using server computers in their own communication centers in order to manage such data. For this reason, each system manufacturer is capable of enhancing its server computers for its data processing without taking much time and costs. Therefore, it is supposed that excess capacities are held by their competitors.

Furthermore, in light of the trend of the market shares in the past decade, entry in the market in question by the “self-issuance type” card manufacturers who are follower companies have grabbed market share, year by year, from the “third-party type” card manufacturers who are first-mover companies (at present, only NGC). Such trend is thought to continue still in the future.

3. Entry

There exists no barrier in systems for entry in the market in question. The amount of capital necessary for entry in the market is substantially small. In addition, there is a plurality of business operators who are willing to enter into the market.

For these reasons, it is supposed that there is a certain degree of entry pressure.

4. Competitive Pressure from Users

Since there is no significant difference among prepaid card systems for use in gaming machines, users (that is, pachinko-halls, etc.) are easily capable of changing the types of prepaid card systems for use in gaming machines which the users intend to introduce. They are now on the verge of reconsidering the systems to be introduced in tandem with their reopening or with their change in gaming machines to new ones with higher specifications.

For these reasons, it is supposed that there exists competitive pressure from users.

5. Assessment from Viewpoint of the AMA

In light of the above-described circumstances, the JFTC assessed that the integration of management between the parties concerned might not be substantially to restrain competition in a particular field of trade through unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

## Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the business combination might not be substantially to restrain a particular field of trade.

## CASE 7　Acquisition of Shares of Varian Inc. by Agilent Technologies Inc.

### Part I Outline of the Case

In this case, Agilent technologies, Inc. (its headquarters is located in the U.S., and hereinafter, referred to as "Agilent"), engaged in manufacturing and sales of analytical instruments, etc., planned to acquire all the issued shares of Varian Inc. (its headquarters is located in the U.S., and hereinafter, referred to as "Varian"), engaged in the same line of business. The provision of the AMA, applied to the case, is Article 10 of the AMA.

Just as other types of business combinations, i.e., mergers, etc., preliminary notification system for acquisition of shares of companies was introduced by the revised AMA in 2009 (put into force on January 1, 2010). This is the first case in which the JFTC has conducted detailed investigation, in response to the preliminary notification associated with the acquisition of shares, by requesting them to submit necessary reports etc.

### Part II Particular Field of Trade

1. Product Range

Among a variety of competing analytical instruments between the parties concerned, the products that are considered to have a significant impact on competition are the following three products, that is, "Micro/portable GC", "Triple quadrupole GC-MS", and " ICP-MS."

(1) Micro/Portable GC

Gas Chromatograph (GC) is an instrument by which a volatile sample is separated into discrete components to analyze whether or not a specific substance is included therein. The product range is defined by "Micro/portable GC" which is portable-type GC.

(2) Triple Quadrupole GC-MS

Gas Chromatography-Mass Spectrometry (GC-MS) is an instrument by which a volatile sample is separated into discrete components by using GC to analyze substances included in discrete components and their amounts contained therein. "Triple quadrupole GC-MS" is a GC-MS equipped with four poles (quadrupole), arranged in series in three rows, so that high precision analysis can be achieved. The product range is defined by "Triple quadrupole GC-MS."

(3) ICP-MS

Inductive Coupled Plasma–Mass Spectrometry (ICP-MS) is an analyzer capable of achieving high sensitivity analysis by ionizing elements with use of inductively-coupled plasma (ICP) in analyzing elements in a sample and their amounts contained therein. The product range is defined by “ICP-MS.”

2. Geographic Range

The parties concerned have been selling analytical instruments all over the world and is selling their analytical instruments through their respective Japanese arms in Japan. Users set great store by quality of products and abundant customer services in selecting their procurement sources. Generally, users tend to procure the products of manufactures who own their headquarters, agents, or distributors in Japan. Therefore the geographic range is defined by “all over Japan.”

Part III Impact of the Share Acquisition on Competition

1. Market Share

(1) Micro/Portable GC

The size of the domestic “micro/portable GC” market in 2008 is estimated at approximately 200 billion Japanese Yen.

The combined market share held by the parties concerned through the acquisition of shares is approximately 80% and is ranked at 1st place. In addition, HHI after the share acquisition is approximately 6,800. The increment of HHI is approximately 3,000. These figures do not fall within the range of safe-harbor rule, applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 1 | Varian | Approximately 50% |
| 2 | Agilent | Approximately 30% |
| (1) | Combined Market Share | Approximately 80% |

(2) Triple Quadrupole GC-MS

The size of the domestic “triple quadrupole GC-MS” market in 2008 is estimated at approximately 1 billion Japanese Yen.

The combined market share held by the parties concerned through the acquisition of shares is approximately 60% and is ranked at 1st place. In addition, HHI after the share acquisition is approximately 4,000. The increment of HHI is approximately 700. These figures do not fall within the range of safe-harbor rule, applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 1 | Varian | Approximately 50% |
| 4 | Agilent | Approximately 10% |
| (1) | Combined Market Share | Approximately 60% |

(3) ICP-MS

The size of the domestic “ICP-MS” market in 2008 is estimated at approximately 4 billion Japanese Yen.

The combined market share held by the parties concerned through the acquisition of shares is approximately 60% and is ranked at 1st place. In addition, HHI after the share acquisition is approximately 4,300. The increment of HHI is approximately 700. These figures do not fall within the range of safe-harbor rule, applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 1 | Agilent | Approximately 55% |
| 5 | Varian | Approximately 5% |
| (1) | Combined Market Share | Approximately 60% |

2. Proposal of Remedies by the Parties Concerned

Not only the JFTC but also Federal Trade Commission (hereinafter, referred to as “FTC”), European Commission, etc. have conducted investigation on their acquisition of shares in question. In the course of the reviews by FTC and European Commission, the both organizations pointed out to the parties concerned that the acquisition of shares between the parties concerned might bring about a significant adverse impact on competition in the field of trade of the above three products, etc. In response thereto, the parties concerned proposed the following remedies:

The parties concerned transfers Micro/portable GC business owned by Agilent to INFICON Holding AG (its headquarters is located in Switzerland; hereinafter "INFICON"). The parties concerned transfers Triple quadrupole GC-MS business and ICP-MS business owned by Varian to Bruker Corporation (its headquarters is located in the U.S.; hereinafter "Bruker"). In response to these remedies, FTC and European Commission permitted the acquisition of shares in question on the premise of implementing the remedies in question (*Note).

Agilent made the same types of proposals as the ones described above to the

JFTC, and the transfer of business associated with the remedies was implemented during the review by the JFTC on the acquisition of shares. With the transfer of business, the market share held by the parties concerned in Japan does not increase even after the acquisition of shares.

Moreover, INFICN and Bruker to which the business is to be transferred have engaged in sales of analytical instruments, etc., all over the world. Since each of the companies has a proven track record of sales through their respective Japanese arms in Japan, the both parties concerned have not only accumulated know-how on analytical instruments but also established their channels for sales.

For these reasons, the JFTC assumes that INFICON and Bruker, as powerful business units, fully make it possible to succeed to and develop each business in the future by way of the transfer of business through their own Japanese arms.

(*Note) At the time when European commission approved the acquisition of shares, it was not decided who to receive the transfer of the business. Therefore, European Commission imposed the following conditions against candidates:

1) To maintain and develop the transferred business
2) To be involved in the field of business and have a proven track record in the field in question
3) To have an organization capable of offering sales and providing services
4) To have channels for sales, and so on.

3. Assessment from Viewpoint of the AMA

In light of the remedies proposed by the parties concerned, the JFTC assessed that the acquisition of shares in question might not be substantially to restrain competition in a particular field of trade through unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the acquisition of shares might not be substantially to restrain a particular field of trade.

(Note) Liaison and Coordination with Overseas Competition Authorities

As described above, FTC and European Commission have made the same types of reviews other than the JFTC. The JFTC conducted its review by exchanging/sharing information between FTC.

CASE 8 Integration of liquefied petroleum gas business between JX Nippon Oil & Energy Corporation and Mitsui Marubeni Liquefied Gas Co., Ltd.

Part I Outline of the Case

JX Nippon Oil & Energy Corporation (hereinafter, referred to as “JX Energy”), operating LP gas business, plans to split its LP gas business (excluding the business concerned operated by Japan Gas Energy Corporation, which is a subsidiary of JX Energy) allowing the LP gas business to be absorbed into Mitsui-Marubeni Liquefied Gas, and then to acquire shares in excess of 50% of Mitsui Marubeni Liquefied Gas Co., Ltd.(hereinafter, referred to as “Mitsui Marubeni Liquefied Gas”). The provisions of the AMA are, applied to the case, is Article 10 and Article 15-2 of the AMA.

Part II Particular Field of Trade

1. Outline of the Products

The term “LP gas” in this context is a generic name of propane, butane, and a mixed gas of propane and butane. Among them, the mixed gas is produced by mixing propane and butane when they are filled into a gas tank truck respectively in shipping the mixed gas by the gas tank truck. Therefore, propane and butane are separately produced, transported, and stored, before their shipment.

75% of the propane and the butane distributed in Japan are imported from gas-producing countries. The methods of producing them are as follows: namely, separating and refining the gas contained in crude oil from oilfields or separating them when natural gas is mined from gas fields. Most of the remaining 25% thereof is produced in Japan by separating it from the gas generated, as a by-product, during the oil refining processes. No product differentiation has been made between the imported products and the domestic products.

The boiling point of propane is negative (-) 42.1 degrees Celsius, whereas, the boiling point of butane is negative (-) 0.5 degrees Celsius. Propane maintains its gas state in temperatures higher than negative (-) 42.1 degrees Celsius under ordinary pressure. On the other hand, butane is liquefied in temperatures lower than negative (-) 0.5 degrees Celsius under ordinary pressure. Moreover, the calorific value of propane per one cubic meter is 94,000 kilojoules. On the other hand, the calorific value of butane per one cubic meter is 121,000 kilojoules. Hence, when the both kinds of gases, each having the same mass, are burned, butane is more efficient than propane in terms of the obtained amount of heat.

When it comes to their usage, propane is typically used for households and for businesses (such as restaurants, etc.). On the other hand, butane is typically used for industries (such as boiler fuel used in factories, etc.), for utility gas services (raw material for utility gas), for automobiles (fuel for LP-gas vehicles, that is, a mixed gas of propane and butane, and hereinafter, referred to as an “automobile gas”), for electric power generation (fuel used for thermal electric power generation), and used as chemical materials (raw material for petrochemical basic products).

Propane and butane are imported from gas producing countries with tankers for transporting frozen gas. Propane and butane are then stored in primary storage facilities and distributed to users from the primary storage facilities by using gas tank tracks. Alternatively, the imported gas is transferred to secondary storage facilities from the primary storage facilities by high pressure tankers for transporting gas and then supplied to users from the secondary storage facilities by using gas tank trucks.

In addition, propane is frequently sold to users by gas retainers through gas wholesalers. On the other hand, butane (except for “automobile gas”) is frequently sold directly by primary distributors to its users, such as, factories, utility gas suppliers, electric power companies, chemical products manufacturers or the like.

Domestic sales prices of propane and butane are generally determined on the basis of the price formula (*Note 2), conforming to FOB price (*Note 1) for long-term contractors, publicly announced every month by Saudi Aramco (Saudi Arabia).

(*Note 1) The term “FOB price” in this context refers to a price at which a seller bears all burdens and responsibilities until goods are loaded into the designated vessel at the port of shipment. The FOB prices of propane and butane, publicly announced every month by Saudi Aramco, for the long-term contractors is called “Contract price” or “CP.”

(*Note 2) The term “price formula” in this context refers to formulae for calculating sales prices of propane and butane. The price formula for propane and butane is different with respect to each primary distributor. The price formula includes CP, import costs, costs for shipping facilities (it means “primary and secondary storage facilities”), petroleum and coal taxes, and so on.

## 2. Definition of Particular Field of Trade

### (1) Product Range

In light of the fact that propane and butane each has its own specific composition, characteristic, and usage, the degree of substitutability in terms of demand between propane and butane is low.

In addition, when it comes to gas storage tanks in shipping facilities used by the primary distributors, since propane and butane each has its own specific liquefied temperature and liquefied pressure or the like, switching between propane storage tanks and butane storage tanks (or vice versa) is difficult. Thus, the degree of substitutability between propane and butane in terms of supply is low.

Therefore, each of “propane” and “butane” is defined as the product range in this case.

(2) Geographic Range

The wholesalers or the like generally procure propane and butane with respect to each regional block due to the restraint resulted from transportation costs by tank trucks. The primary distributors typically use the price formulae on the basis of CP. However, since they have established their service supply systems with respect to each regional block, some primary distributors take wholesale and retail market trends and the balance between demand and supply with respect to each regional block into consideration in the revision of the price formulae or in the negotiations on primary distribution prices when they determine the primary distribution prices.

Therefore, with regard to each of propane and butane, the “regional block” is defined as the geographic range in this case (*Note 3).

(*Note 3) The table below shows regional blocks

| Regional Blocks | Names of Prefectures |
|---|---|
| Hokkaido | Hokkaido |
| Tohoku | Aomori, Iwate, Miyagi, Akita, Yamagata, and Fukushima |
| Kanto | Ibaraki, Tochigi, Gunma, Saitama, Chiba, Tokyo, Kanagawa, Yamanashi, Nagano, Niigata, and Shizuoka |
| Chubu | Aichi, Mie, Gifu, Toyama, Ishikawa, and Fukui |
| Kinki | Shiga, Kyoto, Osaka, Hyogo, Nara, and Wakayama |
| Chugoku | Okayama, Hiroshima, Yamaguchi, Tottori, and Shimane |
| Shikoku | Tokushima, Kagawa, Ehime, and Kochi |
| Kyushu | Fukuoka, Saga, Nagasaki, Kumamoto, Oita, Miyazaki, and Kagoshima |
| Okinawa | Okinawa |

Part III Impact of the Integration on Competition

1. Propane

(1) Market Share

The market size of propane primary distribution (nationwide) in fiscal year 2008 is approximately 12.03 million tons.

The figures below show the combined market share and the rank order of the parties, the level of HHI after the integration, and the increment of HHI as a result of the integration.

Since Shikoku block falls within the safe harbor rule applied to horizontal business combination, the JFTC has concluded that the integration may not be substantially to restrain competition in a particular field of trade.

Note that there is no competition between the parties in Okinawa block.

[Market status with respect to each regional block]

| Regional Block | Combined Share | Rank Order | HHI | |
|---|---|---|---|---|
| | | | After the Business Integration | Increments |
| Hokkaido | 70% | 1st | 5,600 | 2,400 |
| Tohoku | 45% | 1st | 3,500 | 1,000 |
| Kanto | 35% | 1st | 1,800 | 400 |
| Chubu | 35% | 1st | 2,300 | 600 |
| Kinki | 30% | 1st | 2,100 | 300 |
| Chugoku | 45% | 1st | 2,700 | 200 |
| Shikoku | 25% | 2nd | 1,800 | 100 |
| Kyushu | 55% | 1st | 3,400 | 1,100 |

[Reference: Market status all over Japan]

| Combined Share | Rank Order | HHI | |
|---|---|---|---|
| | | After the Business Integration | Increments |
| 40% | 1st | 2,100 | 600 |

(2) State of Competitors

a. Presence of Strong Competitors

There is a plurality of strong competitors each having market share in excess of 10% in each regional block except Hokkaido block and Tohoku block.

In each of Hokkaido block and Tohoku block, there is one strong competitor.

b. The Number of Competitors

There is a plurality of competitors in respective regional blocks.

c. Shipping Facilities of Competitors

With regard to Kanto, Chubu, and Kyushu regional blocks, a plurality of competitors has their own shipping facilities.

With regard to each of Hokkaido and Tohoku regional blocks, only one competitor has its own shipping facilities, respectively.

d. Excess Capacity of Competitors

When it comes to excess capacities of competitors, the estimation on the basis of the excess capacity, which is obtained by subtracting the volume of supply in the fiscal year 2008 from the maximum volume of supply in the past, reveals that competitors in respective regional blocks have excess capacities.

(3) Import

Some bulk users in each of Kanto and Kyushu regional blocks have entered into agreements acting for the import with trading firms to import propane through such trading firms. Bulk users in Kinki block have possibilities of importing propane in the future. Moreover, some bulk users in Kyushu block import propane from Korea to their own secondary storage facilities by using the pressure tankers.

Therefore, it is assumed that there is a certain degree of import pressure with regard to each of Kanto and Kyushu regional blocks.

(4) Competitive Pressure from Related Market

a. Competing Goods

Propane is typically used for households and for businesses, and its competing goods are electric power, utility gas or the like.

General households or the like as “propane users” may have a choice of selecting, as their household energy, electric power in “all-electrified housing” and utility gas service. Recently, there is an increasing trend of switching propane to alternative energy, that is to say, switching their energy to electric power from propane in response to housing rehabilitation to “all-electrified housing” or switching their energy to utility gas from propane in response to the extension of utility gas pipes.

For these reasons, it is assumed that there is a certain degree of competitive pressure from competing goods in respective regional blocks.

b. Status of Geographically Neighboring Market

With regard to respective regional blocks except Hokkaido block, it is possible for the users, operating their business in the prefectures adjacent to the other regional blocks, to procure propane from the shipping facilities in the adjacent regional blocks.

Since there is no land route between Hokkaido block and Honshu-island, it is difficult for the users in Hokkaido block to procure propane from the shipping facilities in the adjacent blocks.

Therefore, with regard to the respective regional blocks except Hokkaido block, it is assumed that there is a certain degree of competitive pressure from the geographically neighboring markets.

(5) Competitive Pressure from Users

Approximately 24,000 propane retailers operate their business in the nationwide propane retailer market. However, the chances of significant increase in propane demand by the households and businesses look slim. Over 6,000 retailers have closed or switched their businesses due to harsh competition after the revision of “Law Concerning the Securing of Safety and the Optimization of Transaction of Liquefied Petroleum Gas” in 1996. In addition, in light of the fact that wholesalers/retailers are capable of switching the primary distributors as their distribution sources, it is assumed that there is a certain degree of competitive pressured from users regardless of the regional blocks.

(6) Assessments Based on the AMA

In consideration of a to e discussed above, the assessments for the respective regional blocks based on the AMA are as follows.

a. Kanto, Chubu, Kinki, and Chugoku Regional Blocks

With regard to Kanto, Chubu, Kinki, and Chugoku regional blocks, the JFTC has concluded that the parties may not be substantially to restrain competition in Kanto, Chubu, Kinki, and Chugoku regional blocks through their unilateral conduct and through their coordinated conduct with their competitor(s) after the integration in consideration of the following reasons: namely, there is a plurality of strong competitors; the plurality of competitors have their own shipping facilities; there is a plurality of competitors; the competitors have excess capacities; there is a certain degree of import pressure with regard to Kanto and Kinki regional blocks; there is a certain degree of competitive pressure from competing goods, such as, electric power, utility gas or the like; there is a certain degree of competitive pressure from geographically neighboring markets; and there is a certain degree of competitive pressure from users.

b. Tohoku Block

With regard to Tohoku block, the JFTC has concluded that the parties may not be substantially to restrain competition in Tohoku block through their unilateral conduct and through their coordinated conduct with their competitor(s) after the integration in consideration of the following reasons: namely, there is one strong competitor; a plurality of competitors, including the strong competitor, have their own shipping facilities; there is a plurality of competitors; the competitors have excess capacities; there is a certain degree of competitive pressure from competing goods, such as, electric power, utility gas or the like; since Tohoku block is adjacent to Ibaraki prefecture in which their competitors have their own shipping facilities, there is a certain degree of competitive pressure from geographically neighboring market; and there is a certain degree of competitive pressure from users.

c. Kyushu Block

With regard to Kyushu block, the JFTC has concluded that the parties may not be substantially to restrain competition in Kyushu block through their unilateral conduct and through their coordinated conduct with their competitor(s) after the integration in consideration of the following reasons: namely, there are two strong competitors; a plurality of competitors, including the strong competitors, have their own shipping facilities; there is a plurality of competitors; it is assumed that import pressure in Kyushu block is stronger than that of the other regional blocks due to that the wholesalers, having their own secondary storage facilities, import propane from Korea; there is a certain degree of competitive pressure from competing goods, such as, electric power, utility gas or the like; since Kyushu block is adjacent to Yamaguchi prefecture in which their competitors have their own shipping facilities, there is a certain degree of competitive pressure from geographically neighboring market; and there is a certain degree of competitive pressure from users.

d. Hokkaido Block

(a) Concerns about Competition

With regard to Hokkaido block, the JFTC has concluded that the parties may be substantially to restrain competition in Hokkaido block through their unilateral conduct and through their coordinated conduct with their competitor(s) after the integration due to the following reasons: namely, although there is one strong competitor and there is a certain degree of competitive pressure from its competing goods and its users, the number of competitors after the integration substantially becomes one (1) and it is difficult to assume that the competitor has excess capacity. In addition, since there is no land route between Hokkaido block and Honshu-island, their users are not only unable to procure propane from the shipping facilities in the other regional blocks but also competitive pressure from graphically neighboring market does not work.

(b) Remedies and Its Assessment

To address the concerns about the competition discussed in the above ｉ,the parties have made the following remedial proposals.

i. Contents of the Proposals

The parties enter into agreements on deposit for consumption (*Note 4) with a plurality of other primary distributors to allow the other primary distributors to use the shipping facilities, having been used by the parties, within Hokkaido block.

(* Note 4) The term “agreement on deposit for consumption” in this context refers to an agreement that is executed between primary distributors to allow shipment of propane and butane from one shipping facility owned by one primary distributor by actually depositing propane and butane to the other shipping facility owned by other primary distributor. The agreement on deposit for consumption between the primary distributors allows the primary distributors to ship propane and butane to the regions even without their own shipping facilities.

ii. Assessment

It is thought that this remedy allows creating new and effective competitors.

Therefore, the JFTC has concluded that the integration may not be substantially to restrain competition in a certain field of trade through their unilateral conduct and through their coordinated conduct with their competitor(s) given that the parties surely implement the remedy proposed by them.

2. Butane

(1) Market Share

The market size of butane primary distribution (nationwide) in fiscal year 2008 is approximately 5.3 million tons.

The figures below show the combined market share and the rank order of the parties, the level of HHI after the integration, and the increment of HHI as a result of the integration. Since Kinki, Chugoku, and Shikoku regional blocks fall within the safe harbor rule applied to horizontal business combination, the JFTC has concluded that the integration may not be substantially to restrain competition in a particular field of trade.

Note that there is no competition between the parties in Okinawa block.

[Market status with respect to each regional block]

| Regional Block | Combined Share | Rank Order | HHI | |
|---|---|---|---|---|
| | | | After the Business Integration | Increments |
| Hokkaido | 35% | 2nd | 5,100 | 600 |
| Tohoku | 65% | 1st | 4,600 | 1,600 |
| Kanto | 30% | 1st | 1,900 | 500 |
| Chubu | 30% | 1st | 2,300 | 300 |
| Kinki | 30% | 1st | 2,200 | 100 |
| Chugoku | 20% | 2nd | 3,600 | 100 |
| Shikoku | 30% | 2nd | 2,500 | 0 |
| Kyushu | 40% | 1st | 2,900 | 600 |

[Reference: Market status all over Japan]

| Combined Share | Rank Order | HHI | |
|---|---|---|---|
| | | After the Business Integration | Increments |
| 30% | 1st | 2,000 | 400 |

(2) State of Competitors

a. Presence of Strong Competitors

There is a plurality of strong competitors each having market share in excess of 10% in each regional block except for Hokkaido block and Tohoku block.

In each of Hokkaido block and Tohoku block, there is one strong competitor.

b. The Number of Competitors

There is a plurality of competitors in respective regional blocks.

c. Shipping Facilities of Competitors

With regard to Kanto, Chubu, and Kyushu regional blocks, a plurality of competitors has their own shipping facilities.

With regard to each of Hokkaido and Tohoku regional blocks, only one competitor has its own shipping facilities, respectively.

d. Excess Capacity of Competitors

When it comes to excess capacities of competitors, the estimation on the basis of the excess capacity, which is obtained by subtracting the volume of supply in the fiscal year 2008 from the maximum volume of supply in the past, reveals that competitors in respective regional blocks have excess capacities.

(3) Import

Some bulk users in each of Kanto and Kyushu regional blocks have entered into agreements acting for the import with trading firms to import butane through such trading firms.

Therefore, it is assumed that there is a certain degree of import pressure with regard to each of Kanto and Kyushu regional blocks.

(4) Entry

With regard to Hokkaido block, since a primary distributor, operating primary distribution business in the other regional block, is planning entry into Hokkaido block at a certain business scale, it is assumed that there is a certain degree of entry pressure in Hokkaido block.

(5) Competitive Pressure from Related Market

a. Competing Goods

Butane is typically used for industries, utility gas services, automobiles, and for chemical raw materials. Typical competing goods with respect to each field of use are as follows: namely, utility gas and liquefied natural gas in the industries; natural gas and liquefied natural gas in utility gas services; gasoline and electric power used by hybrid-automobiles, etc. in automobiles; and naphtha in chemical raw materials.

In respective fields of use, there has been an increasing trend that butane is replaced by the other energy or used alternatively with the other energy.

For these reasons, it is assumed that there is a certain degree of competitive pressure from competing goods in respective regional blocks.

b. Status of Geographically Neighboring Market

With regard to respective regional blocks except Hokkaido block, it is possible for the users, operating their business in the prefectures adjacent to the other regional blocks, to procure butane from the shipping facilities in the adjacent regional blocks.

Since there is no land route between Hokkaido block and Honshu-island, it is difficult for the users in Hokkaido block to procure butane from the shipping facilities in the adjacent blocks.

Therefore, with regard to the respective regional blocks except Hokkaido block, it is assumed that there is a certain degree of competitive pressure from the geographically neighboring markets.

(6) Competitive Pressure from Users

For the reasons (a) and (b) discussed below, it is assumed that there is a certain degree of competitive pressure from users in respective regional blocks.

a. Competing State of Users

Butane is typically supplied to the bulk users, such as factories and utility gas service suppliers. These business operators are capable of switching wholesalers whom they are dealing with in response to their procurement prices by purchasing butane from a plurality of wholesalers or the like or by soliciting bids. In addition, the ratio of directly procuring butane from primary distributors is relatively higher that of propane.

Moreover, propane is supplied to general households after being refilled into smaller cylinders, whereas, butane is supplied in bulk to a single bulk user with tank trucks. This means that the wholesalers' margins obtained from butane is smaller than those of propane and this results in harsh competition among wholesalers or the like to secure sales destinations. Therefore, the wholesalers manage to purchase butane from the parties as cheaply as possible.

b. Easiness of Switching Butane Dealers

The users who procure butane from the primary distributors procure butane from a plurality of butane primary distributors. Furthermore, the users frequently prepare tank trucks going, by themselves, to the primary distributors' shipping facilities to procure butane. In light of such circumstances, it is easy for the users switching the procurement source.

(7) Assessments Based on the AMA

In consideration of b to f discussed above, the assessments for the respective regional blocks based on the AMA are as follows.

a. Kanto and Chubu Regional Blocks

With regard to Kanto and Chubu regional blocks, the JFTC has concluded that the parties may not be substantially to restrain competition in Kanto and Chubu regional blocks through their unilateral conduct and through their coordinated conduct with their competitor(s) after the integration in consideration of the following reasons: namely, there is a plurality of strong competitors; the plurality of competitors have their own shipping facilities; there is a plurality of competitors; the competitors have excess capacities; there is a certain degree of import pressure with regard to Kanto regional block; there is a certain degree of competitive pressure from competeting goods, such as, utility gas or the like; there is a certain degree of competitive pressure from geographically neighboring markets; and there is a certain degree of competitive pressure from users.

b. Hokkaido Block

With regard to Hokkaido block, the JFTC has concluded that the parties may not be substantially to restrain competition in Hokkaido regional block through their unilateral conduct and through their coordinated conduct with their competitor(s) after the integration in consideration of the following reasons: namely, there is one strong competitor who has its own shipping facilities; there is a plurality of competitors; the competitors have excess capacities; since the primary distributor, operating primary distribution business in the other regional block, is planning entry into Hokkaido block, there is a certain degree of entry pressure; there is a certain degree of competitive pressure from competing goods, such as, utility gas and so on; and there is a certain degree of competitive pressure from users.

c. Kyushu Block

With regard to Kyushu block, the JFTC has concluded that the parties may not be substantially to restrain competition in Kyushu block through their unilateral conduct and through their coordinated conduct with their competitor(s) after the integration in consideration of the following reasons: namely, there are two strong competitors; a plurality of competitors, including the strong competitors, have their own shipping facilities; the competitors have excess capacities; it is assumed that import pressure in Kyushu block is stronger than that of the other regional blocks due to that the users import butane by themselves; there is a certain degree of competitive pressure from competing goods, such as, utility gas and so on; since Kyushu block is adjacent to Yamaguchi prefecture in which their competitors have their own shipping facilities, there is a certain degree of competitive pressure from geographically neighboring market; and there is a certain degree of competitive pressure from users.

d. Tohoku Block

i. Concerns about Competition

With regard to Tohoku block, the JFTC has concluded that the parties may be substantially to restrain competition in Tohoku block through their unilateral conduct and through their coordinated conduct with their competitor(s) after the integration unless the parties continue their barter trades: the JFTC admits that there is one strong competitor who has its own shipping facilities; there is a plurality of competitors; the competitors have excess capacities; there is a certain degree of competitive pressure from competing goods, such as, utility gas and so on; since Tohoku block is adjacent to Ibaraki prefecture in which their competitors have their own shipping facilities, there is a certain degree of competitive pressure from geographically neighboring markets; and there is a certain degree of competitive pressure from users. However, the JFTC thinks that if the parties terminate the barter trade (*Note 5) with their competitors after the integration, this may cause a decrease in the market share held by their competitors carrying out the barter trade with the parties to result in not only further increase in the market share held by the parties but also a situation almost equal to duopoly of the market by the parties and their strong competitors.

(*Note 5) The term “barter trade” in this context, refers to a purchase and sales deals by which propane or butane are supplied with each other from primary distributors’ shipping facilities on an equivalent quantity/equivalent price basis. Carrying out such a barter trade allows shipping the propane or the butane to the regions even without their own shipping facilities.

ii. Remedy and Its Assessment

To address the concerns about the competition discussed in the above (a), the parties have made the following remedial proposals.

(i) Contents of the Proposals

At the request of the other primary distributors who currently receive butane supply from the shipping facilities in Tohoku block owned by the parties (hereinafter, referred to as “trading partners”), the parties continue the current barter trade of butane with the trading partners.

(ii) Assessment

This remedy allows continuation of current barter trade of butane by the parties in Tohoku block, so that the supply system by their competitors can be maintained. As a result thereof, this remedy may effectively prevent the increase in the market share and the degree of oligopoly held by the parties.

Therefore, the JFTC has concluded that sure implementation of the proposed remedy by the parties may not be substantially to restrain competition in Tohoku block through unilateral conduct by the parties and through the coordinated conduct with their competitor(s) after the integration.

## Part IV Conclusion

For the reasons discussed above, the JFTC has concluded that the integration may not be substantially to restrain competition in a particular field of trade.

CASE 9　Acquisition of Shares of Tampeinakata by Alfresa Holdings

Part I Outline of the Case

In this case, Alfresa Holdings Corporation (hereinafter, referred to as “Alfresa HD”), engaged in wholesale business of pharmaceutical products planned to acquire shares of Tampeinakata Co.,Ltd. (hereinafter, referred to as “Tampeinakata”), engaged in the same line of business, to acquire full ownership of Tampeinakata. The provision of the AMA, applied to the case, is Article 10 of the AMA.

Part II Particular Field of Trade (*Note1)

Among the five competing fields between the parties concerned, the field to which an impact on discrete competition needs to be considered is wholesale business of proprietary drugs.

1. Product Range

The term “proprietary drug” in this context refers to pharmaceuticals whose behaviors on human body are less significant in terms of their potent/efficacy and which can be purchased, without prescriptions by doctors, at consumers’ discretion and used by them based on the principle of self-responsibility according to the information provided by pharmacists.

Proprietary drugs include a wide range of products having a variety of drug efficacy and each of them has its own function and efficacy. Wholesalers of proprietary drugs are able to deal with proprietary drugs of any drug efficacy. Therefore, the product range is defined by “wholesalers of proprietary drugs.”

2. Geographic Range

There is no bottleneck when wholesalers of proprietary drugs conduct their business activities across prefectural borders. Generally, major proprietary drug wholesalers seem to conduct their business activities in units of regional blocks. Retailers who are their users include a large number of drug stores/pharmacies, and it is difficult to rule out the possibility that some retailers purchase proprietary drugs only from the proprietary drug wholesalers who have their business hub(s) in a prefecture where retailers’ stores are located. Therefore, the geographic range is defined by “each regional block (*Note2)” and “each prefecture” in a multilayered way.

(*Note1) The Determination of a particular field of trade in this case is the same as the business combination case in the past, that is, “Case 10 “acquisition of shares of Kobashou Inc. by Mediceo Paltac Holdings Co., Ltd.” of the major business combination cases in 2007.”

(*Note 2) The table below shows respective regional blocks.

| Regional Blocks | Prefectures | Regional Blocks | Prefectures |
|---|---|---|---|
| Hokkaido | Hokkaido | Kinki | Shiga, Kyoto, Osaka, Hyogo, Nara, Wakayama |
| Tohoku | Aomori, Iwate, Miyagi, Akita, Yamagata, Fukushima | Chugoku | Tottori, Shimane, Okayama, Hiroshima, Yamaguchi |
| Kanto | Ibaraki, Tochigi, Gunma, Saitama, Chiba, Tokyo, Kanagawa | Shikoku | Tokushima, Kagawa, Ehime, Kochi |
| Hokuriku-Koushinetsu | Niigata, Toyama, Ishikawa, Fukui, Yamanashi, Nagano | Kyushu | Fukuoka, Saga, Nagasaki, Kumamoto, Oita, Miyazaki, Kagoshima |
| Chubu | Gifu, Shizuoka, Aichi, Mie | Okinawa | Okinawa |

Part III Impact of the Share Acquisition on Competition

1. Regional Blocks

(1) Market Share

The size of the proprietary drugs market (all over Japan) in fiscal year 2008 is approximately 350 billion Japanese Yen.

The table below shows the combined market share of the parties concerned after the share acquisition, their share in the market, their rank in the market, HHI after the share acquisition, and the increment of HHI after the share acquisition.

Note that since “Hokkaido block” and “Shikoku block” fell within the range of safe harbor rule applied to horizontal business combination, the JFTC judged that the acquisition of shares might not be substantially to restrain a particular field of trade.

[Status of the Market of Each Regional Block]

| Regional Blocks | Combined Market Share | Rank | HHI | |
|---|---|---|---|---|
| | | | After Share Acquisition | Increments |
| Tohoku | 25% | 2nd place | 3,000 | 300 |
| Kanto | 35% | 1st place | 2,400 | 500 |
| Hokuriku-Koushinetsu | 30% | 1st place | 1,900 | 500 |
| Chubu | 40% | 1st place | 2,800 | 800 |
| Kinki | 40% | 1st place | 3,000 | 700 |
| Chugoku | 35% | 2nd place | 3,200 | 400 |
| Kyushu | 25% | 3rd place | 2,700 | 300 |
| Okinawa | 55% | 1st place | 3,300 | 400 |

(2) Status of Competitors

a. Powerful Competitors

There is a plurality of powerful competitors each holding market share in excess of 10% in respective regional blocks except Chugoku and Okinawa blocks.

b. The Number of Competitors

There is a plurality of competitors in respective regional blocks.

c. Excess Capacities of Competitors

Wholesalers of proprietary drugs are capable of increasing their sully quantity with ease by increasing their purchase quantity from proprietary drug manufacturers. In addition, since major wholesalers of proprietary drugs have a plurality of logistics hubs, they are easily capable of supplying their goods from the other affordable logistic hubs, in response to a shortfall of goods in a particular region. For these reasons, it is supposed that each of the proprietary drug wholesalers has enough excess capacity.

(3) Actual Status of Transactions

When it comes to distribution processes of proprietary drugs, not only proprietary drug manufacturers have provided wholesalers and retailers with a variety of rebates but also the wholesalers have provided their retailers with a variety of rebates. For this reason, it is difficult for each of the wholesalers to guess the conditions of transactions, etc. for the other wholesalers.

(4) Entry

To run a proprietary drug wholesale business, Pharmaceutical Affairs Act of Japan requires a business operator to get permission from the prefectural governor of the prefecture where the business operator’s offices are located with respect to each of his/her service offices. Since it does not require huge investments for satisfying the requirements of permission, its entry barrier is assumed to be low.

However, wholesale business of proprietary drugs not only requires high management costs in comparison with the other types of wholesale business but also price competition among the wholesalers is severe. For these reasons, we would have to say that wholesale business of proprietary drugs is business whose profit rate is very low. Due to this, new entry in the market seems to be difficult. Therefore, it is supposed that there exists no entry pressure.

(5) Competitive Pressure from Related Markets

It is supposed that there exists competitive pressure from Related Markets in light of the following reasons a and b.

a. Direct-Sales Manufacturers

There are two types of proprietary drugs. The first type is products supplied from proprietary drug manufacturers through wholesalers to respective retailers. The second type is products directly supplied to respective retailers without intermediation of wholesalers (hereinafter, proprietary drug manufacturers who directly supplies retailers with their products are called as “direct-sales manufacturers.”)

Moreover, proprietary drugs can be classified into a variety of categories based on their efficacy, and major direct-sales manufacturers deploy products, developed by them, with respect to each of the categories. There is no difference between their product line ups and those of wholesalers. In addition, the ratio of the sum of proprietary drugs supplied from direct-sales manufacturers to retailers is approximately 50% of the total sum of proprietary drugs supplied to retailers.

Under such circumstances, it is difficult for proprietary drugs wholesalers to set wholesale prices without regard for the wholesale prices of direct-sales manufacturers.

b. Competitive Pressure from Geographically Neighboring Market(s)

When it comes to the wholesale business of proprietary drugs, there is no restraint on transactions across the borders of respective regional blocks, and there are cases where each retailer is also able to procure goods from wholesalers having logistic hubs in neighboring regional blocks.

(6) Competitive Pressure from Users

It is supposed that there exists competitive pressure from users in light of the following reasons a and b.

a. Room for Price Negotiation by Retailers

In the retail market of proprietary drugs, severe competition has been made by and around chain drug stores, and as a result, the retail prices of proprietary drugs show a downward trend. There are strong requests for a price reduction against proprietary drug wholesalers from retailers. More specifically, retailers attempt to achieve lower purchase prices as far as they can by requesting quotations from multiple proprietary drug wholesalers. Actually, the profit rate of proprietary drug wholesale business has been falling year by year, despite the fact that integration of management has frequently occurred in the proprietary drug market in the past and the number of business operators has also decreased.

b. Ease of Changing Suppliers

There is no difference in basic functions required for wholesalers among proprietary drug wholesalers. Hence it is easy for retailers to change wholesalers with whom they have had business transactions depending on the conditions of transactions, such as, prices, etc.

(7) Business Conditions of Parties Concerned

Although Tampeinakata has been receiving support from Alfresa HD, etc. in addition to its personnel downsizing and its business streamlining, Tampeinakata’s business conditions are not favorable. For this reason, it is difficult to think that the integration of management between the parties concerned significantly increases their competitiveness.

(8) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC judged that the integration of management might not be substantially to restrain a particular field of trade through unilateral business behavior by the parties concerned or through coordinated business behavior between the parties concerned and the other competitors.

2. Respective Prefectures

In addition to the circumstance, that is, although there exist some prefectures in which HHI and the increment of HHI after the integration of management do not fall within the range of safe-harbor rule applied to horizontal business combination, there exists a plurality of powerful competitors in these prefectures, in light of the circumstances described in the above 3. (1) b (c) and c through h, the JFTC judged that the integration management in question might not be substantially to restrain a particular field of trade through unilateral business behavior by the parties concerned or through coordinated business behavior between the parties concerned and the other competitors.

Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the integration of management might not be substantially to restrain a particular field of trade.

CASE 10 Integration of Management between Chuo Mitsui Trust Holdings, Inc. and Sumitomo Trust and Banking Company, Limited

Part I Outline of the Case

In this case, Sumitomo Trust and Banking Company, Limited (hereinafter, referred to as “Sumitomo Trust and Banking”), engaged in trust business, planned exchange of shares with Chuo Mitsui Trust Holdings, Inc. (hereinafter, referred to as “Chuo Mitsui Trust HD”), retaining two trust banks, that is to say, Chuo Mitsui Asset Trust and Banking Company, Limited (hereinafter, referred to as “Chuo Mitsui Asset Trust and Banking”) and The Chuo Mitsui Trust and Banking Company, Limited (hereinafter, referred to as “Chuo Mitsui Trust and Banking”) to integrate their business operations. The provision of the AMA, applied to the case, is Article 10 of the AMA.

Part II Particular Field of Trade

1. Scope of Service

With regard to trust services, the following six fields might be the fields in each of which an impact on competition by the integration of management needs to be separately scrutinized:

(1) money in trust/fund trust
(2) mutual funds
(3) fiduciary services on corporate pensions, i.e., pension trusts, etc. (hereinafter, referred to as “pension trusts, etc.”)
(4) fiduciary services on securities
(5) fiduciary services on monetary claims, and
(6) comprehensive fiduciary services

Moreover, as to the service except the trust services, the field in which the JFTC separately needs to scrutinize an impact on competition by the integration of management is (7) securities transfer agent services.

Note that the above trust services and the service other than the trust services refer to the following services.

(1) The term “money in trust/fund trust” in this context refers to trust services in which an entruster entrusts money or some sort of assets equivalent thereto to a trustee and the trustee maintains/manages the money or assets equivalent thereto.
(2) The term “mutual funds” in this context refer to services in which an investment trust management company collets funds from investors to set up a trust and the investment trust management company gives directions on assets management of the entrusted

assets, i.e., securities, etc., thereby distributing the profits of the assets management to investors. Business operators, offering in fiduciary services conduct their services, such as, management of entrusted assets, in response to the directions on assets management from investment trust management companies.

(3) The term “fiduciary services on corporate pensions”, i.e., pension trusts, etc., in this context refers to services which maintain/manage defined-benefit corporate pensions (i.e., employees' pension funds, defined-benefit corporate pensions, and approved retirement annuities). When it comes to the defined-benefit corporate pensions, such pension assets are maintained and/or managed by business operators, offering in fiduciary services, life insurance companies, and Japan Agricultural Cooperatives.

(4) The term “fiduciary services on securities” in this context refers to services in which a business operator, offering fiduciary services, are entrusted with securities, held by an entrustor, as trust assets, and maintains, manages, or disposes the trust assets.

(5) The term “fiduciary services on monetary claims” in this context refer to services in which a business operator, offering fiduciary services, is entrusted with monetary claims held by an entrustor as trust assets, and manages and/or disposes the trust assets. The fiduciary services on monetary claims have been employed as a method for achieving greater liquidity claims.

(6) The term “comprehensive fiduciary service” in this context refers to services in which a plurality of different types of trust assets, i.e., money, securities, movable assets, real properties, etc., is entrusted as a single entrustment.

(7) The term “securities transfer agent services” in this context refers to services in which a business operator conducts, as a shareholder registry administrator, services associated with securities in place of the company which issues the securities. When it comes to the securities transfer agent services, trust and banking companies and companies specialized in transfer agent services administrate shareholder registries and conduct a variety of services associated with holding shareholders’ meetings.

2. Geographic Range

When it comes to the geographic range, since business operators, engaged in the business described in the above 1, deploys the services all over Japan, the geographic range is defined by “all over Japan.”

Part III Impact of the Integration of Management on Competition

1. Money in Trust/Fund Trust

(1) Market Share

The balance of trust assets of money in trust/fund trust as of March 31st, 2009 is approximately 87 trillion Japanese Yen.

The combined market share held by the parties concerned after the integration of management is approximately 30% and is ranked at 1st place. Moreover, HHI after the integration of management is approximately 2,300 and the increment of HHI is approximately 400. These figures do not fall within the range of safe-harbor rule applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 3 | Sumitomo Trust and Banking | Approximately 20% |
| 5 | Chuo Mitsui Trust HD (*Note1) | Approximately 10% |
| (1) | Combined Market Share | Approximately 30% |

(*Note1) The share of “Chou Mitsui Trust HD” is the sum total of the shares held by Chuo Mitsui Trust and Banking and Chuo Mitsui Asset Trust and Banking (hereinafter, the same shall be applied thereto).

(2) Status of Competitors

There is not only a plurality of powerful competitors who hold market shares in excess of 10% but also there are a number of competitors.

In addition, the services on money in trust/fund trust are processed by using computer systems, so that business operators, offering in fiduciary services, i.e., trust and banking companies, etc., are capable of increasing the quantity of supplied services relatively with ease. Therefore it is supposed that each of the business operators, supplying fiduciary services, has sufficient excess capacities.

(3) Entry

When it comes to money in trust/fund trust, a plurality of business operators has entered in the market within the past five years. For this reason, it is supposed that there is certain entry pressure.

(4) Competitive Pressure from Related Markets

Financial products is similar to money in trust/fund trust from the viewpoint of maintaining and/or managing money, and there is a variety of financial products, such as, deposit, etc. moreover, there are a number of financial institutions such as banks, etc., which offer these financial products, whereby active competition is now in progress.

Therefore, it is supposed that there is a certain degree of competitive pressure from Related Markets.

(5) Competitive Pressure from Users

Institutional investors who are major customers of money in trust/fund trust diversify their investments. These institutional investors compare and scrutinize performances, rates of trust fees, etc., of the business operators offering fiduciary services (that is, “entrustees”), and the institutional investors review, as needed, for changing their entrustees. Furthermore it is easy to change their entrustees.

For these reasons, it is supposed that there is competitive pressure from users.

(6) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed the integration of management might not be substantially to restrain competition in a particular field of trade through the unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

2. Fiduciary Services on Mutual Funds

(1) Market Share

The balance of trust assets of fiduciary services on mutual funds as of March 31st, 2009 is approximately 98 trillion Japanese Yen.

The combined market share held by the parties concerned after the integration of management is approximately 35% and is ranked at 1st place. Moreover, HHI after the integration of management is approximately 2,300 and the increment of HHI is approximately 400. These figures do not fall within the range of safe-harbor rule applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 2 | Sumitomo Trust and Banking | Approximately 25% |
| 6 | Chuo Mitsui Asset Trust and Banking | Approximately 10% |
| (1) | Combined Market Share | Approximately 35% |

(2) Status of Competitors

There is a plurality of powerful competitors who hold market shares in excess of 10%.

In addition, the fiduciary services on mutual funds are processed by using computer systems, so that business operators, offering in fiduciary services, are capable of increasing the quantity of service relatively with ease. Therefore it is supposed that each of the business operators, supplying fiduciary services, has sufficient excess capacities.

(3) Competitive Pressure from Users

Since fiduciary services on mutual funds are highly homogeneous, it is easy to switch business operators (engaged in business of offering fiduciary services) as the entrustees in switching the products (funds). For these reasons, companies who are the customers of entrustees hold strong power in price negotiation with their entrustees. Due to this, the rates of trust fees paid for the business operators, offering fiduciary services, have shown downward trends.

Therefore, it is supposed that there is competitive pressure from users.

(4) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed the integration of management might not be substantially to restrain competition in a particular field of trade through the unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

3. Pension Trusts, etc.

(1) Market Share

The balance of operating assets of pension trusts, etc.., as of March 31st, 2009 is approximately 46 trillion Japanese Yen.

The combined market share held by the parties concerned after the integration of management is approximately 25% and is ranked at 1st place. Moreover, HHI after the integration of management is approximately 1,700 and the increment of HHI is approximately 400. These figures do not fall within the range of safe-harbor rule applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 2 | Sumitomo Trust and Banking | Approximately 15% |
| 3 | Chuo Mitsui Asset Trust and Banking | Approximately 15% |
| (1) | Combined Market Share | Approximately 25% |

(2) Status of Competitors

There is a plurality of powerful competitors who hold market shares in excess of 10%.

In addition thereto, there are a number of competitors.

(3) Competitive Pressure from Related Markets

Discretionary investment contracts offered by investment advisory companies have the same or similar effect to pension trusts, etc.., in terms of managing pension assets. For this reason, it can be thought that there exists a Related Markets to the pension trusts, etc. The balance of operating assets of discretionary investment contracts occupies in excess of 50% of the balance of operating assets of the pension trusts, etc. In addition, there are a number of investment advisory companies offering discretionary investment contracts, whereby active competition is now in progress.

Therefore it is supposed that there exists strong competitive pressure from the Related Markets.

(4) Competitive Pressure from Users

Foundations and corporations who are the customers of pension trusts, etc. diversify their investments. These institutional investors compare and scrutinize performances, rates of trust fees, etc., of the business operators offering fiduciary services (that is, “entrustees”), and foundations and corporations review, as needed, for changing their entrustees. Furthermore it is easy to change their entrustees.

For these reasons, it is supposed that there is competitive pressure from users.

(5) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed the integration of management might not be substantially to restrain competition in a particular field of trade through the unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

4. Fiduciary Services on Securities

(1) Market Share

The balance of trust assets of fiduciary service on securities as of March 31st, 2009 is approximately 42 trillion Japanese Yen.

The combined market share held by the parties concerned after the integration of management is approximately 45% and is ranked at 1st place. Moreover, HHI after the integration of management is approximately 2,900 and the increment of HHI is approximately 300. These figures do not fall within the range of safe-harbor rule applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 1 | Sumitomo Trust and Banking | Approximately 40% |
| 5 | Chuo Mitsui Trust HD | 0 to 5% |
| (1) | Combined Market Share | Approximately 45% |

(2) Status of Competitors

There is a plurality of powerful competitors who hold market shares in excess of 10%. In addition thereto, there are a number of competitors.

In addition, the fiduciary services on securities are processed by using computer systems, so that business operators, offering such services, are capable of increasing the quantity of supplied services relatively with ease. Therefore it is supposed that each of the business operators, offering fiduciary services, has sufficient excess capacities.

(3) Entry

When it comes to fiduciary services on securities, a plurality of business operators has entered in the market within the past five years. For this reason, it is supposed that there exists entry pressure.

(4) Competitive Pressure from Related Markets

Safe-deposits offered by financial institutions, such as, securities companies is service having similar functions to fiduciary services on securities in terms of managing securities. The market size of safe-deposits is greater than that of fiduciary services on securities, and there are a number of financial institutions offering safe-deposit services, whereby active competition is now in progress.

Therefore, it is supposed that there exists a certain degree of competitive pressure from related markets.

(5) Competitive Pressure from Users

Institutional investors who are major customers of fiduciary services on securities diversify their investments. These institutional investors compare and scrutinize rates of trust fees, etc., of business operators offering fiduciary services (that is, “entrustees”), and the institutional investors review, as needed, for changing their entrustees. Furthermore it is easy to change their entrustees.

For these reasons, it is supposed that there exists competitive pressure from users.

(6) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed the integration of management might not be substantially to restrain competition in a particular field of trade through the unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

5. Fiduciary Services on Monetary Claims

(1) Market Share

The balance of trust assets of fiduciary services on monetary claims as of March 31st, 2009 is approximately 33 trillion Japanese Yen. The combined market share held by the parties concerned after the integration of management is approximately 35% and is ranked at 2nd place. Moreover, HHI after the integration of management is approximately 2,700 and the increment of HHI is approximately 300. These figures do not fall within the range of safe-harbor rule applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 2 | Sumitomo Trust and Banking | Approximately 30% |
| 4 | Chuo Mitsui Trust HD | 0 to 5% |
| (2) | Combined Market Share | Approximately 35% |

(2) Status of Competitors

There is not only a plurality of powerful competitors who hold market shares in excess of 10% but also there are a number of competitors.

(3) Entry

When it comes to fiduciary services on monetary claims, a plurality of business operators has entered in the market within the past five years. For this reason, it is supposed that there exists entry pressure.

(4) Competitive Pressure from Related Markets

Liquidity of claims by way of special-purpose companies (SPCs) is service having an effect similar to the fiduciary services on monetary claims in terms of liquidity of short-term monetary claims. There are a number of financial institutions offering services associated with liquidity of claims by way of SPCs.

Therefore, it is supposed that there exists a certain degree of competitive pressure from Related Markets.

(5) Competitive Pressure from Users

When it comes to monetary claims, due to the equalized contents of financial products, business operators, offering fiduciary services (that is, “entrustees”), are selected by bidding mainly at major contracts. As a result, the rates of trust fees paid for the business operators, offering fiduciary services, have shown downward trends.

For these reasons, it is supposed that there exists competitive pressure from users.

(6) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed the integration of management might not be substantially to restrain competition in a particular field of trade through the unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

6. Comprehensive Fiduciary Services

(1) Market Share

The balance of trust assets of comprehensive fiduciary services as of March 31st, 2009 is approximately 78 trillion Japanese Yen.

The combined market share held by the parties concerned after the integration of management is approximately 20% and is ranked at 2nd place. Moreover, HHI after the integration of management is approximately 2,500 and the increment of HHI is approximately 200. These figures do not fall within the range of safe-harbor rule applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 4 | Sumitomo Trust and Banking | Approximately 10% |
| 5 | Chuo Mitsui Trust HD | Approximately 10% |
| (2) | Combined Market Share | Approximately 20% |

(2) Status of Competitors

There is not only a plurality of powerful competitors who hold market shares in excess of 10% but also there are a number of competitors.

(3) Entry

When it comes to comprehensive fiduciary services, a plurality of business operators has entered in the market within the past five years. For this reason, it is supposed that there exists entry pressure.

(4) Competitive Pressure from Users

Institutional investors and/or real estate agents who are major customers of comprehensive fiduciary services compare and scrutinize rates of trust fees, etc. of the business operators offering comprehensive fiduciary services (that is, “entrustees”), and review, as needed, for changing their entrustees. Furthermore it is easy to change their entrustees.

For these reasons, it is supposed that there exists competitive pressure from users.

(5) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed the integration of management might not be substantially to restrain competition in a particular field of trade through the unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

7. Securities Transfer Agent Services

(1) Market Share

As of March 31st, 2009, the companies, which offer transfer agent services, are entrusted with the issuance of shares from approximately 7,300 share-issuing companies (among them, 3,800 companies are public-listed companies) and the number of registered shareholders is approximately 54 million share holders.

The combined market share held by the parties concerned after the integration of management is approximately 40% and is ranked at 2nd place. Moreover, HHI after the integration of management is approximately 3,800 and the increment of HHI is approximately 800. These figures do not fall within the range of safe-harbor rule applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 2 | Chuo Mitsui Trust and Banking(*Note 2) | Approximately 25% |
| 3 | Sumitomo Trust and Banking | Approximately 15% |
| (2) | Combined Market Share | Approximately 40% |

(*Note 2) This figure is the sum total of the shares held by both Chuo Mitsui Trust and Banking and that held by Tokyo Securities Transfer Agent Co., Ltd. (100 percent subsidiary of Chuo Mitsui Trust and Banking).

(2) Status of Competitors

There is a plurality of powerful competitors who hold market shares in excess of 10%.

In addition, services, offered by securities transfer agents, are processed by using computer systems, so that companies, offering securities transfer agent services, are capable of increasing the quantity of supplied services relatively with ease. Therefore it is supposed that each of the business operators who offer securities transfer agent services has sufficient excess capacities.

(3) Competitive Pressure from Users

Securities transfer agent services are highly homogeneous service. When a company that issues shares change its securities transfer agent(s) (hereinafter, referred to as “change in fiduciary”), the securities transfer agent(s) who is newly entrusted with the company’s shares frequently bears the costs for change in fiduciary. Systematization of securities transfer agent services is currently ongoing. For the above-described reasons, change in fiduciary is getting easier, so that the number of share-issuing companies which changes their fiduciaries has been increasing. Hence share-issuing companies are in an advantageous position in terms of transactions with securities transfer agents.

Therefore, it is supposed that there exists competitive pressure from users.

(4) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed the integration of management might not be substantially to restrain competition in a particular field of trade through the unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the integration of management might not be substantially to restrain a particular field of trade.

## CASE 11 Acquisition of Shares of Toho Sales CO., LTD. by Watakyu Seimoa Corporation

### Part I Outline of the Case

In this case, Watakyu Seimoa Corporation (hereinafter, referred to as “Watakyu”), engaged in linen supply business all over Japan, planned to acquire all the outstanding shares of Toho Sales Co., Ltd. (hereinafter, referred to as “Toho Sales”), engaged in the same line of business in Tokushima Prefecture, to acquire full ownership of Toho Sales. The provision of the AMA, applied to the case, is Article 10 of the AMA.

### Part II Particular Field of Trade

#### 1. Scope of Services

Linen supply business is classified into two categories, that is, hotel linen supply business and hospital linen supply business. The contents of services supplied by each type of suppliers are different in regulations, such as laws and ordinances applied to them, business categories of users, systems of supplied services, etc., and therefore, there is no substitutability between them. For this reason, the scope of services is defined by a “hotel linen service” and a “hospital linen service.”

#### 2. Geographic Range

When it comes to hotel linen service, linen supply business operators needs to perform pick-up and delivery at specified time almost every day. Generally, their users have business transactions with linen supply business operators owning laundry factories within the same prefecture.

When it comes to hospital linen service, linen supply business operators are capable of conducting their business all over Shikoku region if they own factories within Shikoku region. This allows their users to have business transactions with linen supply business operators all over Shikoku region regardless of the prefectures where the line supply business operators’ factories are located.

Therefore, when it comes to the hotel linen service, the geographic range is defined by “respective prefectures” and is defined by “Tokushima Prefecture” in which the parties concerned compete against each other. (Although Watakyu owns no laundry factory in Tokushima Prefecture, Watakyu is one of the companies having business transactions with the users in Tokushima Prefecture.) When it comes to the hospital linen service, the geographic range is defined by “Shikoku block.”

Part III Impact of the Acquisition of Shares on Competition

1. Hotel Linen Service

When it comes to the hotel linen service, HHI after the acquisition of shares and the increment of HHI by the acquisition of shares fall within the range of safe-harbor rule applied to horizontal business combination. For this reason, the JFTC assessed that the acquisition of shares might not be substantially to restrain competition in a particular field of trade.

2. Hospital Linen Service

(1) Market Share

The size of the hospital linen service market in Shikoku block in fiscal year 2009 is approximately 3.3 billion Japanese Yen.

The combined market share held by the parties concerned after the acquisition of shares is approximately 35% and is ranked at 1st place. Moreover, HHI after the acquisition of shares is approximately 2,900 and the increment of HHI is approximately 400. These figures do not fall within the range of safe-harbor rule applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 2 | WataKyu | Approximately 25% |
| 4 | Toho Sales | Approximately 10% |
| (1) | Combined Market Share | Approximately 35% |

(*Note) In this table, figures of the companies whose shares are to be added thereto are included.

(2) Status of Competitors

There is a plurality of powerful competitors who hold market shares in excess of 10%. In addition, the operating rates of laundry factories indicate that both the parties concerned and their competitors have excess capacities.

(3) Entry

The JFTC found a case in which a business operator, engaged in different line of business from the linen supply service, newly built a laundry factory for linen supply service within Shikoku region to start business operations mainly focusing on the hospital linen service.

Furthermore, in the context of increasing consciousness of cost reduction by users, recently, some business operators, engaged in different line of business, are getting contracts of peripheral business, (i.e., leasing service of white coats or mattress which is not for bedding) associated with linen supply service, from users having had no business transactions with users. Such business operators start their business for the purpose of newly acquiring the linen supply service.

For this reason, it is supposed that there exists entry pressure.

(4) Competitive Pressure from Related Markets

The JFTC found a case in which development of traffic networks allowed users to select the business operators owning laundry factories outside Shikoku region. The case described above is thought to continue hereafter.

Therefore it is supposed that there exists competitive pressure from related markets.

(5) Competitive Pressure from Users

When it comes to the hospital linen service, users obtain competitive quotes from plural business operators to place orders, and the term of contract is 1 to 3 years. When it comes to the laundry service on bedding and its sterilization, laundry factories are automated in addition to regulations stipulated by laws and ordinances, etc. Therefore there is not a big difference among business operators, and it is easy for their users to change, upon the expiration of their contracts, linen supply business operators with whom they have had business transactions.

Therefore it is supposed that there exists competitive pressure from users.

(6) Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed the acquisition of shares might not be substantially to restrain competition in a particular field of trade through the unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the acquisition of shares might not be substantially to restrain a particular field of trade.

CASE 12　Integration of Management between BLM Inc. and Kishimoto Clinical Laboratory, Inc.

Part I Outline of the Case

In this case, BML Inc. (hereinafter, referred to as “BML”), mainly engaged in business of commissioned clinical examinations all over Japan, and Kishimoto Clinical Laboratory, Inc. (hereinafter, referred to as “Kishimoto Clinical Laboratory”), engaged in the same line of business mainly in Hokkaido, planned to integrate their business operations. The provisions of the AMA, applied to the case, are Article 10 and Article 15-2 of the AMA.

Note that, in this case, the parties concerned and main financing bank, in their joint names, applied for support of corporate restructuring of Kishimoto Clinical Laboratory to Enterprise Turnaround Initiative Corporation of Japan (hereinafter, referred to as “ETIC”).

Part II Particular Field of Trade

1. Scope of Service

Generally, “clinical examinations” are classified into two categories, that is, physiological function tests and laboratory tests. Physiological function tests (i.e., electrocardiogram examination, ultrasonic examination, electroencephalographic examination, etc.) fall under “medical practices” because medical institutions examine the bodies of patients who consult doctors.” Therefore such examinations are permitted only for medical institutions. On the other hand, medical institutions are permitted to outsource their laboratory tests to external business operators who satisfied the requirements stipulated by laws, such as, Medical Care Act, etc.

The parties concerned are engaged in the following business: They conduct laboratory tests commissioned by medical institutions, that is, their users, and report/provide the results of their laboratory tests to their users. Therefore the scope of service is defined by the “commissioned clinical examination business.”

2. Geographic Range

Medical institutions, that is, their users, select the contractors from the business operators who own clinical examination facilities within the regions where the users are running their business, in consideration of collection and delivery of specimen material at any time, etc. For this reason, the geographic range is defined by “respective regional blocks.”

Part III Impact of the Business Integration on Competition

1. Market Share

(1) Regional Blocks Where Parties Concerned are in Competition with Each Other

The parties concerned are in competition with each other in 7 regional blocks, i.e., Hokkaido, Kanto, etc. In the regional blocks except Hokkaido, the level of HHI after the integration of business and the increment of HHI resulted from the integration fall within the range of safe-harbor rule, applied to horizontal business combination. For this reason, the JFTC concluded that the integration of business might not be substantially to restrain competition in a particular field of trade.

(2) Hokkaido Block

The market size in Hokkaido block in fiscal year 2009 is approximately 24 billion Japanese Yen.

The combined market share held by the parties concerned as a result of the business integration is approximately 45% and is ranked at 1st place. In addition, HHI after the business integration is approximately 3,100 and the increment of HHI is 900. Thus these figures do not fall within the range of safe-harbor rule, applied to horizontal business combination.

| Rank | Company Name | Market Share |
|---|---|---|
| 1 | BML | 30% |
| 4 | Kishimoto Medical Laboratory | 15% |
| (1) | Combined Market Share | 45% |

(*Note) The above table includes the companies whose shares are to be added thereto.

2. Status of Competitors

There is a plurality of powerful competitors who hold market shares in excess of 10%.

3. Competitive Pressure from Users

With regard to the typical types of examinations conducted on a routine basis by the commissioned clinical examination business operators, there is not a big difference among such business operators. Note that a medical institution who is the user of such a business operator determines the business operators to whom the medical institution should commission the examinations of specimen material by bidding or by the method of obtaining competitive quotes from plural business operators.

Therefore there exists competitive pressure from users.

4. Financial Conditions of Kishimoto Medical Laboratory

Kishimoto medical laboratory has been crushed by debt for years, and Kishimoto medical laboratory has been suffered from unfavorable business conditions due to the increase in the amount of debts over the years. As described in the above 1, the parties and main financing bank, in their joint names, applied for the support of restructuring Kishimoto Clinical Laboratory to ETIC. Without the support from ETIC, it is highly probable that Kishimoto Clinical Laboratory goes bankrupt to cease its operation.

5. Assessment from the Viewpoint of the AMA

In light of the above circumstances, the JFTC assessed the integration of business might not be substantially to restrain competition in a particular field of trade through the unilateral business behavior by the parties concerned or coordinated business behavior between the parties concerned and the other competitors.

Part IV Conclusion

In light of the above circumstances, the JFTC concluded that the integration of business might not be substantially to restrain a particular field of trade.

Appendix 1

# Regulations on Business Combination

## 1. Regulations on Business Combination

The AMA prohibits the acquisition or possession of the shares of a company, a merger of companies, a split of a company, joint-share transfer or acquisition of business, where it creates a business combination that may be substantially to restrain competition in any particular field of trade. In response thereto, Japan Fair Trade Commission (hereinafter, referred to as “the JFTC”) has been conducting reviews of business combinations pursuant to the provisions of the AMA.

## 2. Notification System Regarding Enterprise Combination Plans Pursuant to the AMA

When business combination is implemented between enterprises, which satisfy certain requirements, the AMA requires such enterprises to make a report on their business combination plan, in advance, to the JFTC. The JFTC is capable of conducting review on whether business combination on which prior notification has been made falls under the case for which detailed review is necessary or not within 30 days after receiving the notification. When the case in question does not have any problem in light of the provisions of the AMA, the JFTC concludes its review within the prescribed period. If the JFTC judged that the case requires further review, the JFTC requests the companies to submit reports and necessary documents and determines whether the business combination in question may raise a problem or not, in light of the provisions of the AMA, within 90 days after receiving all the reports, etc.

In a case where the JFTC judged that the business combination raises a problem in light of the provisions of the AMA, the JFTC notifies the person(s) to be designated as the addressee of the order in question of the possible contents, etc., of the cease-and-desist order, and then the JFTC give the person(s)/addressee(s) an opportunity to deliver opinions and provide evidences, and finally, the JFTC issues the cease-and-desist order against the person(s)/addressee(s). Moreover, a person(s)/addressee(s) is capable of requesting a hearing by the JFTC and a judgment by court if the person(s)/addressee(s) is dissatisfied with the issued cease-and-desist order.

## 3. Revision of Prior Consultation System Regarding Business Combination Plans

The JFTC has been implementing the prior consultation system. The prior consultation is a system through which the companies, planning business combination, consult with the JFTC, on a voluntary basis, as to whether the business combination plan in question may raise a problem or not in light of the AMA, and the JFTC answers them in response to this consultation. However, from the viewpoint of improving the consistency with international frameworks, the JFTC determined to abolish this prior consultation system and to make a decision after receiving the notification pursuant to the AMA. This revision was put into force on July 1st, 2011.

Appendix 2

The Number of Notifications on Share Acquisition, Mergers, Splits, Joint Share Transfers, and Acquisition of Business, etc. in fiscal year 2010

The number of notifications received by the JFTC in fiscal year 2010 totaled 265 (decreased by 73.1% compared to the previous fiscal year). The detail thereof is as follows:

- The number of notifications on acquisition of shares is 184,
- The number of notifications on mergers is 11,
- The number of notifications on splits is 11,
- The number of notifications on joint share transfers is 5, and
- The number of notifications on acquisition of business is 54.
  (See the table below for the details in the past 3 years).

The number of notifications significantly decreased in fiscal year 2010 in comparison with those of 2009 and previous years. It seems that this is because the revised AMA (put into force on January 1st, 2010) narrowed the scope of notifications. (See the postscript [Appendix].)

[The number of received notifications of Acquisition of Shares, Mergers, Splits, Joint Share Transfers, and Acquisitions of Business, etc. in fiscal year 2010]

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| Acquisition of Shares | 829 | 840 | 184 |
| Mergers | 69 | 48 | 11 |
| Splits | 21 | 15 | 11 |
| Joint Share Transfer | -<br>None | 3 | 5 |
| Acquisition of Business, | 89 | 79 | 54 |
| Sum Total | 1,008 | 985 | 265 |

(*Note) The number of "acquisition of shares" in fiscal year 2008 and fiscal year 2009 is the numbers on the report regarding shareholding pursuant to the provisions of the AMA before the revision of the AMA (Act Number 51 of 2009) by the Act for amending the AMA. It should be noted, however, that the number in fiscal year 2009 (840 cases) includes the number of notifications of shareholding received by the JFTC after the above revision.

- See the website of Japan Fair Trade Commission for details (written in Japanese)
  http://www.jftc.go.jp/ma/doukouindex.html

(Reference) The Amendment on obligation of notification/report pursuant to the revision of the AMA in 2009

As to mergers, the AMA before the revision stipulated the obligation to notify the JFTC of the following business combination:

Namely, the business combination between a domestic company whose amount of total assets (including the amount of total assets of domestic direct parent/subsidiary companies) exceeds 10 billion Japanese Yen and a domestic company whose amount of total assets exceeds 1 billion Japanese Yen.

The revised AMA, however, requires that notification is necessary for the following business combination:

Namely, the business combination between a company whose amount of total domestic sales exceeds 20 billion Japanese Yen and a company whose amount of total domestic sales exceeds 5 billion Japanese yen.

In addition, when it came to acquisition of shares, the AMA before the revision stipulated that obligation of notification (after the acquisition of shares in question) was imposed on the parties concerned as to the following acquisition of shares:

Namely, acquisition of shares, etc., of a domestic company whose amount of total assets per se exceeds 1 billion Japanese Yen by a company whose amount of total assets per se exceeds 2 billion Japanese yen and whose amount of total assets exceeds 10 billion Japanese Yen (including the amount of total assets of domestic direct parent/subsidiary companies) and whose ratio of holding of voting rights exceeds 10%, 25%, and 50% (formed in three stages).

The revised AMA, however, requires that notification in advance is necessary for the following acquisition of shares as well as those of mergers, etc.:

Namely, acquisition of shares of a company whose amount of total domestic sales exceeds 5 billion Japanese Yen (including the total domestic sales of subsidiaries) by a company whose amount of total domestic sales exceeds 20 billion Japanese Yen and whose ratio of holding of voting rights exceeds 20% and 50% (formed in two stages)

Appendix 3

## Results of Reviews on Business Combination in Fiscal Year 2010

The table below shows all the cases in 2010 to which the JFTC has given responses pursuant to “Guidelines for Prior Notification regarding Business Combination Plan.”

This table shows the range of HHIs after the business combination and the range of the increments of HHIs caused by the business combination by the concerned parties’ groups, with regard to the field of trade defined according to the target of review and to the case where remedies have been taken.

(*Note1) The JFTC responded to the parties concerned on whether there was any problem in light of the AMA or not and permitted 13 the business combination cases (Among them, one of the cases was permitted on the premise of implementation of remedies).

(*Note2) The figures, i.e., the HHIs at the business combination by the concerned parties’ groups were calculated within the limits where the figures were available from materials, etc. Therefore, the cases in which such figures were unable to calculate were excluded.

(*Note3) In the table below, “HHIs” represent the HHIs after the business combination by the concerned parties’ groups after the business combination and “ΔHHIs” represent the increments of HHIs caused by the business combination between them.

<HHI/ΔHHI> (Unit: Field)

| HHI / ΔHHI | 1,500 or less | | Over 1,500, but not more than 2,500 | | Over 2,500 | | Total | |
|---|---|---|---|---|---|---|---|---|
| | Number of All Fields | Number of Fields with Remedies Taken | Number of All Fields | Number of Fields with Remedies Taken | Number of All Fields | Number of Fields with Remedies Taken | Number of All Fields | Number of Fields with Remedies Taken |
| 150 or less | 6 | 0 | 7 | 0 | 9 | 0 | 22 | 0 |
| Over 150, but not more than 250 | 1 | 0 | 2 | 0 | 3 | 0 | 6 | 0 |
| Over 250 | 0 | 0 | 15 | 0 | 31 | 2 | 46 | 2 |
| Total | 7 | 0 | 24 | 0 | 43 | 2 | 74 | 2 |