

Major Business Combination Cases in Fiscal Year 2012

June 5, 2013

Japan Fair Trade Commission

For the purpose of ensuring the transparency of reviews undertaken by the Japan Fair Trade Commission (hereinafter referred to as “JFTC”) on business combination cases, and for the purpose of improving the predictability of the JFTC’s reviews on cases, the JFTC has published “Guidelines to Application of the Antimonopoly Act concerning Review of Business Combination (hereinafter referred to as the “Business Combination Guidelines”)” in applying the Antimonopoly 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 reviews of major business combination cases each fiscal year.

This year, the JFTC also publishes the results of reviews of major business combinations in fiscal year 2012 and provides the data associated with these reviews.

The JFTC sincerely hopes that companies planning business combinations will make use of the published outcomes of the JFTC’s reviews of major business combination cases, as well as the Business Combination Guidelines.

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Major Business Combination Cases in Fiscal Year 2012

Case 1 Acquisition of shares of C&H Co., Ltd. by DAIKEN Corporation	1
Case 2 Acquisition of shares of Daio Paper Corporation by Hokuetsu Kishu Paper Co., Ltd.....	19
Case 3 Merger between Furukawa-Sky Aluminum Corp. and Sumitomo Light Metal Industries, Ltd.	23
Case 4 M&A between ASML Holdings N. V. and Cymer Inc.....	44
Case 5 Acquisition of shares of SII Nano Technology Inc. by Hitachi High-Technologies Corporation	57
Case 6 Acquisition of Fuji Heavy Industries Ltd.'s garbage truck manufacturing and sales business by ShinMaywa Industries, Ltd.....	74
Case 7 Merger between Universal Shipbuilding Corporation and IHI Marine United Inc.....	77
Case 8 Acquisition of shares of Jupiter Telecommunications Co., Ltd. by KDDI Corporation	80
Case 9 Acquisition of shares of BEST DENKI CO., LTD. by YAMADA DENKI Co., Ltd.....	83
Case 10 M&A between Tokyo Stock Exchange Group, Inc. and Osaka Security Exchange Co., Ltd.....	94
Case 11 Absorption-type company split of Mitsubishi Corporation's gold and platinum reserve business by Tanaka Kikinzoku Kogyo K.K.	128
Appendix 1 Regulations on Business Combinations.....	132
Appendix 2 Summary of Conditions Requiring Business Combination Notification	133
Appendix 3 Status of Notifications of Recent Acquisition of Shares, etc. Received and Reviewed.....	135

- (Note 1) The order of the cases in this document complies with the order used in the Japan Standard Industry Classification, applied to products subject to reviews of business combinations.
- (Note 2) Confidential information and competitor names, etc. associated with the companies concerned are not disclosed in the respective cases.
- (Note 3) Market size, market share, HHI levels after business combinations, and number counts, i.e. the increment, etc. of the 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 companies concerned (note that the term “HHI” in this context refers to the Herfindahl-Hirschman Index; the same shall be applied hereafter). When it comes to market share, in principle, these figures are shown at 5% intervals.

- (Note 4) Notification of M&A between the Tokyo Stock Exchange Group, Inc. and the Osaka Securities Exchange Co., Ltd. was accepted in FY 2011, but the result of the case was not released until July 5, 2012. Because this case could not be published in the Major Business Combination Cases in FY 2011, it is included here as Case 10.
- (Note 5) Among the 349 cases notified to and accepted by the JFTC in FY 2012, the JFTC publishes herein all five cases for which it completed reviews as of May 31, 2013 upon the second review (Case 1, Case 3, Case 4, Case 5 and Case 9).
- (Note 6) Among these 11 cases, the JFTC decided the following four cases not to be problematic in light of the AMA on the premise of implementing the remedies proposed by the companies concerned: Case 1, Acquisition of shares of C&H Co., Ltd. By DAIKEN Corporation, Case 4, M&A between ASML Holdings N. V. and Cymer Inc., Case 9, Acquisition of shares of BEST DENKI CO., LTD. by YAMADA DENKI Co., Ltd., and Case 10, M&A between Tokyo Stock Exchange Group, Inc. and Osaka Security Exchange Co., Ltd. (see Appendix 3).

Case 1 Acquisition of shares of C&H Co., Ltd. by DAIKEN Corporation

Part I Outline of the transaction

DAIKEN Corporation (hereinafter “DAIKEN”; the group of combined companies whose ultimate parent company is DAIKEN shall be referred to as the “DAIKEN Group”), a manufacturer of wood-based materials including medium density fiberboard (hereinafter “MDF”) and of building materials made of wood-based materials, planned to acquire the shares of C&H Co., Ltd. (hereinafter “C&H” ; the group of combined companies whose ultimate parent company is C&H shall be referred to as the “HOKUSHIN Group”), that manufactures MDF, and thereby to obtain more than half of C&H’s voting rights (hereinafter “the Share Acquisition”). Moreover, concurrent with the acquisition of the shares of C&H, DAIKEN planned to acquire the shares of HOKUSHIN, and thereby to raise the ratio of voting rights up to approximately 15%. The provision of applicable law is Article 10 of the AMA.

Part II Reviewing process and outline of the results

1. Reviewing process

In April 2012, DAIKEN voluntarily submitted to the JFTC a written opinion to the effect that the company does not consider that the Share Acquisition will substantially restrain competition in the field of trade of MDF, the product for which the parties compete with each other, and thereafter, the JFTC had meetings with DAIKEN upon the request of the company. On April 25, 2012, DAIKEN submitted a notification concerning the plan on the Share Acquisition to the JFTC under Article 10, paragraph (2) of the AMA. The JFTC accepted this notification and launched the primary review. While proceeding with the review based on said notification and other documents submitted by DAIKEN and the information collected through interviews with users and competitors, etc., the JFTC found that more detailed review should be necessary. Accordingly, on May 25, 2012, the JFTC requested a report, etc. from DAIKEN and launched the secondary review, and on May 28, the JFTC announced that it had launched the secondary review and it would accept opinions from third parties.

In the secondary review, the JFTC studied the impact that the Share Acquisition might have on competition in the relevant fields, based on the

reports and other documents submitted successively by DAIKEN as well as information collected through interviews and questionnaire surveys with users and competitors, etc. While most of the reports etc. requested to DAIKEN had been submitted by around July 2012, the JFTC found it necessary to explain the issues to the parties, thus it provided an explanation on the issues to them based on its review results available at that time. In response, the parties submitted additional allegations and documents, which were then examined by the JFTC. Subsequently, the JFTC indicated competitive problems in relation to some types of MDF, namely, M-type thin MDF and M-type thick MDF, and DAIKEN presented a method of resolving these competitive problems. Following the consideration by the JFTC, DAIKEN submitted a report of the changes concerning the measures to resolve the competitive problems.

By submitting the report and documents on January 11, 2013, DAIKEN submitted all reports etc. as requested by the JFTC.

2. Outline of the review results

With respect to M-type thin MDF and M-type thick MDF, the JFTC considered that, assuming that DAIKEN implements the measures it has proposed to the JFTC, the Share Acquisition would not substantially restrain competition in these fields of trade. The JFTC also found that the Share Acquisition would not substantially restrain competition in any other fields of trade.

The details of the review results are as indicated in Part III to V below.

(reference)

Receipt of the notification regarding the proposed acquisition of C&H's shares by DAIKEN on April 25, 2012 (start of the primary review)

Request for reports, etc. by the JFTC on May 25, 2012 (start of the secondary review)

Receipt of all requested reports from DAIKEN on January 11, 2013 (the due date for a prior notice was set on April 12, 2013)

Submission of a report on changes in the notification by DAIKEN, in which the remedies were incorporated on January 18, 2013

Notification to DAIKEN that a cease and desist order will not be issued on January 24, 2013

Part III Joint Relationship to be Created by the Share Acquisition

As indicated in II above, DAIKEN planned to (i) conduct the Share Acquisition (acquire shares of C&H and obtain a majority of the voting rights of C&H), and (ii) acquire shares of HOKUSHIN and increase the ratio of voting rights it holds to approximately 15%. Presently, the MDF manufactured by HOKUSHIN in whole is sold via C&H. The parties state that they will continuously sell the whole MDF manufactured by HOKUSHIN via C&H after the Share Acquisition.

Of these two acquisitions of shares proposed by DAIKEN, only (i) is subject to the liability to submit notification under the AMA. As a result of (i), C&H will be jointly owned by DAIKEN and HOKUSHIN, which will create an indirect joint relationship between DAIKEN and HOKUSHIN. As a result of (ii), DAIKEN will directly hold approximately 15% of the voting rights of HOKUSHIN, and moreover, a new business alliance for the manufacturing, etc. of MDF will be established between DAIKEN and HOKUSHIN. Thus, the series of actions accompanied with the Share Acquisition will create a joint relationship between the DAIKEN Group and the HOKUSHIN Group.

Therefore, in the sections below, this case will be examined on the assumption that a joint relationship will be newly created between the DAIKEN Group and the HOKUSHIN Group as a result of the Share Acquisition.

Part IV Particular field of trade

1. Product range

MDF is a kind of wood material, manufactured by processing wood chips into fiber, adding adhesive to such wood fiber, and pressing it. As it is made of wood fiber, it has a smooth surface and square edges, has high processability, and is less likely to cause curvature or seasonal cracks which are usually seen with rough woods. MDF is mainly used as materials for interior finishing of buildings such as flooring, and its major direct users are interior finishing materials manufacturers. The major purchasers of interior finishing materials made of MDF are residential building manufacturers.

MDF with different characteristics are manufactured depending on the type of tree from which the wood chips are made, thickness of the product, and type of adhesive used.

(1) Substitutability between different types of MDF

A. Substitutability between MDF made of different types of wood chips

There are two major types of wood chips that can be used to make MDF, those of hardwood trees and those of softwood trees (hereinafter MDF made of the former type of wood chips shall be referred to as “hardwood MDF” and MDF made of the latter type of wood chips shall be referred to as “softwood MDF”). Although these two types of MDF are not distinguished from each other under the Japanese Industrial Standards (JIS), it is generally said that hardwood MDF is superior in water resistance, whereas softwood MDF is whiter and less likely to affect the color of surface sheets.

According to the questionnaire survey that asked MDF users regarding the substitutability between the two types, they would switch approximately 30% of hardwood MDF (softwood MDF) to softwood MDF (hardwood MDF) should the price of hardwood MDF (softwood MDF) rises by around 10%. Also through price correlation analysis, a correlation was found between prices of hardwood MDF and that of softwood MDF.

Accordingly, MDF users recognize hardwood MDF and softwood MDF as substitutable, and it is considered that there is no need to define the particular fields of trade separately for these types of MDF.

B. Substitutability between different thicknesses of MDF

There are MDF products of different thickness, ranging from 2.5mm to 30.0mm. Generally, MDF of 5.5mm or thinner is called thin MDF, and that of over 5.5mm is called thick MDF. Thin MDF is mainly used as surfacing materials by being affixed to the front and back sides of plywood, etc. and used as base materials for flooring, doors, etc. Thick MDF is mainly used independently as base materials for window frames, steps of stairways, etc.. According to the questionnaire survey that asked MDF users regarding the substitutability between the two types, the users would switch only a very small portion of thin MDF (thick MDF) to thick MDF (thin MDF) when the price of thin MDF (thick MDF) rises by around 10%. Thus, MDF users do not recognize thin MDF and thick MDF as substitutable.

From the standpoint of the substitutability for suppliers, with respect to manufacturing facilities of MDF, there are two types depending on the pressing modes, namely continuous press and multi-stage press. The

continuous press can basically make any thickness of products but is mainly used to manufacture thin products aiming to achieve production efficiency. The multi-stage press is mainly used to manufacture thick products aiming to achieve production efficiency and it is incapable to manufacture a certain range of thin products which have high demands. Thus, the substitutability for suppliers between thin MDF and thick MDF exists to a certain degree but the substitutability is weak.

Accordingly, it is considered that it is necessary to define the particular fields of trade separately for thin MDF and thick MDF.

C. Substitutability between MDF made with different types of adhesive used

MDF can be categorized into three types under JIS by the type of adhesive used, namely, MDF made with urea resin adhesive (U-type), MDF made with melamine resin adhesive (M-type), and MDF made with phenol resin adhesive (P-type). The water resistance increases in this order.

P-type MDF is used for buildings and structures, whereas U-type and M-type MDF are not used for this purpose. Therefore, P-type MDF can be regarded as a distinct type of MDF as compared to the other two types.

According to the interviews that asked MDF users regarding the substitutability between U-type and M-type MDF, they use high water-resistant M-type MDF as materials to be situated at places that are easily exposed to dampness, such as window frames and flooring, while low-priced U-type MDF is used for products that are not required to have high water resistance, such as furniture. Thus, MDF users use different types of MDF based on the difference in the type of adhesive used (level of water resistance) for different purposes. Also according to the questionnaire survey of MDF users, they would switch only a very small portion of U-type MDF (M-type MDF) to M-type MDF (U-type MDF) when the price of U-type MDF (M-type MDF) rises by around 10%. Thus, MDF users do not recognize U-type MDF and M-type MDF as substitutable.

From the standpoint of the substitutability for suppliers, if they do manufacture several types of MDF using the same production lines, they can manufacture different types of MDF by changing the types of adhesive used as inputs. However, if they manufacture only one type of MDF using with production line, it is not easy for them to manufacture different types of MDF using the same production line, due to the necessary investments in

preparing adhesive tanks, etc. and the lack of expertise in manufacturing other types of MDF. Thus, the substitutability for suppliers exists only to a limited degree.

Accordingly, it is considered that it is necessary to define the particular fields of trade separately for U-type MDF, M-type MDF, and P-type MDF.

While the HOKUSHIN Group manufactures and sells P-type MDF, the DAIKEN Group does not manufacture or sell this type of MDF, which means that these groups are not in a competitive relationship (horizontal relationship) for P-type MDF. In addition, since the interior finishing materials division of the DAIKEN Group does not procure P-type MDF, these groups are not in a relationship where they deal in different trading positions regarding P-type MDF (vertical relationship). Therefore, P-type MDF will hereinafter be excluded from the scope of the review.

(2) Substitutability between MDF and other wood-based materials

There are other types of wood-based materials that are used for the same purpose as MDF, namely, plywood (Note 1) and particle board (hereinafter "PB") (Note 2).

According to the interviews with MDF users, they commented that plywood is less smooth on the surface and inferior in processability as compared to MDF, and that plywood is less useful due to its high price volatility. Through price correlation analysis, correlation was not found between prices of M-type thin MDF and that of plywood. With respect to PB, according to the interviews with MDF users, most of them commented that although PB is relatively cheaper than MDF, it is less smooth on the top surface and cross-section surface and is inferior in strength, thus it is difficult to use PB as a substitute for MDF except for limited applications. Also according to the questionnaire survey of MDF users, they would switch only less than 5% of M-type thin MDF to plywood or PB when the price of M-type thin MDF rises by around 10%. Thus, MDF users recognize MDF and plywood or PB as only slightly substitutable.

Moreover, due to the difference between the manufacturing facility of MDF and the manufacturing facility of plywood or PB, the substitutability for suppliers does not exist.

Accordingly, it is considered that it is necessary to define the particular fields of trade separately for MDF and plywood or PB.

(Note 1) Plywood is made by laminating thin wood panels, made by paring logs, so that the directions of the fibers are at right angles to one another, and pasting them together using adhesive.

(Note 2) Particle boards (PB) are made by adding adhesive to particles of wood chips and pressing them into boards.

(3) Section summary

Accordingly, the JFTC defined “U-type thin MDF,” “U-type thick MDF,” “M-type thin MDF,” and “M-type thick MDF” as the product ranges.

2. Geographic range

MDF products in the Japanese market, with some exceptions, are mostly JIS-certified MDF, because Japanese users prefer products that meet the JIS standard. In this respect, Japanese users are different in their disposition from overseas users.

Therefore, the JFTC defined entire area of Japan (markets for all users in entire area of Japan) as the geographic range.

Part V Review concerning substantial restraint of competition

1. M-type thin MDF

The parties are both leading manufactures and sellers of M-type thin MDF. Thus, firstly, the impact that the Share Acquisition would have on the competition in M-type thin MDF is examined.

(1) The status of the parties and the competitive situation

In the market for M-type thin MDF, after the Share Acquisition, the total market share of the parties would be approximately 65% (the largest share on the market), the HHI would be approximately 5,500, and the increment of HHI is approximately 1,800. Therefore, the Share Acquisition does not meet the safe harbor standards for horizontal business combinations

In this market, the parties are facing a leading competitor, Company A (a domestic manufacturer), which holds approximately 35% share.

[Market shares for M-type thin MDF in the FY2011]

Rank	Company Name	Share
1	HOKUSHIN Group (C&H)	Approx. 45%
2	Company A	Approx. 35%
3	DAIKEN Group	Approx.20%
—	Overseas manufacturers	Less than 1%
	Total	100%

(2) Excess supply capacity

The utilization ratio of the facilities of all MDF manufacturers is nearly 100%. Although it may be possible for them to increase production to a certain degree by adjusting the operating hours or improving the production facilities without enhancing the existing facilities, none of them seem to have an adequate excess supply capacity.

(3) Competitive pressure from overseas manufactures' products

At present, overseas manufactures' products are scarcely found in the Japanese market. According to the interviews with MDF users, they consider that overseas manufactures' M-type thin MDF cannot assure the necessary performance.

Thus, there is no competitive pressure from overseas manufactures' products.

(4) Entry pressure

Amid the declining birthrate and decrease in population of Japan, it is hard to expect that the number of housing starts will increase dramatically in the future. Under such circumstances, as it is necessary to invest several billion yen to introduce the MDF manufacturing facilities and it is not always easy to find a supplier of wood chips, it is less likely that there will be any new entrants in the MDF market.

Thus, there is no entry pressure.

(5) Competitive pressure from neighboring markets

As mentioned in PartIV-1(2) above, even when the price of M-type thin

MDF rises, interior finishing materials manufacturers, which are direct users of the product, would switch only a small portion to plywood or PB (less than 5%). Thus, there is no (direct) competitive pressure from neighboring markets.

(6) Allegations of the parties on the substitutability between MDF and plywood, etc. as interior finishing materials, and assessments thereof

A. Allegations of the parties

The parties allege that as interior finishing materials, M-type thin MDF can be substituted with plywood, etc., and this type of MDF is under indirect competitive pressure from neighboring markets.

Specifically, most demands for M-type thin MDF is used as a component of base materials for flooring (M-type thin MDF pasted together with plywood is used as flooring; hereinafter such materials shall be referred to as “thin MDF-plywood base materials”). In the market for finished products of flooring, those made of thin MDF-plywood base materials compete with those made of materials consisting only of plywood (hereinafter “pure-plywood base materials”). If the price of M-type thin MDF rises, the price of flooring made of thin MDF-plywood base materials would rise accordingly, and demands would shift to flooring made of pure-plywood base materials. The parties allege that the markets for plywood, etc. pose indirect competitive pressure from neighboring markets on M-type thin MDF in this way.

B. Review and assessment of the allegations of the parties

In addition to thin MDF-plywood base materials, pure-plywood base materials are widely used as base materials for flooring. In recent years, the share of flooring made of thin MDF-plywood base materials has been increasing, but flooring made of pure-plywood base materials still holds a large share.

There are various types of flooring depending on the features in appearance or characteristics such as color, pattern, and luster, or the features in performances, such as scratch resistance and easiness in removing stain. Based on their skills and experiences, flooring manufacturers adopt an appropriate type of base materials (thin MDF-plywood base materials or pure-plywood base materials), surface

sheet, coating, etc. to make flooring that has the demanded characteristics and performances. According to the interviews with the residential building manufacturers, etc., which are the major purchasers of flooring products, since there is no such characteristics or performances that can only be achieved by thin MDF-plywood base materials, they do not particularly designate thin MDF-plywood base materials when purchasing flooring products but they would be willing to switch to flooring made of pure-plywood base materials having the same characteristics or performances, should the price of flooring made of thin MDF-plywood base materials rises.

As indicated above, thin MDF-plywood base materials and pure-plywood base materials are available as base materials for flooring, and purchasers of flooring products adopt and procure the flooring having the nature or performance that they need, without being fixated on any particular type of base material. Thus, flooring made of thin MDF-plywood base materials and flooring made of pure-plywood base materials are in a fierce competition, and M-type thin MDF is under indirect competitive pressure from the neighboring market. Consequently, the Share Acquisition is unlikely to have an effect that will result in substantial restraint of competition, such as raising the price of flooring made of thin MDF-plywood base materials.

(7) Assessments concerning vertical market foreclosure

A. Impact of the vertical market foreclosure on competition

The DAIKEN Group is a MDF manufacturer and an interior finishing materials manufacturer engaged in manufacturing flooring and other interior finishing materials using MDF, etc., whereas the HOKUSHIN Group is exclusively engaged in manufacturing MDF. Therefore, the Share Acquisition would have an aspect of a vertical business combination between the HOKUSHIN Group, a MDF manufacturer, and the DAIKEN Group, an interior finishing materials manufacturer, thus the HOKUSHIN Group might sell MDF to the DAIKEN Group under favorable conditions in preference to other flooring manufacturers which do not manufacture MDF by themselves and to which HOKUSHIN has sold its MDF (hereinafter “independent flooring manufacturer”) (vertical market foreclosure). In fact, as the DAIKEN Group is a leading entity in the market for flooring and has

an adequate excess supply capacity to manufacture flooring, it may have an ability and incentive to procure MDF from the HOKUSHIN Group in preference to competitors and increase its production of flooring.

Some independent flooring manufacturers maintain specific characteristics or performances of their products by applying their own skills, etc. and by exclusively taking advantage of the surface smoothness, etc. of MDF. Such manufacturers would find it difficult to switch MDF to plywood when the price of MDF rises or the procurement of MDF becomes difficult. As indicated in (1) to (5) above, although there is one leading competitor which manufactures M-type thin MDF as materials for flooring, it does not have an adequate excess supply capacity, and there is no competitive pressure from overseas manufactures' products or entry pressure, nor is there direct competitive pressure from neighboring markets. Under such circumstances, if the vertical market foreclosure occurs with regard to MDF manufactured by the HOKUSHIN Group, which holds approximately 45% market share, independent flooring manufactures would have difficulty in taking competitive actions.

According to the questionnaire surveys and interviews with independent flooring manufacturers, many of them commented that they were concerned that after the Share Acquisition, the HOKUSHIN Group might supply its MDF preferentially to the interior finishing materials division of the DAIKEN Group and alternatively reduce the amount of MDF supplies to them.

B. Measures proposed by DAIKEN

After the JFTC indicated to the parties the issues indicated above, DAIKEN has proposed that it would take the following measures.

- (i) For five years from the execution of the Share Acquisition, with regard to M-type thin MDF that C&H currently sells to users other than the DAIKEN Group (including its subcontracting manufacturers), DAIKEN will have C&H deal with orders from such external users under reasonable and substantially equivalent terms of trade to those applicable to the supply to the DAIKEN Group in terms of the price, quantity, deadline for delivery, quality, specification (thickness, size, etc.) and other conditions; provided, however, that this commitment shall not

apply should the volume of sales from C&H to external users (in cubic meters) (hereinafter the “volume of external sales”) for each business year exceeds the maximum volume of external sales during the most recent five business years (per business year).

(ii) For five years from the execution of the Share Acquisition, DAIKEN will report to the JFTC, once every six months, regarding the sales results of M-type thin MDF sold by C&H to each user (e.g. date of order, price, quantity, deadline for delivery, quality, specification (thickness, size, etc.) and other aspects).

C. Assessment of the measures proposed by DAIKEN

The measures proposed by DAIKEN represent its commitment that for a certain period of time after the Share Acquisition (five years), DAIKEN will have C&H sell to external users the same quantity of M-type thin MDF as that C&H currently sells to them, under reasonable and substantially equivalent terms of trade to those applicable to the supply to the DAIKEN Group in terms of the price, etc.

During the period in which these measures are in effect (five years), independent flooring manufacturers will be able to procure the same quantity of M-type thin MDF as heretofore from HOKUSHIN Group under reasonable and substantially equivalent terms of trade as compared to those applicable to the DAIKEN Group, thus they will not have difficulty in taking competitive actions.

As for the five-year period of implementation of said measures, even for independent flooring manufacturers, which maintain specific characteristics or performances of their products using M-type thin MDF, five years would be sufficient to prepare for manufacturing flooring with such characteristics or performances by using materials other than thin MDF-plywood base materials (e.g. pure-plywood base materials), thus after the end of implementation of said measures, they would be able to continue taking competitive actions.

Accordingly, it is considered that assuming that DAIKEN implements the measures it has proposed, the Share Acquisition will not cause a vertical market foreclosure.

(8) Assessment under the AMA

As indicated above, in the market for M-type thin MDF, the parties jointly hold approximately 65% share. Although there is one leading competitor, it does not have an adequate excess supply capacity, and there is no competitive pressure from overseas manufactures' products or entry pressure, nor is there direct competitive pressure from neighboring markets. However, in the market for flooring, for which M-type thin MDF is mainly used, there is an active competition between flooring made of thin MDF-plywood base materials and flooring made of pure-plywood base materials, thus there is indirect competitive pressure from the neighboring markets. In view of such circumstances, the Share Acquisition will not substantially restrain competition, such as raising the price of flooring made of thin MDF-plywood base materials. Furthermore, assuming that DAIKEN implements the measures it has proposed, the Share Acquisition will not cause a vertical market foreclosure. Consequently, the Share Acquisition will unlikely to have an effect that will result in substantial restraint of competition in the field of trade of M-type thin MDF by any action taken by the parties unilaterally or in coordination with the competitors.

2. M-type thick MDF

(1) The status of the parties and the competitive situation

In the market for M-type thick MDF, after the Share Acquisition, the total market share of the parties would be approximately 65% (the largest share on the market), the HHI would be about 5,400, and the increment of HHI is approximately 800. Therefore, the Shares Acquisition does not meet the safe harbor standards for horizontal business combinations.

In this market, the parties are facing a leading competitor, Company B (a domestic manufacturer), which holds approximately 30% share.

The DAIKEN Group, one of the parties, holds a small market share, approximately 5%, and its position as a manufacturer and seller of M-type thick MDF is relatively less influential as compared to its position as a manufacturer and seller of M-type thin MDF.

[Market shares for M-type thick MDF in the FY2011]

Rank	Company Name	Share
1	HOKUSHIN Group (C&H)	Approx. 60%
2	Company B	Approx. 30%
3	DAIKEN Group	Approx. 5%
4	Company C	Less than 5%
—	Overseas manufacturers	Less than 1%
	Total	100%

- (2) Excess supply capacity, competitive pressure from overseas manufactures' products, entry pressure, and competitive pressure from neighboring markets

The circumstances concerning M-type thick MDF in relation to these factors are the same as those concerning M-type thin MDF indicated in Part V-1 above. That is, none of the manufacturers of M-type thick MDF has an adequate excess supply capacity, and there is no competitive pressure from overseas manufactures' products or entry pressure, nor is there (direct) competitive pressure from neighboring markets.

- (3) Substitutability between M-type thick MDF and plywood as interior finishing materials

Most demands for M-type thick MDF is for materials for window frames (hereinafter "thick MDF base materials"). Window frames made of thick MDF base materials compete with those made of plywood base materials, which suggests that there is indirect competitive pressure from the neighboring market. In this respect, the situation of M-type thick MDF is similar to that of M-type thin MDF in which most demands for M-type thin MDF is used as base materials for flooring and there is a competition between flooring made of thin MDF-plywood base materials and flooring made of pure-plywood base materials.

- (4) Assessment under the AMA

As compared with its position as a manufacturer and seller of M-type thin MDF, the position of the DAIKEN Group as a manufacturer and seller of

M-type thick MDF is less influential, and thus the Share Acquisition will have only a relatively small impact on the competition in the field of trade of M-type thick MDF. In view of such circumstances, as well as the fact that there is indirect competitive pressure from the neighboring market, the Share Acquisition will not substantially restrain competition, such as raising the price of window frames made of thick MDF base materials.

Meanwhile, as in the case of M-type thin MDF, the Share Acquisition would have an aspect of a vertical business combination between the HOKUSHIN Group, a MDF manufacturer, and the DAIKEN Group, an interior finishing materials manufacturer; and it would make it difficult for window frame manufacturers which do not manufacture MDF by themselves to take competitive actions. DAIKEN has proposed that it would take the same measures for M-type thick MDF as those for M-type thin MDF (indicated in Part V-1(7) B). Assuming that DAIKEN implements these measures it has proposed, the Share Acquisition will not cause a vertical market foreclosure.

Accordingly, the Share Acquisition is unlikely to have an effect that will result in substantial restraint of competition in the field of trade of M-type thick MDF by any action taken by the parties unilaterally or in coordination with the competitors.

3. U-type thin MDF and U-type thick MDF

(1) The status of the parties and the competitive situation

In the market for U-type thin MDF, after the Share Acquisition, the total market share of the parties would be approximately 50% (the largest share on the market), the HHI would be approximately 3,500, and the increment of HHI is approximately 1,200. Thus, the Share Acquisition does not meet the safe harbor standards for horizontal business combinations. In this market, the parties are facing leading competitors: Company D (a domestic manufacturer), which holds approximately 25% share, and Company E (a domestic manufacturer), which holds approximately 15% share.

In the market for U-type thick MDF, after the Share Acquisition, the total market share of the parties would be approximately 50% (the largest share on the market), the HHI would be approximately 3,300, and the increment of HHI is approximately 1,200. Thus, the Share Acquisition does not meet the safe harbor standards for horizontal business combinations. In this market, the parties are facing leading competitors, Company G (a domestic

manufacturer), which holds approximately 25% share, and Company H and Company I (domestic manufacturers), each of which holds approximately 10% share.

[Market shares for U-type thin MDF in the FY2011]

Rank	Company Name	Share
1	DAIKEN Group	Approx. 35%
2	Company D	Approx. 25%
3	HOKUSHIN Group (C&H)	Approx. 15%
4	Company E	Approx. 15%
5	Company F	Approx. 5%
—	Overseas manufacturers	Approx. 5%
	Total	100%

[Market shares for U-type thick MDF in the FY2011]

Rank	Company Name	Share
1	HOKUSHIN Group (C&H)	Approx. 30%
2	Company G	Approx. 25%
3	DAIKEN G	Approx. 20%
4	Company H	Approx. 10%
5	Company I	Approx. 10%
—	Overseas manufacturers	Approx. 5%
	Total	100%

(2) Excess supply capacity, entry pressure, and competitive pressure from neighboring markets

The circumstances concerning U-type thin or thick MDF in relation to these factors are similar to those concerning M-type thin MDF indicated in Part V-1 above. That is none of the manufacturers of U-type thin or thick MDF has an adequate excess supply capacity, and there is no entry pressure, nor is there (direct) competitive pressure from neighboring markets.

(3) Competitive pressure from overseas manufactures' products

The quality standards that users require for U-type MDF are not as high as those for M-type MDF. Consequently, while overseas manufactures' products are scarcely found in the market for M-type MDF in Japan, a certain volume of overseas manufactures' products are present in the markets for U-type thin and thick MDF, holding approximately 5% market share respectively.

According to the interviews with MDF users, some of them purchase a certain volume of U-type MDF which are made by Korean or Indonesian manufacturers and that are JIS-certified. Moreover according to the questionnaire survey of MDF users, some of them manufacture the surface materials of door fittings or furniture etc. using U-type MDF which are made by overseas manufactures and that are not JIS-certified

Accordingly, there is competitive pressure to a certain degree from overseas manufactures' products.

(4) Substitutability between U-type MDF and plywood, etc. as interior finishing materials

U-type MDF is used for products that do not need to be water resistant, such as door fittings and furniture. For such usages, plywood, PB and the like are actually being used as substitutes for U-type MDF. There is no such characteristic or performance that can only be achieved by MDF. Interior finishing materials made of U-type MDF compete with those made of plywood, etc., which suggest that there is indirect competitive pressure from the neighboring market.

(5) Assessment under the AMA

Both in the markets for U-type thin MDF and U-type thick MDF, the parties jointly hold approximately 50% share. Although none of the manufacturers

of U-type MDF has an adequate excess supply capacity, there are a few leading competitors. Furthermore, there is competitive pressure from overseas manufactures' products. In view of such circumstances, the Share Acquisition will not substantially restrain competition, such as raising the price of interior finishing materials made of U-type thin MDF or U-type thick MDF.

As in the case of M-type MDF, there may be a concern that a vertical market foreclosure will occur for U-type MDF when the HOKUSHIN Group, a MDF manufacturer, becomes a member of the DAIKEN Group, an interior finishing materials manufacturer. However, should it becomes difficult for MDF users to procure U-type MDF from the parties, since there are a few other manufacturers which make U-type MDF and it is possible to use overseas manufactures' products as a substitute, the Share Acquisition would not make it difficult for interior finishing materials manufactures which use U-type MDF to take competitive actions.

Accordingly, the Share Acquisition is unlikely to have an effect that will result in substantial restraint of competition in the field of trade of U-type thin MDF or U-type thick MDF by any action taken by the parties unilaterally or in coordination with the competitors.

Case 2 Acquisition of shares of Daio Paper Corporation by Hokuetsu Kishu Paper Co., Ltd.

Part I Outline of the transaction

In this case, Hokuetsu Kishu Paper Co., Ltd. (hereinafter referred to as “Hokuetsu Kishu Paper”), which is engaged in the business of paper manufacturing and sales, planned to acquire the shares of Daio Paper Corporation (hereinafter referred to as “Daio Paper”), which is also engaged in the business of paper manufacturing and sales. The provision of applicable law is Article 10 of the AMA.

Part II Determination of formation of a joint relationship by the transaction

The JFTC determined this transaction forms a joint relationship between the two companies based on the following observations: (a) as a result of the transaction, Hokuetsu Kishu Paper will hold more than 20 percent of Daio Paper’s shareholder voting rights (including voting rights held by companies that belong to the group of combined companies whose ultimate parent company is Hokuetsu Kishu Paper) and (b) this voting share percentage is the largest, singly-held voting bloc.

It is important to note that the companies will continue their sales activities as independent companies after the transaction .

Part III Definition of the particular field of trade

1. Product range

Paper can be classified in various ways, depending on the application, quality, and other factors. The companies in this case are leading players in the manufacture and sale of paper that is specially coated to enhance printed colors on the paper surface. Paper with these qualities is classified as coated paper, lightweight coated paper, and ultra-lightweight coated paper (hereinafter collectively referred to as “coated papers”). The differences among these categories are the thickness of the coating materials and the quality of the base sheet. Applications for all coated papers include flyers, catalogs, pamphlets, and magazines.

The JTFC recognizes that substitutability for users exists to a certain degree among coated papers for three reasons. (1) Coated papers are demarcated for convenience by the amount of coating material per square

meter. This, however, is a relative demarcation and does not clearly indicate whether a given coated paper is suitable for certain purpose, such as color printing for example. (2) With improvements in the quality of coating materials in recent years, the variances in coating material amounts among products are much smaller than in the past. (3) Given points (1) and (2) above, users select whether to use a paper with a certain amount of coating material in accordance with factors such as price and printing finish.

The JFTC recognizes that substitution for suppliers exists among coated papers as well, because all coated papers are produced using the same manufacturing facilities.

Accordingly, the JFTC concluded that, overall, coated papers constitute a single product range and defined “coated papers” as the product range in this case.

2. Geographic range

Distributors and major users, users of coated papers, are located throughout Japan and procure coated papers from paper manufacturers located throughout Japan. Furthermore, there are no geographical restrictions to the transport of coated papers. Accordingly, the JFTC defined “all regions of Japan” as the geographic range in this case.

Part IV Impact of the business combination on competition

1. Market share

The domestic market for coated papers (quantity shipped domestically) is approximately 5.50 million tonnes. With this transaction, combined market share of the companies concerned will be ranked in the 1st place, with approximately 30 percent of the market. The HHI after the transaction will be approximately 2,100, and the increment is about 450. These figures do not fall within the range of the horizontal safe-harbor.

FY 2011 Shares in the coated papers market (quantity shipped domestically)

Rank	Company	Market Share
1	A	Approximately 20%
2	B	Approximately 20%
3	Hokuetsu Kishu Paper	Approximately 15%
4	Daio Paper	Approximately 15%
5	C	Approximately 5%
-	Imports	Approximately 15%
Total		100%

2. Status of competitors

There are multiple leading competitors with market shares over 10 percent.

Some competitors lost market share from FY 2010 due to damages sustained on their production plants in the Tohoku region caused by the March 2011 Great East Japan Earthquake, which forced the suspension of operations. It is expected that these companies' market shares will return to their pre-earthquake levels with the resumption of operations at the afflicted plants.

3. Competitive pressure from imports

Differences in quality have been largely eliminated between imported coated paper products manufactured in Asia, mainly China, and products from domestic manufacturers. This is a result of overseas manufacturers' advancement in production facilities; skilled personnel leaving domestic manufacturers to advise overseas manufacturers on technology; and domestic distributors who handle imported papers giving feedback on quality issues to overseas manufacturers. Furthermore, imported products are priced between five and ten percent cheaper than domestic manufacturers' products and delivery issues have been resolved by distributors that deal with imported products maintaining a certain excess

inventory, etc. Moreover, imports from Europe have also climbed in recent years, resulting in imported products growing to about 15 percent of the market share in FY 2011.

Accordingly, the JFTC recognizes that there is import pressure.

Part V Conclusion

Taking the above instances into account, the JFTC concluded that the transaction is unlikely to substantially restrain competition in any particular fields of trade.

Case 3 Merger between Furukawa-Sky Aluminum Corp. and Sumitomo Light Metal Industries, Ltd.

Part I Outline of the transaction

Furukawa-Sky Aluminum Corp. (hereinafter, “FSA”) and Sumitomo Light Metal Industries, Ltd. (hereinafter, “SLM”), both of which are manufacturers of rolled aluminum products, etc. planned to merge on October 1, 2013 (hereinafter, “the Merger”).

Nippon Foil Mfg. Co., Ltd., which is a subsidiary of FSA, and Sumikei Aluminum Foil Co., Ltd., which is a subsidiary of SLM, are both engaged in the manufacture and sale of rolled aluminum products, etc. Furthermore, Sumikei Copper Tube Co., Ltd., which is a subsidiary of SLM, is a company engaged in the manufacture and sale of copper tube products, and Furukawa Electric Co., Ltd., which is a parent company of FSA, is a company engaged in the manufacture and sale of copper tube products. The provision of applicable law is Article 15 of the AMA

Part II Reviewing process and outline of the results

1. Reviewing process

Commencing in May 2012, the parties have voluntarily submitted written opinions and relevant documents to the JFTC stating that, with respect to the rolled aluminum products and copper tube products in which the parties (including the subsidiaries and the parent company of the parties) compete, the parties consider that the Merger may not substantially restrain competition. The JFTC held several meetings with the parties at the request of the parties. Thereafter, on August 31, 2012, notification of a plan regarding the Merger was submitted by the parties. Accordingly, the JFTC received the notification and commenced a primary review on the same day. The JFTC conducted the primary review considering materials including the above notification and written opinions that were submitted by the parties, interviews with users and competitors, etc. As a result, it was determined that a more detailed review was necessary. Accordingly, on September 28, 2012, the JFTC requested that the parties submit reports, etc., and commenced a secondary review. In addition, the JFTC announced the commencement of the secondary review and began to accept information regarding the Merger from the general public. On the occasion of the request

for reports, etc., the JFTC explained the current issues to the parties.

In the secondary review, the JFTC received a series of reports, etc., submitted by the parties and also held several meetings with the parties at the request of them. The JFTC conducted a further review of the effects of the Merger on competition considering the results of interviews with users and competitors and questionnaire surveys, and the information accepted from the general public, etc.

All the reports, etc., that the JFTC had requested from the parties had been submitted by January 31.

2. Outline of the results of the review

Regarding this case, the JFTC has concluded that the Merger may not substantially restrain competition in the fields of “aluminum sheet products (general use)”, “aluminum sheet products (end/tab stock)”, “aluminum foil products”, and “pure copper tube products”, in which the parties compete and in which the Merger seemed to have significant impacts on competition. The JFTC has also concluded that the Merger may not substantially restrain competition with respect to any other fields of trade.

The details of the results of the review on the fields of trade regarding “aluminum sheet products (general use)”, “aluminum sheet products (end/tab stock)”, “aluminum foil products”, and “pure copper tube products” are described in Part III to Part V below.

(reference)

Receipt of the notification regarding the proposed merger between FSA and SLMon August 31, 2012 (start of the primary review)

Request for reports, etc. by the JFTC on September 28, 2012 (start of the secondary review)

Receipt of all requested reports from the parties on January 31, 2013 (the due date for a prior notice was set on May 2, 2013)

Notification to the parties that a cease and desist order will not be issued on February 21, 2013.

Part III Aluminum sheet products

1. Particular field of trade

(1) Product ranges

Aluminum sheet products are sheets of aluminum (including aluminum alloys; the same shall apply hereinafter) with a thickness of more than 0.2 millimeters. These products are formed by means of a rolling process, in which semi-processed slabs of aluminum are passed through a rolling mill. The semi-processed slabs are made by melting and casting aluminum metal, either on its own or with chemical additives. Applications of aluminum sheet products include beverage cans and components of home appliances, automobiles, electronic products, Aluminum sheet products are also the raw material (hereinafter, “foil stock”) for aluminum foil products.

Aluminum sheet products can be divided into many product categories in terms of their composition or shape according to their applications. Of these many products, however, there is no substitutability for users with respect to end/tab stock (aluminum sheet products (end/tab stock)), which is used for the lids and pull tabs on beverage cans. Since the manufacturing facilities for end/tab stock must not only be of a certain minimum scale but also have the capability to apply protective coatings to prevent corrosion where the aluminum comes in contact with a beverage, there is no substitutability for suppliers. Consequently, the JFTC considers end/tab stock to constitute a separate product range from other sheet products. With regard to other sheet products (hereinafter, “aluminum sheet products (general use)”), although substitutability for users between products is not recognized, there is substitutability for suppliers since the products are manufactured using the same manufacturing facilities. Therefore, the JFTC considers aluminum sheet products (general use) to constitute a single product range.

Accordingly, the JFTC defined two product ranges: aluminum sheet products (general use) and aluminum sheet products (end/tab stock).

(2) Geographic range

a. Assertion by the Parties

The parties assert that the applicable geographic range is the area which includes Japan and the East Asian region (China, South Korea, Taiwan, and the ASEAN countries), because: (i) it is unavoidable for Japanese manufacturers of rolled aluminum products (hereinafter, “Japanese Aluminum manufacturers”) to compete with the manufacturers of rolled aluminum products in the East Asian area (hereinafter, “Aluminum manufactures in the East Asian area”), as users in Japan expand their

businesses in the East Asian area; (ii) aluminum manufactures in the East Asian area develop their businesses in Japan and all over the East Asian area; (iii) users in the East Asian area and users in Japan purchase products from Japan and all over the East Asian area; (iv) aluminum is not likely to deteriorate during maritime transportation; (v) maritime transportation costs account for only several percent in the price of aluminum sheet products; (vi) as the raw metal price accounts for a large proportion of the price of rolled aluminum products, and as the raw metal price is based on the London Metal Exchange, prices of aluminum sheet products in Japan and the East Asian area tend to converge to the same price range; and (vii) the quality of aluminum sheet products does not differ greatly among counties including Japan.

b. The JFTC's viewpoint on this case

According to the materials submitted by the parties, the JFTC finds the assertions (i), (ii), (iv), and (v) to be reasonable. However, according to the user interviews and questionnaire surveys, the assertions (vi) and (vii) are not reasonable, for the following reasons: concerning (vi), different ranges of prices are formed between Japan and the East Asian area, because price differences exist to a certain degree between imported products and products made by Japanese aluminum manufacturers; and concerning (vii), users do not recognize that the quality of products made by Japanese aluminum manufacturers and that of import products are equivalent.

Under these circumstances, the market share of Japanese aluminum manufacturers in Japan is high while their share in the East Asian area is low. Accordingly, the assertion (iii) by the parties is likewise not reasonable.

Meanwhile, in Japan, there are no constraints on the transportation of aluminum sheet products from the viewpoint of difficulties with transport and the cost of transport. The parties and their competitors conduct sales all over Japan and circumstances showing a difference in selling prices according to regions have not been identified.

Accordingly, "all of Japan" is defined as being the geographic range for this product.

2. Review concerning substantial restraint of competition

(1) Sheet products (general use)

a. Changes in the market structure

After the Merger, the combined post-merger market share of the parties will be approximately 50 percent (ranked first) and HHI will increase by about 1,200 to approximately 3,200, which will not meet the safe harbor threshold for horizontal business combinations.

Market share of sheet products (general use) in the fiscal year 2011

	Company name	Market share
1	FSA	Approximately 30%
2	Company A	Approximately 20%
3	SLM	Approximately 20%
4	Company B	Approximately 10%
5	Company C	5-10%
6	Company D	0-5%
	Imports	5-10%
Total		100%

b. Status of competitors

Companies A, B, and C each have market shares to a certain degree, and the utilization rates of the manufacturing facilities of these three companies are not high. Therefore, the JFTC recognizes that these three companies have excess supply capacity.

c. Import pressure

Over the past 10 years the import rates have generally moved within a range of three to six percent. Although there is no evidence that imports are making large market share gains, products from aluminum manufactures in the East Asian area are being imported constantly.

According to interviews with users and competitors and questionnaire surveys, the quality of imported aluminum products is catching up with that of Japanese aluminum manufacturers for certain applications, although some concerns remain in the area of stability. For example, imported

aluminum products are unfit for applications where design characteristics are paramount, such as areas where bare aluminum is exposed on the surface. However, imported products can be used without any problem in generic items or in applications where a coating covers the aluminum.

The shipping costs required for imports are negligible if they come from the East Asian area, and imports are subject to a two percent tariff. Furthermore, quality deterioration is highly unlikely to occur due to shipping.

Therefore, the JFTC recognizes that there is import pressure to a certain degree.

d. Competitive pressure from neighboring markets (product range)

Aluminum as a material is in a situation in which it is competing with other lighter and stronger materials (plastic, carbon fiber, etc.) or other metals (stainless steel, etc.) for various applications.

Therefore, the JFTC recognizes that there is competitive pressure from neighboring markets (product range).

e. Competitive pressure from neighboring markets (geographic range)

Some users of aluminum sheet products (general use) are relocating their production bases to the East Asian area and elsewhere in the interest of cutting costs because they are being exposed to competition from imports in their own product markets. Following their customers' lead, Japanese aluminum manufacturers are also working to promote sales overseas. According to the parties, major overseas aluminum manufacturers, such as Alcoa, Novelis, and Hydro, are actively pursuing sales in the East Asian area. Furthermore, emerging corporations in China and elsewhere in recent years have made large-scale capital investments to quickly scale-up their manufacturing capacities.

Users of aluminum sheet products (general use) that have moved their production bases from Japan to the East Asian area are procuring raw materials locally as a means of cutting costs. Such users, when negotiating prices with the parties, have asserted that they will purchase, or are considering purchasing, products from major overseas aluminum manufacturers or others in place of products from Japanese aluminum manufacturers.

Accordingly, the JFTC recognizes that there is competitive pressure from neighboring markets (geographic range).

f. Assessment under the AMA

(a) Substantial restraint of competition by unilateral conduct

Although the Merger will result in the merged company having a market share of approximately 50 percent, the JFTC considers that there is little possibility of a situation developing in which the merged company would be able to manipulate prices, etc. to any extent through unilateral conduct, and thus concludes that the Merger may not substantially restrain competition in the field of trade, for the following reasons: (i) there are competitors which have certain market shares and have excess capacities; (ii) there is import pressure to a certain degree; and (iii) there is competitive pressure from neighboring markets.

(b) Substantial restraint of competition through coordinated conduct

Although the Merger will result in the number of companies in the aluminum sheet products (general use) market being reduced from six to five, the JFTC considers that there is little possibility of a situation developing in which the parties and competitors would be able to manipulate prices, etc. to any extent through coordinated conduct, and thus concludes that the Merger may not substantially restrain competition, for the following reasons: (i) as the merged company and each competitor with a certain market share both have excess capacities, thus they have room to deprive competitors' sales by cutting prices; (ii) as there is import pressure to a certain degree, should companies in Japan were to raise the domestic price through coordinated conduct, they would lose sales to greater imports;; and (iii) there is competitive pressure from neighboring markets.

(2) Sheet products (end/tab stock)

a. Changes in market structure

After the Merger, the combined post-merger market share of the parties will be approximately 70 percent (ranked first). HHI will increase by about 2,200 to approximately 5,500, which will not meet the safe harbor threshold for horizontal business combinations.

Market share of sheet products (end/tab stock) in the fiscal year 2011

	Company name	Market share
1	SLM	Approximately 40%
2	Company E	Approximately 30%
3	FSA	Approximately 30%
Total		100%

b. Status of competitors

Although Company E has a certain market share, the utilization rate of its manufacturing facility is high. Therefore, Company E has no excess capacity.

c. Competitive pressure from users

In interviews and questionnaire surveys of beverage can manufacturers (hereinafter, "beverage can manufacturers"), who are users of aluminum sheet products, almost all beverage can manufacturers that purchase aluminum sheet products (end/tab stock) from the parties or from Company E said they purchase end/tab stock together with body materials used for the side and bottom of beverage cans (hereinafter, "body materials"). The parties stated that the ratio by weight of end/tab stock to body materials in a 350-milliliter can, for example, is generally one to three. Therefore, beverage can manufacturers actually purchase greater volumes of body materials than aluminum sheet products (end/tab stock).

Body materials are manufactured and sold by the parties, Company E, and Company B, a manufacturer of aluminum sheet products (general use). In addition, imported body materials are distributed in the domestic market.

Thus, should the merged company attempt to increase the price of aluminum sheet products (end/tab stock), beverage can manufacturers that currently purchase aluminum sheet products (end/tab stock) and body materials together may claim that they would switch to Company B or Company E for body materials, or else to importing from aluminum manufactures in the East Asian area. Therefore, the JFTC recognizes that competitive pressure from these users will constrain the ability of the merged company to increase prices. Similarly, beverage can manufacturers that currently purchase only aluminum sheet products (end/tab stock) may

claim that they would consider importing from aluminum manufactures in the East Asian area, taking the claims in Section d. below into consideration. Therefore, the JFTC recognizes that competitive pressure from these users will also constrain the ability of the merged company to increase prices.

Accordingly, the JFTC recognizes that there is competitive pressure from users.

d. Import pressure

In interviews, beverage can manufacturers stated they do not import aluminum sheet products (end/tab stock) from aluminum manufactures in the East Asian area because of concerns about quality and stability of procurement.

On the other hand, materials submitted by the parties note that the quality of aluminum sheet products (end/tab stock) from aluminum manufactures in the East Asian area compares favorably with the parties' products. Furthermore, with regard to the stability of procurement, beverage can manufacturers have a track record of importing body materials from aluminum manufactures in the East Asian area. Therefore, the JFTC recognizes no particular hindrance to importing aluminum sheet products (end/tab stock). Moreover, beverages contained in aluminum cans produced in the East Asian area are sold in Japan without distinction from beverages contained in aluminum cans produced in Japan. Therefore, because these beverages are distributed without hindrance, the JFTC recognizes that there is no substantial functional difference between aluminum cans manufactured with products from aluminum manufactures in the East Asian area and aluminum cans manufactured with products from Japanese aluminum manufacturers.

Although there are no imports at the present time, given the findings above, the JFTC does not recognize any special factors preventing imports other than beverage can manufacturers' low assessment of aluminum sheet products (end/tab stock) from aluminum manufactures in the East Asian area compared to that of aluminum sheet products (end/tab stock) from Japanese aluminum manufacturers. Therefore, the JFTC considers that changes to the competitive environment could result in the importation of aluminum sheet products (end/tab stock) if beverage can manufacturers were to change their assessment of imported products.

e. Assessment under the AMA

(a) Substantial restraint of competition by unilateral conduct

Although the Merger will result in the merged company having a market share of about 70 percent, the JFTC considers that there is little possibility of a situation developing in which the merged company would be able to manipulate prices, etc. to any extent through unilateral conduct, and thus concludes that the Merger may not substantially restrain competition, for the following reasons: (i) there is competitive pressure from users; (ii) there is a competitor with a certain market share; and (iii) although there are no imports at the present time, there is the potential for changes to the competitive environment to trigger imports if beverage can manufacturers were to change their assessment of imported products.

(b) Substantial restraint of competition through coordinated conduct

Although the Merger will result in the number of companies in the aluminum sheet products (end/tab stock) market being reduced from three to two, the JFTC considers that there is little possibility of a situation developing in which the merged company and their competitor would be able to manipulate prices, etc. to any extent through coordinated conduct, and thus concludes that the Merger may not substantially restrain competition, for the following reasons: (i) the JFTC recognizes that beverage can manufacturers, the users, have strong bargaining power over price negotiations with respect to the price of aluminum sheet products (end/tab stock) strengthened by the volumes of body materials they purchase; and (ii) although there are no imports at the present time, there is the potential for changes to the competitive environment to trigger imports if beverage can manufacturers were to change their assessment of imported products.

Part IV Aluminum foil products

1. Particular field of trade

(1) Product range

Aluminum foil products are aluminum products with a thickness of 0.2 millimeters or less. These products are formed by rolling foil stock using a

rolling mill. Applications of aluminum foil products include packaging for food and medical supplies, liners for drink boxes, cathode and anode components in electrolytic capacitors, and daily use products such as aluminum foil for household use.

Aluminum foil products consist of plain foil (non-processed foil) manufactured by simply rolling the foil stock, and processed foil, in which some additional processing is performed on the plain foil.

a. Processed foil

Processed foil products are generally manufactured in one of two ways: a processor, called a converter, procures unprocessed foil from an aluminum manufacturer and applies finishing processes; or a user of processed foil (such as a food manufacturer), often as a food packaging material (wrapping materials, retort pouches, etc.), procures unprocessed foil from an aluminum manufacturer and applies finishing processes internally.

In the area of converters, there are businesses that can manufacture various types of processed foils and businesses that specialize in manufacturing specific processed foils (e.g., liners for drink boxes).

Processed foils can be divided into various product categories according to their application and finishing process. As such, there is no substitutability between products for users. Furthermore, because the manufacturing facilities differ depending on the finishing process, there is no substitutability for suppliers either.

Consequently, in normal circumstances, it would be appropriate to define separate product ranges for processed foils respectively by their application and finishing process. However, in all of these potential product ranges, the JFTC considers that the Merger will not have a large influence on the sales market of any processed foil type due to the presence of converters and because the combined market share of the parties is estimated to be sufficiently small. Therefore, as the product range, the JFTC did not define separate product ranges for processed foils by their application and finishing process, and instead collectively refer to them as foil products (processed foils).

The range of foil products (processed foils) meets the safe harbor threshold for horizontal business combinations.

b. Non-processed foil

In the same way as aluminum sheet products (general use), non-processed foil products can be divided into various product categories by their composition or shape according to their application. As such, there is no substitutability between products for users. Of these products, high-purity aluminum foil used in electrolytic capacitor cathodes undergoes a finishing process after rolling that is different from other products in order to ensure the foil's high conductivity. Therefore, because of this unique finishing process, the JFTC considers high-purity aluminum foil to constitute a separate product range, as there is no substitutability for suppliers. With regard to other products, although substitutability between products for users is not recognized, there is substitutability for suppliers since the products are manufactured using the same manufacturing facilities. Therefore, the JFTC considers all non-processed foil products other than high-purity aluminum foil to constitute a single product range.

Accordingly, the JFTC defined two product ranges: general-use foil products and high-purity foil products for capacitors.

Since the parties do not compete in high-purity foil products for capacitors, the JFTC's examination below only considers general-use foil products.

(2) Geographic range

a. Assertion by the Parties

The parties assert that the applicable geographic range is the area which includes Japan and the East Asian area, because: (i) it is unavoidable for Japanese manufacturers of aluminum foil products to compete with the manufacturers of aluminum foil products in the East Asian area, as users in Japan expand their businesses in the East Asian area; (ii) aluminum manufacturers in the East Asian area develop their businesses in Japan and all over the East Asian area; (iii) users in the East Asian area and users in Japan purchase products from Japan and all over the East Asian area; (iv) aluminum is not likely to deteriorate during maritime transportation; (v) maritime transportation costs account for only several percent in the price of aluminum foil products; (vi) as the raw metal price accounts for a large proportion of the price of aluminum foil products, and as the raw metal price is based on the London Metal Exchange, prices of aluminum foil

products in Japan and the East Asian area tend to converge to the same price range; and (vii) the quality of aluminum foil products does not differ greatly among counties including Japan.

b. The JFTC's viewpoint on this case

According to the materials submitted by the parties, the JFTC finds assertions (i), (ii), (iv), and (v) to be reasonable. However, according to the user interviews and questionnaire surveys, assertions (vi) and (vii) are not reasonable, for the following reasons: concerning (vi), different ranges of prices are formed between Japan and the East Asian area, because price differences exist to a certain degree between imported products and products made by Japanese aluminum manufacturers; and concerning (vii), users do not recognize that the quality of products made by Japanese aluminum manufacturers and that of import products are equivalent. Under these circumstances, the market share of Japanese aluminum manufacturers in Japan is high while their share in the East Asian area is low. Accordingly, assertion (iii) by the parties is likewise not reasonable.

Furthermore, in Japan, there are no constraints on the transportation of aluminum foil products from the viewpoint of difficulties with transport and the cost of transport. The parties and their competitors conduct sales all over Japan. Circumstances showing a difference in selling prices according to region have not been identified.

Accordingly, "all of Japan" is defined as being the geographic range for this product.

2. Review concerning substantial restraint of competition

(1) Changes in market structure

After the Merger, the combined post-merger market share of the parties will be approximately 25 percent (ranked second). HHI will increase by about 350 to approximately 3,000, which will not meet the safe harbor threshold for horizontal business combinations.

Market share of foil products (general use) in the fiscal year 2011

	Company name	Market share
1	Company F	Approximately 40%
2	Nippon Foil Mfg. Co., Ltd.	Approximately 15%
3	Sumikei Aluminum Foil Co., Ltd.	Approximately 10%
4	Company G	Approximately 10%
	Imports	Approximately 25%
Total		100%

(2) Status of competitors

Companies F and G have considerable market share, and the utilization rates of the manufacturing facilities of these two companies are not high. Therefore, the JFTC recognizes that these two companies have excess capacities.

(3) Import pressure

Imported products account for about 25 percent of the market. This is primarily because users will adopt imports when they can purchase large volumes of products with uniform specifications, such as daily use products (e.g., aluminum foil for household use) and aluminum foil used as liners for drink boxes.

Despite some users being reluctant to adopt imports for certain applications because of quality issues, other users are actively considering adopting imports to take advantage of cost benefits due to the high value of the yen in recent years. Furthermore, users who adopted imports report that there is no substantial difference in quality between products from Japanese aluminum manufacturers and imports from the East Asian area.

Because foil products are shipped by sea in packaged rolls, there is the potential for some quality deterioration due to shipping, such as the

formation of creases or kinks. Nevertheless, shipping costs are negligible and imports from the East Asian area are cheaper in price than the products of domestic manufacturers, even though the tariff rate is 7.5 percent.

Accordingly, the JFTC recognizes that there is effective import pressure.

(4) Competitive pressure from neighboring markets (product range)

Aluminum foil, as a material, competes against a wide range of other materials, such as paper, plastics, and other kinds of metallic foils. Furthermore, certain applications for downstream product face competitive pressure from the neighboring markets of the downstream product, such as plastic PET bottles competing against drink boxes.

Accordingly, the JFTC recognizes that there is competitive pressure from neighboring markets (product range).

3. Assessment under the AMA

(1) Substantial restraint of competition by unilateral conduct

Although the Merger will result in the parties having a market share of approximately 25 percent, the JFTC considers that there is little possibility of a situation developing in which the parties would be able to manipulate prices, etc. to any extent through unilateral conduct, and thus concludes that the Merger may not substantially restrain competition, for the following reasons: (i) there are competitors which have certain market shares and have excess capacities; (ii) there is effective import pressure; and (iii) there is competitive pressure from neighboring markets (including competitive pressure from neighboring markets of the downstream product market)..

(2) Substantial restraint of competition through coordinated conduct

Although the Merger will result in the number of companies in the foil products (general use) products market being reduced from four to three, the JFTC considers that there is little possibility of a situation developing in which the parties and their competitors would be able to manipulate prices, etc. to any extent through coordinated conduct, and thus concludes that the Merger may not substantially restrain competition, for the following reasons: (i) as the parties and each competitor with a certain market share both have excess capacities, they have room to deprive competitors' sales by cutting prices; (ii) as there is import pressure to a certain degree, should companies

in Japan were to raise the domestic price through coordinated conduct, they would lose sales to greater imports;; and (iii) there is competitive pressure from neighboring markets (including competitive pressure from neighboring markets of the downstream product market).

Part V Pure copper tube products

1. Particular field of trade

(1) Product range

Pure copper tube is a copper product manufactured using a minimum of 99 percent pure copper. Applications include heat exchangers in air-conditioners and refrigeration units, water heaters, and warm-water plumbing.

Various pure copper tube products exist having different copper compositions and shapes. Although substitutability between products for users is not recognized, there is substitutability for suppliers since the products are manufactured using the same manufacturing facilities. Therefore, the JFTC considers all pure copper tube products to constitute a single product range.

Accordingly, the JFTC defined pure copper tube products as the product range.

(2) Geographic range

a. Assertion by the parties

The parties assert that the applicable geographic range is the area which includes Japan and the East Asian area, because: (i) it is unavoidable for Japanese manufacturers of pure copper tube products (hereinafter, “Japanese pure copper tube manufacturers”) to compete with the manufacturers of pure copper tube products in the East Asian area (hereinafter, “pure copper tube manufactures in the East Asian area”), as users in Japan expand their businesses in the East Asian area; (ii) pure copper tube manufactures in the East Asian area develop their businesses in Japan and all over the East Asian area; (iii) users in the East Asian area and users in Japan purchase products from Japan and all over the East Asian area; (iv) pure copper tube is not likely to deteriorate during maritime transportation; (v) maritime transportation costs account for only several percent in the price of pure copper tube products; (vi) as the raw metal

price accounts for a large proportion of the price of pure copper tube products, and as the raw metal price is based on the London Metal Exchange, prices of pure copper tube products in Japan and the East Asian area tend to converge to the same price range; and (vii) the quality of pure copper tube products does not differ greatly among countries including Japan.

b. The JFTC's viewpoint on this case

According to the materials submitted by the parties, the JFTC finds assertions (i), (ii), (iv), and (v) to be reasonable. However, according to the user interviews and questionnaire surveys, assertions (vi) and (vii) are not reasonable, for the following reasons: concerning (vi), different ranges of prices are formed between Japan and the East Asian area, because price differences exist to a certain degree between imported products and products made by Japanese pure copper tube manufacturers; and concerning (vii), users do not recognize that the quality of products made by Japanese pure copper tube manufacturers and that of import products are equivalent. Under these circumstances, the market share of Japanese pure copper tube manufacturers in Japan is high while their share in the East Asian area is low. Accordingly, assertion (iii) by the parties is likewise not reasonable.

Furthermore, in Japan, there are no constraints on the transportation of pure copper tube products from the viewpoint of difficulties with transport and the cost of transport. The parties and their competitors conduct sales all over Japan. Circumstances showing a difference in selling prices according to region have not been identified.

Accordingly, "all of Japan" is defined as being the geographic range.

2. Review concerning substantial restraint of competition

(1) Changes in market structure

After the Merger, the combined post-merger market share of the parties will be approximately 35 percent (ranked second). HHI will increase by about 400 to approximately 2,800, which will not meet the safe harbor criteria for horizontal business combinations.

Company I, with the third market share, has withdrawn from the market as of March 2012.

Market share of pure copper tube products in fiscal year 2011

	Company name	Market share
1	Company H	Approximately 35%
2	Sumikei Copper Tube Co., Ltd.	Approximately 25%
(3)	(Company I)	Approximately 15%
4	Furukawa Electric Co., Ltd.	Approximately 10%
	Imports	Approximately 15%
Total		100%

(2) Status of competitors

Although Company H has a considerable market share, the utilization rate of its manufacturing facility is high. Therefore, company H has no excess capacity.

(3) Import pressure

Imported products account for about 15 percent of the market. This is primarily because users recognize imports as having the same level of quality as products from Japanese pure copper tube manufacturers for applications where complex processing is not required.

Pure copper tube is shipped as straight pipes or in coils. The nature of the products is such that quality deterioration is highly unlikely to occur due to shipping. The shipping costs are negligible, and imports are subject to a three percent tariff. Interviews with users found that products from pure copper tube manufactures in the East Asian area are cheaper than products from Japanese pure copper tube manufacturers. Users are actively moving to products from pure copper tube manufactures in the East Asian area to take advantage of cost benefits, after accounting for disadvantages in comparison with Japanese pure copper tube manufacturers, such as longer delivery times

and the inability of manufacturers to provide meticulous services.

Accordingly, the JFTC recognizes that there is effective import pressure.

(4) Competitive pressure from neighboring markets (product range)

Warm-water plumbing, one of the main applications of pure copper tube, is steadily being replaced by plastic tube and stainless-steel tube. Heat exchangers make up the greater part of the demand for pure copper tube. However, aluminum tube is starting to be considered as an alternative to pure copper tube in heat exchangers for air-conditioning units.

Accordingly, the JFTC recognizes that there is competitive pressure from neighboring markets (product range).

(5) Competitive pressure from neighboring markets (geographic range)

Many home appliance manufacturers (hereinafter, "home appliance manufacturers"), which are major users of pure copper tube, have relocated or are relocating their production bases overseas. Following their customers' lead, Japanese pure copper tube manufacturers are also working to expand their product sales overseas.

Japanese home appliance manufacturers that have moved their production bases to the East Asian area are exposed to competition with imports in the sales markets for their own products. To make their products more price-competitive, these manufacturers are adopting products from pure copper tube manufactures in the East Asian area in the interest of cutting costs. In fact, air-conditioner units re-imported from Japanese home appliance manufacturers' plants located in the East Asian area use pure copper tube manufactured in the East Asian area.

In some cases, home appliance manufacturers have claimed, in price negotiations with the parties, that they have purchased or are considering purchasing products from pure copper tube manufactures in the East Asian area in place of products from Japanese pure copper tube manufacturers.

Accordingly, the JFTC recognizes that there is competitive pressure from neighboring markets (geographic range).

(6) Entry pressure

Manufacturers of copper products made from brass (an alloy of copper and zinc) (hereinafter, "brass products") ordinarily manufacture only brass

products to avoid the costs associated with cleaning furnaces, which is necessary in order to switch over to manufacturing other types of copper products. However, since the structure of manufacturing facilities for pure copper products and brass products are essentially the same, it is technically possible for these manufacturers to manufacture pure copper tube if they clean their furnaces.

Consequently, the JFTC considers that, should the parties raise their prices after the Merger, brass product manufacturers could enter the field of trade regarding pure copper tube without requiring massive entry costs.

Accordingly, the JFTC recognizes that there is entry pressure.

(7) Competitive pressure from users

Major users of pure copper tube are home appliance manufacturers which have a strong bargaining power in price negotiations strengthened by their purchasing power. Other users also purchase pure copper tube from multiple pure copper tube manufacturers to ensure stable procurement and to strengthen their bargaining positions.

Accordingly, the JFTC recognizes that there is competitive pressure from users.

3. Assessment under the AMA

(1) Substantial restraint of competition by unilateral conduct

Although the Merger will result in the parties having a market share of approximately 35 percent, the JFTC considers that there is little possibility of a situation developing in which the parties would be able to manipulate prices, etc. to any extent through unilateral conduct, and thus concludes that the Merger may not substantially restrain competition, for the following reasons: (i) there is a competitor with a certain market share; (ii) there is effective import pressure; (iii) there is entry pressure; and (iv) there is competitive pressure from neighboring markets and users.

(2) Substantial restraint of competition through coordinated conduct

Although the Merger will result in the number of companies in the pure copper tube market being reduced from three to two, the JFTC considers that there is little possibility of a situation developing in which the parties and their remaining competitor would be able to manipulate prices, etc. to any

extent through coordinated conduct, and thus concludes that the Merger may not substantially restrain competition, for the following reasons: (i) there is a competitor with a certain market share; (ii) as there is effective import pressure, should companies in Japan were to raise the domestic price through coordinated conduct, they would lose sales to greater imports; (iii) there are entry pressure and competitive pressure from neighboring markets.

Case 4 M&A between ASML Holdings N. V. and Cymer Inc.

Part I Outline of the transaction

ASML US Inc., (headquartered in the United States; hereinafter “ASML US”) belongs to the group of combined companies*¹ whose ultimate parent company is ASML Holding N.V. (headquartered in the Netherlands) (hereinafter “ASML”) that runs business of manufacturing and selling lithography systems used in the front-end process*² of semiconductor manufacturing, planned to acquire all the shares of Cymer which runs business of manufacturing and selling light sources composing an important part of the lithography system (hereinafter “the Acquisition”). The provision of applicable law is Article 10 of the AMA.

*Note 1: The process of semiconductor manufacturing is categorized into front-end and back-end as follows: the front-end process is where electronic circuits are printed on wafers (thin circular plates) that are the basic structure of semiconductor integrated circuits by lithography systems, and the back-end process is where cutting offs, assemblings and final inspections of each chip are carried out by the chip (product).

*Note 2: The group of combined companies prescribed in Article 10 (2) of the AMA .

Part II Reviewing process and outline of the review results

1. Reviewing process

Since November 2012, ASML US voluntarily submitted a written opinion to the Japan Fair Trade Commission (hereinafter “the JFTC”) stating that ASML US considered that the Acquisition would not substantially restrain competition in any particular fields of trade. The JFTC had meetings with ASML US upon the request of them. On January 30, 2013, following the meeting, ASML US submitted a notification concerning the plan on the Acquisition to the JFTC under Article 10 (2) of the AMA. The JFTC received this notification and launched the primary review. In the primary review, ASML US asked the JFTC to explain the points potentially to argue and so on in order to enable the review of the Acquisition to smoothly proceed. The JFTC explained the points to argue to them. Then, the parties proposed measures to resolve the points potentially to argue. Thereafter, since the JFTC

found that a more detailed review should be needed including that of the contents of the measures, on February 28, 2013, the JFTC requested ASML US to submit reports and other necessary documents and launched the secondary review. On the same day, the JFTC announced that it had launched the secondary review and it would accept opinions from third parties.

In the secondary review, the JFTC studied the impact that the Acquisition might have on competition in the particular fields of trade based on the proposed measures to resolve the points potentially to argue that ASML US proposed as well as information collected through interviews with users and competitors, etc.

As to the JFTC's request to ASML US, with the requested reports and necessary documents submitted on April 11, 2013, ASML US completed its obligation on the JFTC's request.

2. Outline of the review results

As to the Acquisition, the JFTC concluded that, taking the measures ASML US proposed which are mentioned in article V-2 (3), V-3 (3) and V-4 (2) below, etc. into consideration the Acquisition would not substantially restrain competition in the particular fields of trade.

The details of review results are as mentioned in the below from Part III to V.

(reference1) Reviewing process

Receipt of the notification regarding the Acquisition by ASML US on January 30, 2013 (start of the primary review)

Request for reports, etc. by the JFTC on February 28, 2013 (start of the secondary review)

Receipt of all requested reports, etc. from the parties on April 11, 2013 (the due date for a prior notice was set on July 11, 2013)

Notification to the parties that a cease and desist order will not be issued on May 2, 2013

(reference2) Coordination with the foreign competition authorities

Antitrust Division of the U.S. Department of Justice (hereinafter "DOJ"), Korea Fair Trade Commission (hereinafter "KFTC") and other competition authorities also had reviewed this case, and the JFTC had conducted the

review of this case while exchanging information with DOJ, KFTC and other foreign competition authorities.

After the JFTC's release of the result of the review, KFTC released its result of the review.

Part III Particular field of trade

1. Upstream market (light source)

(1) Product range

Light source, a device that generates laser beams, is one of the essential and important parts of lithography systems as mentioned in Part III-2, below, and is used to print electronic circuits on wafers. The light source in which the parties currently have transaction is DUV (Deep Ultraviolet Light) light source. DUV light source can be divided into two major types: KrF light source*³ and ArF light source*⁴.

Telling of a general nature of light sources, the shorter wavelength it generates, the higher resolution performance it achieves that enables print circuits to be done in more microscopic bandwidth. With regard to the wavelength of the light source, KrF light sources have wavelength light of about 248 nano meter (hereinafter "nm") and ArF light sources have wavelength light of about 193nm. Light sources with longer wavelength light are used to print circuits with broad bandwidth. Light sources with shorter wavelength light are used to print circuits with narrow bandwidth.

Although there is another type of light source besides DUV light source called EUV (Extreme Ultraviolet Light) light source which has wavelength light of about 13.5nm, EUV light sources and EUV lithography systems are under technical challenge. Therefore, current sales of EUV light sources are marginal and made only for research and development purposes.

As mentioned above, due to the differences of resolution performances and price ranges between KrF light sources and ArF light sources, users which are manufacturers of lithography systems do not recognize KrF light sources and ArF light sources as substitutable. Therefore, the JFTC defined one product range as "KrF light sources" and another product range as "ArF light sources" both are separately subject to its review.

*Note 3: KrF light sources are a light source which generates light from the

gas laser composed of krypton and fluoride.

*Note 4: ArF light sources are a light source which generates light from the gas laser composed of argon and fluoride.

(2) Geographic range

Light source manufacturers and retailers (hereinafter “light source manufacturers”) sell their light sources at a substantially same price all over the world. Moreover, lithography system manufacturers and distributors, domestic and overseas light source users (hereinafter “lithography system manufacturers”), give non-discriminatory treatment to domestic and overseas light source manufacturers. Therefore, for each of the light sources as defined in (1), above, the geographic range is, respectively for each, defined as “the whole world”.

2. Downstream market (lithography system)

(1) Product range

Lithography system is a device that makes an image of electronic circuit patterns (circuit original plate) in reduced size, projected through its lens and prints the image on a wafer which is the basic structure of semiconductor integrated circuits. Whereas mentioned in Part III-1, above, in case of light sources, one with shorter wavelength light has higher resolution performance that enables the light sources to print circuits with narrow bandwidth, a lithography system with ArF light source called “immersion lithography system” exists. This lithography is designed to enhance high resolution via application of refraction index of water created when the area between the lens and wafer is immersed with water.

With respect to resolution performances of lithography systems by the light source, the lithography system attached with KrF light source (hereinafter referred to as “KrF lithography system”) is capable of resolution performance of approximately 100-250 nm, the lithography system attached with ArF light source (hereinafter referred to as “ArF lithography system”) is capable of approximately 65-90 nm and the immersion lithography system attached with ArF light source (hereinafter referred to as “ArF immersion lithography system”) is capable of approximately 45-65 nm. Therefore, the resolution performance of ArF immersion lithography system is the highest

among the lithography systems.

With respect to KrF lithography systems, ArF lithography systems and ArF immersion lithography systems, since there are differences between resolution performances and price ranges among them, the substitutability for semiconductor manufacturers and distributors and semiconductor manufactures to produce by order (hereinafter both of them shall be collectively referred to as the “chipmakers”) which are customers of lithography systems does not exist. Therefore, the JFTC defined the product ranges as “KrF lithography systems”, “ArF lithography systems” and “ArF immersion lithography systems” individually for each.

Nonetheless, chipmakers which are customers of lithography systems can freely choose any light sources manufactured by each of light source manufacturers when they purchase lithography systems.

(2) Geographic range

Lithography system manufacturers sell lithography systems at substantially same price all over the world. Chipmakers which are domestic and overseas users give non-discriminatory treatment to domestic and overseas lithography system manufacturers. Therefore, for each lithography as defined above (1), “the whole world” is individually defined as a geographic range.

Part IV Review concerning substantial restraint of competition

1. The status of the parties and the competitive situation

(1) Upstream market (light source)

In the market for KrF light sources, the market share of Cymer would be approximately 60% (ranked in the first in the market) and the HHI would be approximately 5,300. In the market for ArF light sources, the market share of the parties would be approximately 75% (ranked in the first in the market) and the HHI would be approximately 6,300. Therefore, both products do not meet the safe harbor standards for vertical business combinations.

Company A(a domestic manufacturer) is the only competitor of Cymer.

[Market share of KrF light sources in 2012]

Rank	Company name	Market share
1	Cymer	Approx. 60%
2	Company A	Approx. 40%
Total		100%

[Market share of ArF light sources in 2012]

Rank	Company name	Market share
1	Cymer	Approx. 75%
2	Company A	Approx. 25%
Total		100%

(2) Downstream market (lithography system)

In the market for KrF lithography systems, the market share of ASML would be approximately 90% (ranked in the first in the market) and the HHI would be approximately 8,300. In the market for ArF lithography systems, the market share of the parties would be approximately 45% (ranked in the second in the market) and the HHI would be about 5,100. In the market for ArF immersion lithography systems, the market share of the parties would be approximately 85% (ranked in the first in the market) and the HHI would be approximately 7,500. Therefore, all products do not meet the safe harbor standards for vertical business combinations.

With respect to KrF lithography systems, Company X and Company Y (both of them are domestic manufacturers) are the only competitors of ASML. With respect to ArF lithography systems and ArF immersion lithography systems, Company X is the only competitor of ASML.

[Market share of KrF lithography systems in 2012]

Rank	Company name	Market share
1	ASML	Approx. 90%
2	Company X	Approx. 5%
3	Company Y	0-5%
Total		100%

[Market share of ArF lithography systems in 2012]

Rank	Company name	Market share
1	Company X	Approx. 55%
2	ASML	Approx. 45%
Total		100%

[Market share of ArF immersion lithography systems in 2012]

Rank	Company name	Market share
1	ASML	Approx. 85%
2	Company X	Approx. 15%
Total		100%

2. Refusal of sale, etc. of light sources transaction

(1) Impact of refusal of sale on competition

In the downstream market, Company X and Company Y which manufacture and distribute KrF lithography systems, ArF lithography systems or ArF immersion lithography systems procure an appreciable extent of KrF light sources or ArF light sources from Cymer of the upstream market. As a result of the Acquisition, in case where Company X or Company Y are deprived of an opportunity to deal with Cymer or in case where Company X or Company Y is disadvantageously treated in transactions compared with ASML (hereinafter referred to as “input foreclosure”), Company X or Company Y are placed in a disadvantageous situation and there are some possibilities of resulting in market foreclosure or exclusivity.

Cymer occupies a high market share of the upstream market and there are few competitors in the upstream market. Therefore, if Cymer substantially sells light sources exclusively to ASML, and thus the competitors in the downstream market lose the primary procurement sources of light sources and result in market foreclosure or exclusivity, it is considered that such situation has a large impact on competition in the downstream market.

(2) Allegations of the parties and assessments thereof

A. Allegations of the parties

According to the parties' claim, upon selling lithography systems, as to a light source which constitutes an important part of lithography systems, whereas it is chipmakers who decide to choose which light source of which light source manufacturer, if the parties engaged in input foreclosure, the parties lose not only their light source profit causes but also lose trust from chipmakers and that leads to have impact on ASML's lithography sales. Therefore, the parties claimed that input foreclosures provide no incentive for them.

B. Review and assessment of the allegations of the parties

It is chipmakers that purchase lithography systems and choose light sources attached to lithography systems. According to the following facts, it is considered that chipmakers have countervailing power to a certain degree against the input foreclosure by the parties: (i) chipmakers state that, should the parties exercise an input foreclosure after the Acquisition, chipmakers are still able to give their opinions regarding the choice of light source manufactures to the parties since the state where multiple choices of light sources are retained contributes to price and performance competition; (ii) most of the sales of the parties are occupied by several major chipmakers and (iii) the development of lithography systems and light sources are carried out according to the roadmap of the whole semiconductor industry that includes such as chipmakers.

(3) Measures proposed by ASML US

After the JFTC explained to ASML US as saying that such input foreclosure might be a point potentially to argue in the review of the Acquisition, ASML US has proposed that it would take the following measures against the concern of the input foreclosure.

- (i) With respect to DUV light sources, Cymer will continuously do business with Company X and Company Y under fair, reasonable and non-discriminatory terms of trade as well as in the manner of paying regard to and being consistent with the existing agreements. Moreover, with respect to EUV light sources, after the Acquisition, Cymer will do business with Company X and Company Y under fair, reasonable and non-discriminatory terms of trade as well as in the manner of paying

regard to and being consistent with the industry standard.

(ii) Cymer will implement joint development activities with Company X and with Company Y under the reasonable terms of trade. With respect to DUV light sources, Cymer will implement it in the manner consistent with the existing agreements.

(iii) For five years from the execution of the Acquisition, the parties will report the status of compliance with the measures mentioned above to the JFTC once a year.

(iv) The report mentioned (iii) is to be created by an audit team independent from parties, which will be appointed subject to a prior approval of the JFTC.

(4) Assessment under the AMA

The measures proposed by ASML US mentioned (3), above, are as follows: Cymer will continuously deal with Company X and Company Y in a manner consistent with the terms of trade equivalent to that of prior to the Acquisition. Moreover, an audit team independent of the parties', which will be appointed subject to a prior approval of the JFTC, conducts an audit and Cymer will report to the JFTC regarding the result of audit for a certain period of time after the Acquisition, thus the effectiveness of the measures will be ensured. Moreover, as mentioned in (2) B above, there is competitive pressure from chipmakers to a certain degree.

Therefore, taking the measures proposed by ASML US, etc. into consideration, the Acquisition will not cause the input foreclosure.

3. Refusal of purchase, etc. of lithography systems transaction

(1) Impact of refusal of purchase on competition

In the upstream market, Company A which runs business of manufacturing and selling KrF light sources and ArF light sources sells an appreciable extent of KrF light sources or ArF light sources to ASML of the downstream market. As a result of the Acquisition, there is a possibility of placing Company A in a disadvantageous situation and resulting in market foreclosure or exclusivity, in case where Company A is deprived of an opportunity to deal with ASML or Company A is treated disadvantageously in transactions compared to that of Cymer (hereinafter “customer foreclosure”).

ASML occupies a high market share of the downstream market and there are few competitors in the downstream market. Therefore, if ASML virtually procure light sources exclusively from Cymer, and thus the competitors in the upstream market lose sale destinations and excluded from the upstream market, it is considered that such situation has a large impact on competition in the upstream and downstream markets.

(2) Allegations of the parties and assessments thereof

A. Allegations of the parties

As mentioned in 2(2) A above, the parties alleged that there was no incentive for the parties to engage in the customer foreclosure because if the parties engaged in it, there would be competitive pressure from the chipmakers due to the fact that the choice of the light source is dependent on the decision of chipmakers.

B. Review and assessment of the allegations of the parties

As mentioned in 2(2) B above, chipmakers have countervailing power to a certain degree against the customer foreclosure by the parties.

(3) Measures proposed by ASML US

After the JFTC explained to ASML US that such customer foreclosure might be a possible issue in the review of the Acquisition, ASML US has proposed that it would take the following measures against the concern of the customer foreclosure.

(i) When ASML develops in partnership with Cymer or Company A and

places orders for products, parts and services of light sources to them, ASML will determine the supplier based on objective and non-discriminatory criteria, such as quality, logistics, technology, cost and chipmakers' preferences etc.

(ii) ASML will continuously permit chipmakers to choose light sources of their choice, and not unduly exert influence on the decision of chipmakers with respect to the choice of light sources.

(iii) ASML will substantially simultaneously provide both Cymer and Company A with information which is necessary in research and development of light sources and order placements for light source products, parts and services.

(iv) For five years from the execution of the Acquisition, the parties will report the status of compliance with the measures mentioned above to the JFTC once a year.

(v) The report mentioned (iv) is to be created by an audit team independent from parties, which will be appointed subject to a prior approval of the JFTC.

(4) Assessment under the AMA

The measures proposed by ASML US mentioned (3) above represent its promise that after the Acquisition, ASML will continuously deal with Company A in a manner consistent with the terms of trade equivalent to that of prior to the Acquisition. Moreover, an audit team independent of the parties, which will be appointed subject to a prior approval of the JFTC, conducts an audit and ASML will report to the JFTC regarding the result of audit for a certain period of time after the Acquisition, thus the effectiveness of the measures will be ensured. Moreover, as mentioned in (2) B above, there is competitive pressure to a certain degree from chipmakers.

Therefore, taking the measures proposed by ASML US etc. into consideration, the Acquisition will not cause the customer foreclosure.

4. Access to confidential information

(1) Impact of access to confidential information on competition

Light source manufacturers and lithography systems manufacturers share various confidential information, such as product development, product specification, their customers, etc. with each other in terms of developing, manufacturing, and selling products. Thus, after the Acquisition, there is a possibility that, Cymer accesses to Company A's confidential information shared between ASML and Company A through ASML, or ASML accesses to Company X or Company Y's confidential information shared between Cymer and Company X or Company Y through Cymer. It is recognized that there is less possibility the parties and competitors take coordinated conduct because technological innovation is frequent in upstream and downstream markets and there is competitive pressure to a certain degree from chipmakers. However, there is a possibility that the parties may use the confidential information for their advantages, and thereby their competitors may be placed in a disadvantageous situation and foreclosure or exclusivity in market may be occurred.

The parties occupy high market shares of the both upstream and downstream markets and there are few competitors in these markets respectively. Therefore, if the confidential information of competitors is shared between the parties and market foreclosure or exclusivity are resulted in, it is considered that such situation has a large impact on competition in the upstream and downstream markets.

(2) Measures proposed by ASML US

After the JFTC explained to ASML US that handling confidential information of competitors might be a possible issue in the review of the Acquisition, ASML US has proposed that it would take the following measures against the handling of confidential information.

(i) Directors/Employees of Cymer who are responsible for the confidential information of Company X or Company Y will be prohibited from providing the confidential information to directors/employees of ASML and enter into a non-disclosure agreement.

(ii) Directors/Employees of ASML who are responsible for the confidential

information of Company A will be prohibited from providing the confidential information to directors/employees of Cymer and enter into a non-disclosure agreement.

(iii) To comply with (i) and (ii) above, the parties will create a protocol of information blackout for its employees.

(iv) For five years from the execution of the Acquisition, the parties will report the status of compliance with the measures mentioned above to the JFTC once a year.

(v) The report mentioned (iv) is to be created by an audit team independent from parties, which will be appointed subject to a prior approval of the JFTC.

(3) Assessment under the AMA

The measures proposed by ASML US as mentioned in (2) above represent its promise that after the Acquisition, the parties implement measures to prevent disclosure of confidential information which includes their directors/employees to enter into a non-disclosure agreement. Moreover, an audit team independent of the parties', which will be appointed subject to a prior approval of the JFTC, conducts an audit and ASML will report to the JFTC regarding the result of audit for a certain period of time after the Acquisition, thus the effectiveness of the measures will be ensured.

Therefore, taking the measures proposed by ASML US, etc. into consideration, the Acquisition will not raise an issue of access to confidential information of competitors.

Part V Conclusion

The JFTC concluded that, taking the measures proposed by ASML US, etc. into consideration, the Acquisition would not substantially restrain competition in any particular fields of trade.

Case 5 Acquisition of shares of SII Nano Technology Inc. by Hitachi High-Technologies Corporation

Part I Outlines of the transaction

Hitachi High-Technologies Corporation (HHT), a company that runs business of manufacturing and distributing analytical instruments*¹, etc. planned to acquire the entire stocks of SII Nano Technology Inc. (SIINT), a company manufacturing and distributing analytical instruments as well (hereinafter, the “Acquisition of Shares”). The provision of applicable law is Article 10 of the AMA.

*Note 1:Analytical instruments” mean those machines, instruments or devices that are used for qualitative and quantitative measures of composition, nature, structure or condition of substances

Part II Reviewing process and outline of the results

1. Reviewing process

Prior to submitting notification regarding the Acquisition of Shares, the parties concerned voluntarily submitted a written opinion and materials to the JFTC stating that the Acquisition of Shares would not substantially restrain competition in the field of trade on analytical instruments such as scanning electron microscopes (SEMs), focused ion beam systems (FIBs), and FIB-SEMs, in which the parties concerned compete with each other. In response to requests from the parties concerned, the JFTC held several meetings with them. Thereafter, on July 10, 2012, a notification regarding the Acquisition of Shares was submitted by HHT pursuant to the provisions of Article 10, Paragraph 2 of the AMA. The JFTC received the notification and commenced its primary review. The JFTC undertook this primary review based on the abovementioned notification, other materials submitted by the parties concerned, and interviews with their users and competitors, etc. As a result, the JFTC determined that it would require a further review. Accordingly, on August 9, 2012, the JFTC requested that HHT submit reports, etc., and commenced its secondary review. On the same day, the JFTC made a public announcement that it had commenced the secondary review of the Acquisition of Shares, and that it would seek written opinions from any third

parties.

In its secondary review, the JFTC examined the effects on competition of the Acquisition of Shares based on interviews with, and questionnaire surveys of, users and competing companies, etc., as well as the individual reports, etc. submitted by the parties concerned. The JFTC also held meetings, etc. with the parties concerned as necessary during the period of the secondary review.

In response to the request for HHT to submit reports, etc., HHT submitted all such reports, by November 9, 2012.

2. Outline of the results of the review

As a result of its review, the JFTC concluded that the Acquisition of Shares would not substantially restrain competition in the fields of trade on SEMs, FIBs, and FIB-SEMs, in which the parties concerned compete with each other and which were deemed to raise a significant effect on competition. The JFTC also concluded that the Acquisition of Shares would not substantially restrain competition in any other fields of trade.

The detailed results of the review concerning the fields of trade on the abovementioned SEMs, FIBs, and FIB-SEMs are as described in Part III through V below.

(reference)

Receipt of the notification regarding the proposed acquisition of SIINT's shares by HHT on July 10, 2012 (start of the primary review)

Request for reports, etc. by the JFTC on August 9, 2012 (start of the secondary review)

Receipt of all requested reports from the parties on November 9, 2012 (the due date for a prior notice was set on February 8, 2013)

Notification to the parties that a cease and desist order will not be issued on December 10, 2012

Part III Scanning Electron Microscopes (SEMs)

1. Particular field of trade

(1) Product range

A SEM is an analytical instrument for observing samples, which accelerates and focuses electrons, radiates the electron beam to a sample, and produces an image of the sample using the secondary electron signals generated and reflection electrons from the sample. It is used to observe the surface of solid samples such as metals and semiconductors, biological samples including plants and cells, and others.

With regard to the performance of SEMs, the emphasis is placed on resolution.*² One of the elements on which SEMs' resolution greatly depends is the electron gun.*³ The electron guns used in SEMs are mainly divided into thermionic-emission guns and field-emission electron guns. SEMs with field-emission electron guns (hereinafter, "FE-SEMs") have a higher resolution than those with thermionic-emission guns (hereinafter, "TE-SEMs").

While each analytical instrument is manufactured based on analytical technology, its users, such as local governments, universities, semiconductor manufacturers, and companies engaging in entrusted analysis, select the optimal instruments, respectively, in accordance with the purpose of the analysis, the sample to analyze, etc., and their analysis capabilities differ. Accordingly, there is no substitutability for users between different types of analytical instruments. Also, while there are two types of SEMs, or TE-SEMs and FE-SEMs, as stated above, users choose either type of instrument in accordance with the purpose of the analysis, the sample to analyze, etc. Therefore, there is no substitutability for users between TE-SEMs and FE-SEMs, either.

Therefore, the JFTC has defined "TE-SEMs" and "FE-SEMs" respectively as product ranges.

The following sections discuss the FE-SEMs that do not fall within the safe harbor standards for horizontal business combination.*³

*Note2: Resolution means the minimum distance required to observe distinguishable objects.

*Note 3: An electron gun is a device that produces an electron beam.

(2) Geographic range

Most users procure analytical instruments from manufacturers that have head offices and sales agents, etc. in Japan. They generally do not deal with overseas analytical instrument manufacturers that do not have sales agents, etc. in Japan and that have not established a sales channel in Japan.

Therefore, "all of Japan" is defined as the geographic range for the product.

2. Review concerning substantial restraint of competition

(1) Changes in the market structure

As a result of the Acquisition of Shares, HHI will be approximately 4,200; the combined market share of the parties concerned will be approximately 55%; they will rank first in the market; and the increment of HHI will be approximately 500. Accordingly, the Acquisition of Shares does not fall within the safe harbor standards for horizontal business combination.

The FE-SEMs marketed by SIINT are manufactured by Company C, listed in the table below, and SIINT sells FE-SEMs to users the same way Company C does. SIINT has determined to quit selling the products manufactured by Company C by December 31, 2012.

[Market share of FE-SEMs in FY2010]

Rank	Company	Market share
1	HHT	Approx. 50%
2	Company A	Approx. 35%
3	Company B	Approx. 5%
4	SIINT	Approx. 5%
5	Company C	0-5%
Total		100%

(2) Perspectives of the review

As stated in (1) above, SIINT has determined to quit selling the FE-SEMs manufactured by Company C by December 31, 2012. As a result, the parties concerned will no longer compete with each other on FE-SEMs, and there is a low possibility that the Acquisition of Shares will raise a problem in terms of the AMA.

However, HHT will acquire the sales department of SIINT through the

Acquisition of Shares, and it currently holds a market share of approximately 50%. Therefore, the JFTC undertook a review to see whether the Acquisition of Shares would result in a substantial restraint of competition, either through unilateral conduct by the parties concerned or through the coordinated conduct with one or more of their competitors, based on the assumption that SIINT will market HHT's products instead of those of Company C.

(3) Status of competitors

The competitors of the parties concerned include Company A, a leading competitor that holds a market share of approximately 35%, and multiple other companies, including Company C, which is expected to be influential in the future.

(4) Previous status of competitors

Because FE-SEMs are used for research and development, etc., users demand a high level of performance and quality, etc. from the products. When a user plans to purchase a FE-SEM, it selects a supplier after comparing the performance and quality of products from multiple suppliers through sample tests*, etc. If the user is a public agency, the number of analytical instrument manufacturers capable of offering products with specifications that meet the required level of performance, etc. may be limited, and accordingly, the number of companies able to participate in the bidding may be limited.

For example, semiconductor manufacturers analyze miniaturized and integrated semiconductors (such as wafers) as samples, and therefore need analytical instruments with higher resolutions than those demanded by other users. Analytical instrument manufacturers take the technological innovations of semiconductors, etc. into consideration and develop FE-SEMs with high resolutions, which enable the observation of miniaturized and integrated samples.

Moreover, the competitors of the parties concerned include overseas companies that have a high level of technological capability in the global market and a subsidiary, etc. in Japan. Thus the parties concerned are also engaging in a development race with these competitors.

Therefore, technological innovations are continually occurring in the

FE-SEMs market, and it is recognized that active competition on performance and quality is taking place in the said market.

*A sample test is the process of testing the performance, quality, etc. of an analytical instrument in the showroom, etc. of an analytical instrument manufacturer in which demo units are installed by actually using the instrument to analyze samples which users would like to analyze.

(5) Supply capacity of each company

It is recognized that each company has a supply capacity to a certain degree.

(6) Entry pressure

A FE-SEM is composed of various components, and companies market these components. At the same time, the patent periods of basic patents have already been expired. Accordingly, it is considered that companies with a certain level of technologies, facilities, and human resources can enter the FE-SEMs market.

However, due to the fact that the domestic FE-SEMs market is not expected to expand significantly in the future, and the size of the market is limited, thus there is no incentive to actively enter the market; a high level of product technology is required to manufacture these high-performance products; and there have been virtually no new entries into the domestic market for the past 10 years, it is recognized that there is no market entry pressure.

(7) Competitive pressure from related markets

Analytical instruments (used for surface observations, etc. of samples) other than the FE-SEMs include the TE-SEMs, the transmission electron microscope (an instrument that radiates an electron beam to the sample and forms an image for observation from the interaction of the electrons transmitted through the sample; hereinafter the "TEMs"), and the helium ion microscope. While these analytical instruments can be partially substituted with each other to a certain degree for particular observations, the results of observations, the time required for observation, the price of the analytical instrument, and other elements vary among different types of analytical instruments. Therefore, users select the analytical instruments according to their necessities for the purposes of their analyses, etc.

For these reasons, it is recognized that there is no competitive pressure from related markets.

(8) Competitive pressure on price from users

Users planning to purchase FE-SEMs generally place more emphasis on the performance and quality of the instruments than on their prices. Accordingly, it is recognized that there is no competitive pressure on price for analytical instrument manufacturers from users.

(9) Sales capability of the parties concerned after the Acquisition of Shares

The domestic FE-SEMs market is limited in size. In addition, as stated in (4) above, users place emphasis on the performance and quality of the products. Therefore, increasing the sales personnel, etc. of the parties will not necessarily lead to an increase in their market share. Thus, HHT's market share is expected to increase only slightly due to its acquisition of SIINT's sales department as a result of the Acquisition of Shares, and its impact on competition is considered to be small.

3. Assessments under the AMA

(1) Substantial restraint of competition by unilateral conduct

Because SIINT will quit selling SEMs by December 31, 2012, the parties concerned will no longer compete with each other on FE-SEMs.

In addition, due to the fact that there are multiple leading competitors; each company has an excess capacity to a certain degree; competition in performance and quality in FE-SEMs market is active; and it is unlikely that HHT's market share will be greater and or has an impact on competition although HHT will acquire SIINT's sales department following the Acquisition of Shares, there is little likelihood that the parties concerned will be able to manipulate prices, etc. to any extent through unilateral conduct, and the Acquisition of Shares is not considered to substantially restrain competition.

(2) Substantial restraint of competition by coordinated conduct

SIINT will quit selling SEMs by December 31, 2012, and as a result, Company C is expected to become a leading competitor. Therefore, the number of companies that market FE-SEMs will substantially be the same.

In addition, due to the fact that each company has an excess capacity to a certain degree; competition in performance and quality in the FE-SEMs market is active; and it is unlikely that HHT's market share will be greater or has an impact on competition although HHT will acquire SIINT's sales department following the Acquisition of Shares, there is little likelihood that the parties concerned and their competitors will be able to manipulate prices, etc. to any extent through coordinated conduct, and the Acquisition of Shares is not considered to substantially restrain competition.

Part IV Focused Ion Beam Systems (FIBs)

1. Particular field of trade

(1) Product range

A FIB is an analytical instrument with two functions that is, to observe a sample and to process it. A FIB radiates an ion beam to the sample, and its detector receives the secondary electrons or secondary ions released from the sample, thereby permitting surface observation of the sample. It is also capable of processing a sample by radiating an ion beam against it. While an FIB has these two functions, it is mainly used for processing samples, such as cutting out particular microscopic portions of samples—including the defective parts of semiconductor devices—with high precision, and creating samples to observe with SEMs or TEMs. Users who purchase FIBs also use SEMs and TEMs, etc. With regard to its observation function, FIBs generally have a lower resolution than that of SEMs. They are also disadvantageous in that the sample is chipped off by the ion beam while it is being observed.

As stated later in Part V, there is a type of FIBs that is called a FIB-SEM. To ensure higher performance and greater convenience, a FIB-SEM combines the functions of a FIB and a SEM, thereby permitting the user to process a sample with a FIB while using a SEM to check the microscopic parts to process and to observe a sample processed with a FIB without moving it and while retaining the vacuum state of the sample stage.

As stated in Part III-1-(1) above, while each analytical instrument is manufactured based on analytical technology, its users, such as local governments, universities, semiconductor manufacturers, and companies engaging in entrusted analysis, select the optimal instruments, respectively, in accordance with the purpose of the analysis, the sample to analyze, etc., and their analysis capabilities differ. Accordingly, users have found no

substitutability between different types of analytical instruments.

Therefore, the JFTC has defined "FIBs" as the product range.

(2) Geographic range

Since the situation is similar to that of Part III-1-(2) above, "all of Japan" is defined as the geographical range for the product.

2. Review concerning substantial restraint of competition

(1) Changes in the market structure

As a result of the Acquisition of Shares HHI will be approximately 5,200; the combined market share of the parties concerned will be approximately 60%; they will rank first in the market; and the increment of HHI will be approximately 1,800. Accordingly, the Acquisition of Shares does not fall within the safe harbor standards for horizontal business combination.

[Market share of FIBs in FY2010]

Rank	Company	Market share
1	Company A	Approx. 40%
2	HHT	Approx. 35%
3	SIINT	Approx. 25%
4	Company B	0-5%
Total		100%

(2) Perspectives of the review

After the Acquisition of Shares, the parties concerned and Company A will essentially be the only companies in the FIBs market, and the combined market share of the parties concerned will be approximately 60%. Therefore, the JFTC undertook a review to see whether the Acquisition of Shares would result in a substantial restraint of competition, either through unilateral conduct by the parties concerned or through the coordinated conduct with one or more of their competitors, in consideration of a competitor other than Company A and the FIB-SEMs, etc. in the related market.

(3) Status of competitors

The competitors of the parties concerned include Company A, a leading competitor that holds a market share of approximately 40%. There is

another competitor, Company B, but the sales figures of this company are small.

(4) Previous status of competitors

A. Status of competitors

As stated in (3) above, the competitors of the parties concerned include Company B, whose sales figures in the domestic market are small. However, Company B has high technological capabilities in the market for FIBs and FIB-SEMs, and has a large share in terms of the global market.

On the other hand, the results of a questionnaire survey of users show that half of users who use FIBs other than those of Company B find that Company B's FIBs are substitutable with those of the parties concerned because their performances are equivalent to those of the parties concerned, etc. Some of these users actually obtained quotations from Company B.

B. Competition on performance and quality

As also stated in Part III-2-(4) above, technological innovations are continually occurring in the FIBs market, and it is recognized that active competition on performance and quality is taking place in the market.

(5) Supply capacity of each company

It is recognized that each company has a supply capacity to a certain degree.

(6) Entry pressure

A FIB is composed of various components, and companies market these components. At the same time, the patent periods of basic patents have already been expired. Accordingly, it is believed that companies with a certain level of technologies, facilities, and human resources can enter the FIBs market.

However, due to the fact that the domestic FIBs market is not expected to expand significantly, and the size of the market is limited thus there is no incentive to actively enter the market; a high level of product technology is required to manufacture FIBs with higher performances; and there have been no new entries into the domestic market for the past 10 years, it is recognized that there is no market entry pressure.

(7) Competitive pressure from related markets

Instruments called FIB-SEMs have been developed as a type of FIBs. To ensure higher performance and greater convenience, a FIB-SEM combines the functions of a FIB and a SEM, thereby permitting the user to process a sample with a FIB while using a SEM to check the microscopic parts and to observe a sample processed with a FIB without moving it, retaining the vacuum state of the sample stage. Currently, the majority of users use FIB-SEMs instead of FIBs. Therefore, in recent years, sales of FIB-SEMs have been larger than those of FIBs in terms of quantity. In FY2010, sales of FIB-SEMs accounted for approximately 70% of the total sales of FIBs and FIB-SEMs in terms of quantity.

Also, in a questionnaire survey of users, the majority of users who owned FIBs responded that they would consider purchasing FIB-SEMs when replacing their FIBs in the future. The FIBs market is therefore anticipated to shrink further.

The purchase price of FIB-SEM is lower than that to buy a FIB and a SEM separately, because a FIB-SEM combines a FIB and a SEM, and the chassis and other components are shared by these two instruments. Furthermore, FIB-SEMs that are cheaper than FIBs are also available in the market.

For these reasons, FIB-SEMs marketed by companies other than the parties concerned countervail price increases, etc. by the parties concerned in the FIBs market, and it is recognized that there is competitive pressure from a related market.

(8) Competitive pressure on price from users

Users planning to purchase FIBs generally place more emphasis on the performance and quality of the instruments than on their prices. Accordingly, it is recognized that there is no competitive pressure on price for analytical instrument manufacturers from users.

3. Assessments under the AMA

(1) Substantial restraint of competition by unilateral conduct

The parties concerned will hold a market share of approximately 60% as a result of the Acquisition of Shares. However, due to the fact that there is a leading competitor in the market, Company A, and Company B engages in the manufacturing and distribution, etc. of FIBs whose performance is equivalent

to those of the parties concerned, etc.; each company has an excess capacity to a certain degree; there is competitive pressure from FIB-SEMs in a related market; and competition in performance and quality in the FIBs market is active, there is little likelihood that the parties concerned will be able to manipulate prices, etc. to any extent through unilateral conduct, and the Acquisition of Shares is not considered to substantially restrain competition.

(2) Substantial restraint of competition by coordinated conduct

The number of companies in the FIBs market will be reduced from four to three as a result of the Acquisition of Shares. However, due to the fact that each company has an excess capacity to a certain degree; there is competitive pressure from FIB-SEMs in a related market; and competition in performance and quality in the FIBs market is active, there is little likelihood that the parties concerned and their competitors will be able to manipulate prices, etc. to any extent through coordinated conduct, and the Acquisition of Shares is not considered to substantially restrain competition.

Part V FIB-SEMs

1. Particular field of trade

(1) Product range

As stated in Part IV above, a FIB-SEM is an analytical instrument that combines an FIB which has a function to observe surface of a sample and to process a sample for an electron microscope, etc., with the functions of an SEM for higher performance and greater convenience.

A FIB-SEM allows users to process a sample with a FIB while using a SEM to check the microscopic parts and to observe a sample processed with an FIB without moving it, retaining the vacuum state of the sample stage. A FIB-SEM enables to record images of the samples being processed with an FIB by using an SEM, and creating three-dimensional images by superimposing images on each other.

As stated in Part III-1-(1) above, while each analytical instrument is manufactured based on analytical technology, its users, such as local governments, universities, semiconductor manufacturers, and companies engaging in entrusted analysis, select the optimal instruments, respectively, in accordance with the purpose of the analysis, the sample to analyze, etc., and their analysis capabilities differ. Accordingly, users have found no

substitutability between different types of analytical instruments. Also, similar to SEMs described in Part III above, there are two types of SEMs for FIB-SEMs, or TE-SEMs and FE-SEMs, and users select either type of instrument in accordance with the purpose of the analysis, the sample to analyze, etc. Thus, there is no substitutability between TE-SEMs and FE-SEMs, either.

Therefore, the JFTC has defined "FIB-SEMs with TE-SEMs" and "FIB-SEMs with FE-SEMs" as product ranges respectively.

The following sections examine FIB-SEMs with FE-SEMs (hereinafter simply referred to as "FIB-SEMs"), in which the parties concerned compete with each other.

(2) Geographic range

Since the situation is similar to that of III-1-(2) above, "all of Japan" is defined as the geographical range for the product.

2. Review concerning substantial restraint of competition

(1) Changes in the market structure

As a result of the Acquisition of Shares, HHI will be approximately 4,600; the combined market share of the parties concerned will be approximately 60%; they will rank first in the market; and the increment of HHI will be approximately 1,700. Accordingly, the Acquisition of Shares does not fall within the safe harbor standards for horizontal business combination.

The FIB-SEMs marketed by SIINT include those developed jointly with Company C, listed in the table below (hereinafter, the "jointly developed products"), and those manufactured by Company C. SIINT is the only distributor of the jointly developed products in Japan, and sells the FIB-SEMs manufactured by Company C to users in the same way that Company C does. SIINT has determined to quit selling the jointly developed products and FIB-SEMs manufactured by Company C by December 31, 2012.

[Market share of FIB-SEMs in FY2010]

Rank	Company	Market share
1	SIINT	Approx. 35%
2	Company B	Approx. 30%
3	HHT	Approx. 25%
4	Company A	Approx. 10%
5	Company C	0-5%
Total		100%

(2) Perspectives of the review

As stated in (1) above, SIINT has determined to quit selling the FIB-SEMs by December 31, 2012. As a result, the parties concerned will no longer compete with each other on FIB-SEMs, and there is a little possibility that the Acquisition of Shares will raise a problem in terms of the AMA.

However, even when SIINT has quit selling FIB-SEMs, HHT will acquire the sales department, etc. of SIINT related to FIB-SEMs as a result of the Acquisition of Shares. Therefore, the JFTC undertook a review to see whether the Acquisition of Shares would result in a substantial restraint of competition, either through unilateral conduct by the parties concerned or through the coordinated conduct with one or more of their competitors, which may take place if, for example, HHT sells the products it manufactures as alternatives to the jointly developed products, and the users of the jointly developed products will make the shift to become users of the products manufactured by HHT.

(3) Status of competitors

The competitors of the parties concerned include Company B and Company A, leading competitors which holds a market share of approximately 30% and 10% respectively. There is also another competitor, Company C.

(4) Previous status of competitors

Similar to the situation stated in III-2-(4) above, technological innovations are continually occurring in the FIB-SEMs market, and it is recognized that active competition on performance and quality is taking place in the market.

(5) Supply capacity of each company

It is recognized that each company has a supply capacity to a certain degree.

(6) Entry pressure

The domestic market for FIB-SEMs is expected to see new demand in fields where FIB-SEMs were not previously used, etc.

However, due to the fact that the size of the market is limited, thus there is no incentive to actively enter the market; FIB-SEMs require the product technology for FE-SEMs; and there have been no new entries into the domestic market for the past 10 years, it is recognized that there is no market entry pressure.

(7) Competitive pressure on price from users

Users planning to purchase FIB-SEMs generally place more emphasis on the performance and quality of the instruments than on their prices. Accordingly, it is recognized that there is no competitive pressure on price for analytical instrument manufacturers from users.

(8) Users' responses to SIINT's discontinuing sales of jointly developed products

The jointly developed products that SIINT will quit selling by December 31, 2012 tend to be similar to the products of a specific competitor other than HHT. In a questionnaire survey of users, there were many similar responses that point out this fact.

Accordingly, there is a little possibility that the customers who use the jointly developed products will be customers of HHT, due to SIINT's discontinuing sales of the jointly developed products, and these customers are highly likely to switch to products of the specific competitor. Therefore, there is little concern that HHT's market share will increase significantly, or substantially to restrain competition as a result of the Acquisition of Shares.

(9) Sales capability, etc. of the parties concerned after the Acquisition of Shares

The FIB-SEMs market is limited in size. In addition, similar to the situation stated in III-2-(4) above, users place emphasis on the performance and

quality of the products. Therefore, increasing the sales personnel, etc. of the parties concerned will not necessarily lead to an increase in their market share. Also, according to the parties concerned, the development of new products by HHT and SIINT will take a certain amount of time after the Acquisition of Shares.

Thus, HHT's market share is expected to increase only slightly due to its acquisition of SIINT's sales department, etc., and its impact on competition is considered to be small as a result of the Acquisition of Shares.

3. Assessments under the AMA

(1) Substantial restraint of competition by unilateral conduct

Because SIINT will quit selling FIB-SEMs by December 31, 2012, the parties concerned will no longer compete with each other on FIB-SEMs.

In addition, due to the fact that there are multiple leading competitors; each company has an excess capacity to a certain degree; competition in performance and quality in the FIB-SEMs market is active; and users of the jointly developed products by SIINT and Company C are highly likely to switch to products from the other competitor, thus it is unlikely that HHT's market share will be greater and or has an impact on competition as a result of the Acquisition of Shares, there is little likelihood that the parties concerned will be able to manipulate prices, etc. to any extent through unilateral conduct, and the proposed share acquisition is not considered to substantially restrain competition.

(2) Substantial restraint of competition by coordinated conduct

SIINT will quit selling FIB-SEMs by December 31, 2012, and as a result, Company C will virtually become a new competitor. Therefore, the number of companies that market FIB-SEMs will substantially be the same.

In addition, due to the fact that each company has an excess capacity to a certain degree; competition in performance and quality in the FIB-SEMs market is active; users of the jointly developed products by SIINT and Company C are highly likely to switch to products of the specific competitor, thus it is unlikely that HHT's market share will be greater or has an impact competition as a result of the Acquisition of Shares, there is little likelihood that the parties concerned and their competitors will be able to manipulate prices, etc. to any extent through coordinated conduct, and the Acquisition of

Shares is not considered to substantially restrain competition.

Case 6 Acquisition of Fuji Heavy Industries Ltd.'s garbage truck manufacturing and sales business by ShinMaywa Industries, Ltd.

Part I Outline of the transaction

In this case, ShinMaywa Industries, Ltd. (hereinafter referred to as “ShinMaywa”), which is engaged in the business of manufacturing and selling garbage trucks and similar vehicles, planned to acquire the garbage truck manufacturing and sales business from Fuji Heavy Industries Ltd. (hereinafter referred to as “FHI”), which is also engaged in the business of manufacturing and selling garbage trucks and similar vehicles. The provision of applicable laws is Article 16 of the AMA.

Part II Definition of the particular field of trade

1. Product range

Garbage trucks are vehicles that collect and transport garbage put out by homes and businesses. The trucks consist of a truck body (hereinafter referred to as the “chassis”) and loading / discharge mechanisms and a container (hereinafter collectively referred to as the “upper assembly”) that are mounted on the chassis. There are two methods of loading garbage: the rotator-blade method, which loads without compacting or crushing the garbage, and the compacting method, which compacts and crushes the garbage as it is loaded. There are also two discharge methods: the dumping method, which tilts the upper assembly to eject the garbage, and the forced discharge method, which uses an ejection blade in the container to push and eject the garbage.

Garbage trucks are built individually, as each vehicle has specific specifications for the chassis, size, loading / discharge mechanisms, and other factors. Garbage trucks are technologically mature products, as they were introduced in Japan decades ago. Consequently, there are virtually no differences in quality among the products of companies that manufacture and sell garbage trucks (hereinafter referred to as the “garbage truck manufacturers”).

The end users of garbage trucks include local governments and general-waste collection and transport companies (including household-garbage collection and transport companies contracted by local governments). Users select the capacity of the upper assembly and the

loading and discharge methods according to the type and volume of garbage they plan to collect and transport. Therefore, the JFTC recognizes that there is no substitutability for users among upper assembly capacities or between loading and discharging methods. However the JFTC recognizes substitutability for suppliers, since garbage truck manufacturers can produce a variety of garbage trucks with the same facilities and personnel. (Note 1)

Accordingly, the JFTC defined “garbage trucks” as the product range in this case.

Note 1: Garbage truck manufacturers purchase the chassis in order to manufacture their garbage truck from chassis manufacturing and sales companies (truck manufacturers).

2. Geographic range

End users buy garbage trucks from garbage truck manufacturers located throughout Japan either directly from the manufacturer or through chassis manufacturer distributors (hereinafter referred to as “dealers”).

Furthermore, garbage truck manufacturers sell vehicles to users located throughout Japan. Therefore, the JFTC defined “all regions of Japan” as the geographic range in this case.

Part III Impact of the business combination on competition

1. Market share

The domestic market for garbage trucks in fiscal year 2011 was approximately 3,500 vehicles.

With this acquisition, the market share of the companies concerned will be ranked in the 1st place, with approximately 65 percent of the market. The HHI after the transaction will be approximately 4,800, and the increment is about 2,200. These figures do not fall within the range of the horizontal safe-harbor.

FY 2011 Shares in the garbage truck market

Rank	Company	Market Share
1	ShinMaywa	Approximately 35%
2	FHI	Approximately 30%
3	A	Approximately 20%
4	B	Approximately 15%
Total		100%

2. Status of competitors

There are multiple leading competitors with market shares over 10 percent. Furthermore, each of these competitors has a supply capacity to a certain degree.

3. Competitive pressure from users

As mentioned in Part II, garbage trucks are technologically mature products. And because there are no differences in quality among garbage truck manufacturers, users can readily switch among garbage truck manufacturers. Furthermore, since the majority of garbage trucks are ordered through dealers, they have an advantageous position when negotiating prices with garbage truck manufacturers due to the fact that they order many other specially-equipped vehicles (Note 2) in addition to garbage trucks.

Accordingly, the JFTC recognizes that there is competitive pressure from users.

Note 2: Specially-equipped vehicles are vehicles usually powered by automotive engines that are equipped with specific mechanisms or equipments for a special purpose. Examples include dump trucks, tank trucks, and concrete mixer trucks.

Part IV Conclusion

Taking the above instances into account, the JFTC concluded that the transaction is unlikely to substantially restrain competition in any particular fields of trade.

Case 7 Merger between the Universal Shipbuilding Corporation and IHI Marine United Inc.

Part I Outline of the transaction

In this case, the Universal Shipbuilding Corporation, which is engaged in the shipbuilding business, and IHI Marine United Inc., which is also engaged in the shipbuilding business, planned to merge. The provision of applicable law is Article 15 of the AMA.

Part II Definition of the particular field of trade

1. Product range

Merchant vessels are vessels that transport cargo or passengers for the purpose of earning freight revenues. Merchant vessels can be broadly divided into cargo vessels that transport cargo, passenger vessels that carry passengers, and mixed cargo-passenger vessels that carry cargo and passengers at the same time. Merchant vessels are also categorized into ocean-going vessels, which sail on ocean routes connecting Japan to other parts of the world, and inland vessels, which sail on home-water routes connecting domestic ports. In general, ocean-going vessels are larger than inland vessels.

Ocean-going cargo vessels are categorized into bulkers, container vessels, and specialized cargo vessels according to the cargo they carry. Specialized cargo vessels are further categorized into tankers, which are specialized to transport crude oil or other specific cargo, and liquefied gas carriers, etc. Cargo vessels are also subdivided into various types by size.

The companies concerned primarily build ocean-going merchant vessels. In the past five years, the companies concerned have competed in two types of vessels: Cape size bulkers with capacities between 100,000 and 200,000 DWT (see Note), and VLCC tankers with capacities between 200,000 and 300,000 DWT.

Users select the category and type of vessels according to the cargo to be transported and the planned shipping routes. Therefore, even among the same category of vessels, there is no substitutability for users among the types of vessels.

Shipbuilders, including the companies concerned, focus on certain categories and types of vessels where their expertise lies. They aim to build

vessels efficiently and maximize profits by taking repeated orders for the same category type of vessels and standardize design specifications across multiple orders.

Accordingly, the JFTC defined “cape size bulkers” and “VLCC tankers,” the types of vessels where the companies concerned compete, as the product range in this case.

Note: DWT stands for deadweight tonnage. It is a measure in tonnes for the maximum weight of cargo a vessel is capable to carry.

2. Geographic range

Both domestic and overseas users generally obtain estimates for ocean-going vessels, including cape size bulkers and VLCC tankers, from multiple domestic and overseas shipbuilders and select a shipbuilder after comparing price, performance, delivery timing, shipbuilding record, and other factors. Users make no distinction between domestic and overseas shipbuilders in their business dealings. Furthermore, domestic and overseas shipbuilders will sell the same ocean-going vessels essentially at the same price globally, regardless of where users are located.

Accordingly, the JFTC defined “the entire world” as the geographical range in this case.

Part III Impact of the business combination on competition

1. Cape size bulkers

Approximately 740 cape size bulkers were ordered worldwide from FY 2007 through FY 2011.

Even after this merger, the combined market share of the companies concerned over the same period would have been less than 5 percent. The HHI after the transaction will be approximately 500, and the increment is about 3. These figures fall within the range of the horizontal safe-harbor.

2. VLCC tankers

Approximately 170 VLCC tankers were ordered worldwide from FY 2007 through FY 2011.

Even after this merger, the combined market share of the companies concerned over the same period would have been less than 5 percent. The

HHI after the transaction will be approximately 1,300, and the increment is 1. These figures fall within the range of the horizontal safe-harbor.

Part IV Conclusion

Taking the above instances into account, the JFTC concluded that the transaction is unlikely to substantially restrain competition in any particular fields of trade.

Case 8 Acquisition of shares of Jupiter Telecommunications Co., Ltd. by KDDI Corporation

Part I Outline of the transaction

In this case, KDDI Corporation (hereinafter referred to as “KDDI”), which is engaged in telecommunications business, planned to acquire additional shares of Jupiter Telecommunications Co., Ltd. (hereinafter referred to as “J:COM”), which is engaged in multichannel paid broadcast business delivered by cable television. The provision of applicable law is Article 10 of the AMA.

Part II Definition of the particular field of trade

1. Service range

Within the companies that belong to the group of combined companies whose ultimate parent company is KDDI (hereinafter referred to as the “KDDI Group”), Japan Cablenet Limited (hereinafter referred to as “JCN”), a subsidiary of KDDI, operates a multichannel paid broadcast business delivered by cable television and KDDI operates a multichannel paid broadcast business delivered by Internet protocol television (IPTV). On the other hand, J:COM operates a multichannel paid broadcast business delivered by cable television.

Multichannel paid broadcast businesses are classified by their transmission method into broadcasting satellite (BS), communication satellite (CS), IPTV, and cable television.

The businesses provide movies, sports, music, variety shows, and other broadcast content, whether delivered by BS, CS, IPTV, or cable television, for a fee either for individual channels or for bundled channels. Users wishing to view these programs select and sign up with a provider taking into consideration the programs available, the price, and other factors.

Accordingly, the JFTC defined “multichannel paid broadcast business” as the service range in this case.

2. Geographic range

Users wishing to view multichannel paid broadcasts select a provider from the providers offering services in their area. Although BS, CS, and IPTV broadcast providers generally offer the same services throughout Japan,

cable television broadcast providers usually provide services in units of municipality, thus two or more cable television broadcast providers generally do not compete in offering services in the same geographic area.

Accordingly, the JFTC defined “service areas of cable television broadcast providers” as the geographic range in this case.

Part III Impact of the business combination on competition

1. Status of past competition between the companies concerned

Although J:COM’s cable television and KDDI’s IPTV compete as multichannel paid broadcast businesses in the same service areas of cable television broadcast providers, J:COM’s cable television service does not compete with JCN’s cable television service in any service area, as stated in Part II-2. The majority of KDDI Group’s subscribers are JCN subscribers; therefore, in view of service areas of cable television broadcast providers, users of the companies concerned will not increase significantly in any given service area as a result of the transaction.

2. Status of competitors

There are leading BS broadcast providers, CS broadcast providers, and IPTV broadcast providers in all service areas of cable television broadcast providers. There are also no issues regarding other multichannel paid broadcast providers’ supply capacities.

Furthermore, multichannel paid broadcasts have reached a mature stage, and further large increases in subscribers are not expected. Therefore, multichannel paid broadcast businesses are exposed to competition in capturing a small number of new contracts.

3. Competitive pressure from related markets

The move to broadband Internet in recent years has brought about various paid and free video-on-demand services. In consideration of this and other developments, the JFTC recognizes that there is competitive pressure from related markets to a certain degree.

Part IV Conclusion

Taking the above instances into account, the JFTC concluded that the transaction is unlikely to substantially restrain competition in any particular

fields of trade.

Case 9 Acquisition of shares of BEST DENKI CO., LTD. by YAMADA DENKI Co., Ltd.

Part I Outlines of the transaction

An electric appliance retailer YAMADA DENKI planned to acquire the stocks of BEST DENKI, a company retailing electric appliances as well, and thereby to obtain more than half of BEST DENKI's voting rights. The provision of applicable law is Article 10 of the AMA.

Part II Reviewing process and outline of the results

1. Reviewing process

Prior to submitting notification pursuant to the provisions of Article 10, paragraph (2) of the AMA, YAMADA DENKI requested consultation with the JFTC regarding the company's plan to acquire BEST DENKI's shares, and the JFTC accepted its request. (See Section 2 of "Policies Concerning Procedures of Review of Business Combination", JFTC, June 14, 2011)

Thereafter, YAMADA DENKI submitted the abovementioned notification on June 7, 2012. The JFTC accepted this notification and began a primary review. The JFTC undertook this primary review based on the abovementioned notification, other materials submitted by the Parties, etc. As a result, a more detailed review was needed. Accordingly, on July 6, 2012, the JFTC requested that YAMADA DENKI submit reports, etc., thereby starting a secondary review. On July 13, 2012, the JFTC announced that it had started a secondary review and would accept written opinions from third parties.

In its secondary review, the JFTC held several meetings with the Parties in response to their requests. At the same time, the JFTC examined the effects on competition of the proposed acquisition of shares, in view of the results of interviews with competitors and opinions, etc. from the public, as well as the reports, etc. submitted by the Parties. YAMADA DENKI had submitted appreciable requested reports, etc. by October 2012, when explanations of the issues, etc. were recognized to be necessary. Accordingly, the JFTC provided explanations of the issues, etc. based on the results of its reviews that had been obtained by that point. In response to these explanations, the Parties submitted additional allegations and materials. The JFTC reviewed these allegations and materials from the Parties. The JFTC later pointed out

that the proposed acquisition of shares was likely to substantially restrain competition concerning the retailing of electrical appliances in certain geographic areas. In response, YAMADA DENKI provided remedies to address the problem concerning competition. After its proposal was reviewed by the JFTC, YAMADA DENKI submitted a revised report of the notification concerning its remedies to address the problem.

With regard to the request for YAMADA DENKI to submit reports, etc., the company submitted all such reports, etc., by December 4, 2012.

2. Outline of the results of the review

As a result of its review, the JFTC concluded that the proposed acquisition of shares would not substantially restrain competition in the particular field of trade, based on the remedies that YAMADA DENKI provided to the JFTC to address the concerns about the retailing of electrical appliances in certain geographic areas.

The detailed results of the review are as described in Part III through VIII below.

(reference)

Receipt of the notification regarding the proposed acquisition of BEST DENKI's shares by YAMADA DENKI on June 7, 2012 (start of the primary review)

Request for reports, etc. by the JFTC on July 6, 2012 (start of the secondary review)

Receipt of all requested reports from YAMADA DENKI on December 4, 2012 (the due date for a prior notice was set on March 5, 2013)

Submission of a report on changes in the notification by YAMADA DENKI, in which the remedies were incorporated on December 7, 2012,

Notification to YAMADA DENKI that a cease and desist order will not be issued on December 10, 2012

Part III Particular field of trade

1. Service range

Retailers dealing in electrical appliances include mass retailers, general merchandise stores (hereafter, "GMS"), home centers, discount stores (hereinafter, GMS, home centers, and discount stores will be collectively referred to as "GMS, etc."), and local electrical appliance retailers (including retailers affiliated with electrical appliance manufacturers and locally based retailers; the same applies hereinafter), which sell products at brick-and-mortar stores, as well as mail-order companies. The variety of electrical appliance products handled by local electrical appliance retailers and GMS, etc. is limited in many cases compared to the variety of products handled by mass retailers. In addition, mail-order companies have a different method of selling products from that used by mass retailers, and many of these companies do not offer the same level of after-sales service or the same variety of products as that offered by mass retailers.

Given these circumstances, mass retailers recognize other mass retailers to be their competitors when they formulate pricing strategies. In addition, consumers who use mass retailers also compare the prices, etc. offered by multiple mass retailers before deciding from which stores they will buy electrical appliances.

Accordingly, the degree of substitutability between the electrical appliance retail business of mass retailers and that of other electrical appliance retailers is recognized to be low. Therefore, the JFTC has defined "electrical appliance retail business of mass retailers" to be the service range in this case.

2. Geographic range

In general, each mass retailer store monitors certain competing mass retailer stores and plans pricing strategies by checking the sales prices of the electrical appliance products offered at those stores, for example. Therefore, it is recognized that competition among mass retailers takes place on a store-by-store basis.

Each mass retailer establishes its trading area of each of its stores based on consumer shopping areas, etc. The Parties largely define the trading area of each of their stores as "the area within a 10 kilometers radius of the store." In interviews with mass retailers other than the Parties, many of them said

that it is normal to establish the area within a 10 kilometers radius of the store as the trading area.

Therefore, the JFTC has defined "the area within a 10 kilometers radius of the store" as the geographic range in this case.

Part IV Review concerning substantial restraint of competition

1. Status of competition between the Parties

The Parties directly manage stores all over Japan. In addition, they also operate franchise stores under franchise agreements. Franchise stores of a certain size (500 square meters or larger) are capable of offering a variety of products comparable to those offered by the stores directly managed by mass retailers, and therefore are regarded as equivalent to the stores that are directly managed by the Parties.

In the particular field of trade defined in Part III above, there are 253 areas in which the Parties compete with each other.

2. Overview of the status of competition in these areas

While it is technically difficult to calculate the market share of each mass retailer store in the 253 areas mentioned above (or to determine whether a case falls within the safe harbor rule applied to horizontal business combination, which is stipulated in IV-1-(3) "Effect may not be Substantially to Restrain Competition" of the Guidelines to Application of the AMA Concerning Review of Business Combination (JFTC, May 31, 2004)), it is considered that, in general, the more competitors there are in an area, the greater the competition will be in the area.

With regard to the impact of the proposed acquisition of shares on the competition in each geographic range, this impact is considered to be greater in areas where there is a small number of competitors and the proposed acquisition of shares will result in a decrease of one competitor than in areas where there is a large number of competitors and a decrease of one competitor. As mentioned in section 1 above, the Parties compete with each other in 253 areas, and there are many competitors of the Parties in some of these areas, while there are no competitors at all in others.

In addition, as described in Part III above, each mass retailer monitors certain competing mass retailer stores that are located close to its stores, and is very conscious of those competing stores when it sets prices. Therefore, it

is considered that each mass retailer store strongly competes with the particular stores that it monitors, even where there are several competing mass retailers. YAMADA DENKI monitors mass retailer stores other than BEST DENKI in 212 of the 253 areas mentioned above, and monitors those of BEST DENKI in 41 of them.

3. Entry pressure

The Parties argue that there are no barriers to entry for mass retailers, either institutionally or practically. In principle, the only regulation on mass retailer entry is the fact that a store has to provide a notification when the store area exceeds a certain stipulated standard, pursuant to the Act on the Measures by Large-Scale Retail Stores for Preservation of Living Environment. It is therefore considered that institutional barriers to entry are low. In addition, the cost of opening a new store is not significantly higher than that for other industries.

On the other hand, the competitors interviewed by the JFTC said that the areas they are motivated to enter are limited according to their store-opening strategies. Therefore, entry pressure is not seen as equal in all areas.

It is recognized that entry pressure is evident in areas where the specific store-opening plans by competitors have been identified.

4. Competitive pressure from related markets (markets in geographically neighboring areas)

Many locations with a small number of mass retailers are located in rural areas, and many consumers in these areas use their cars to go shopping. In light of the purchasing behavior of these users, many mass retailers open their stores along main roads. As a result, users in rural areas can do their shopping over a wider area than those in urban areas. Based on these points, the Parties argue that there is competitive market pressure from geographically neighboring areas.

With regard to this point, the materials submitted by YAMADA DENKI describe cases in which consumers will actually shop beyond the geographical range (the area within a 10 kilometers radius of the store), and cases in which the Parties monitor competitors' stores that are located outside the geographical range.

Accordingly, it is considered that there is competitive market pressure for some stores from geographically neighboring areas.

5. Competitive pressure from related markets (GMS, etc.)

The Parties argue that there is competitive pressure from GMS, etc. because GMS, etc., which are not mass retailers, also handle almost all kinds of electrical appliances, and among other things, deal with a large number of products emphasizing low prices, such as those produced in South Korea or China.

With regard to this point, the variety of electrical appliances handled by GMS, etc. is limited compared with mass retailers, and of the total sales of electrical appliances in Japan, the percentage of GMS, etc. sales is small. In addition, the results of interviews show that mass retailers and GMS, etc. do not see themselves as competing with each other in the electrical appliance retail business.

In addition, instances in which the existence of GMS, etc. in the same trading area resulted in competitive pressure were not generally recognized, either, according to the results of questionnaire surveys concerning the purchasing behavior of consumers, which are released by local governments, or the results of economic analyses (including a panel analysis of the impact that GMS, etc. stores in a particular trading area had on the profit rates, etc. of the Parties), which were undertaken based on the financial data of each store, and other information submitted by the Parties.

For these reasons, it is considered that GMS, etc. do not produce competitive pressure for mass retailers except under exceptional circumstances in which GMS, etc. are recognized as producing specific competitive pressure in a particular area.

6. Competitive pressure from related markets (mail-order companies)

The Parties argue that there is strong competitive pressure from mail-order companies for the following reasons: 1) the amount of mail-order sales of electrical appliances, mainly via the Internet, have been significantly increasing due to the spread and enhancement of the Internet environment and the resulting changes in consumers' purchasing behavior; 2) entry of the mail-order business is easy because it doesn't require the cost of managing stores, and it is easier for mail-order companies than for brick-and-mortar

companies to lower product prices, and; 3) consumers can purchase electrical appliance products over the Internet without going to stores by searching for the mail-order company that offers the lowest price through a price comparison site, etc.

With regard to this point, while it is recognized that sales of mail-order companies mainly via the Internet account for a certain percentage of the sales of electrical appliances and that this percentage has been increasing in recent years, it is also understood that, although it can't be denied that mail-order companies focusing on Internet retailing are producing a certain amount of competitive pressure for mass retailers, this can't be recognized to be strong competitive pressure, in light of the following points: 1) the materials submitted by YAMADA DENKI indicate that the number of customers who have visited its stores and who also consider mail-order companies as potential stores to buy products from is small; 2) according to the results of the interview with mass retailers, many of these retailers believe that mass retailers and mail-order companies are practically segregated from each other, and while mail-order companies can produce modest competitive pressure, it is not strong competitive pressure; 3) according to the results of the interview with mail-order companies, mass retailers and mail-order companies don't entirely compete with each other on price, and; 4) many mail-order companies don't offer the same level of after-sales service or the same variety of products that mass retailers do.

7. Financial conditions of the company group

The Parties argue that the proposed acquisition falls within cases where "the Possibility that the Business Combination May Be Substantially to Restrain Competition Is Usually Thought to Be Small" stipulated in section B-(a) of IV-2-(8) (Financial Conditions of the Company Group) of the Guidelines to Application of the AMA Concerning Review of Business Combination (JFTC, May 31, 2004), because the business performance of BEST DENKI has been poor. However, in light of the financial conditions of BEST DENKI and the selection process of the prospective third parties to which BEST DENKI would allocate new shares, etc., it is not recognized that the proposed acquisition immediately falls within the above cases.

On the other hand, it is understood that the business performance of BEST DENKI has been poor, and the business capabilities of BEST DENKI are

limited compared with its competitors. Actually, in many areas it is understood that competition as severe as, or more severe than, the competition between the Parties is occurring between the Parties and other competitors.

8. Other arguments of the Parties

The Parties also argue that they cannot increase prices at specific stores after the proposed acquisition of shares, in light of the methods they apply for setting prices, including the fact that the sales prices offered at their stores are the same all over Japan.

With regard to this point, it is not necessarily possible to recognize, based only on the above argument, that the Parties cannot raise prices at specific stores. The reasons for this include the following: 1) the results of economic analyses (including a comparative analysis and a variance analysis of the average price offered at each store, which are aimed at verifying the presence or absence of price differences among stores) ,which were based on the actual sales price data, etc. the parties submitted, showed that prices differed among individual stores to a certain degree, although no extreme differences were found among them, and; 2) the specific method to be applied for setting prices after the proposed acquisition of shares is unknown. Also, it is possible that the proposed acquisition of shares will restrain competition in terms of the variety of products, apart from prices.

Part V Assessments under the AMA

Whereas there are 253 areas in which the Parties compete with each other, it has been recognized as a result of detailed reviews of the status of competition in each area that competition that is as severe as, or more severe than, the competition between the Parties is taking place between the Parties and other competitors in many areas, partly because the business capabilities of BEST DENKI are limited due to its poor business performance. Specifically, there are a total of 243 areas where YAMADA DENKI monitors stores other than those of BEST DENKI, and competitive pressure from these stores is actually recognized to be strong in light of their location, size, etc. or where YAMADA DENKI monitors the stores of BEST DENKI but competitors' stores that are as competent as the stores of the Parties in terms of their location, size, etc. are recognized to exist in the same geographical range or

in a geographically neighboring market (such stores include discount stores, etc., although these are limited in number, as well as mass retailer stores in some areas). In these areas, strong competition with competitors' stores is expected to continue after the proposed acquisition of shares. At the same time, in some of these areas, entry pressure is evidently recognized because it is known that there are specific entry plans and a certain amount of competitive pressure from mail-order companies is also recognized. When these points are considered together, it is determined that the proposed acquisition of shares will not substantially restrain competition through unilateral conduct by the Parties or through the coordinated conduct with competitors.

On the other hand, with regard to the 10 areas^{*1} other than the 243 areas mentioned above (hereinafter, "the 10 areas"), YAMADA DENKI monitors the stores of BEST DENKI, and it is recognized that there is no other competitor store in the same geographic range or in the geographically neighboring area that is as competitive as those of the Parties in light of its location, size, etc., nor is there any apparent entry pressure, either. Accordingly, it is understood that the proposed acquisition of shares will substantially restrain competition in these said geographic ranges, although a certain amount of competitive pressure from mail-order companies is recognized there.

*Note 1: The Amagi area (Fukuoka Prefecture), 2) the Karatsu area (Saga Prefecture), 3) the Shimabara area (Nagasaki Prefecture), 4) the Isahaya area (Nagasaki Prefecture), 5) the Omura area (Nagasaki Prefecture), 6) the Hitoyoshi area (Kumamoto Prefecture), 7) the Tanegashima area (Kagoshima Prefecture), 8) the Sukumo area (Kochi Prefecture), 9) the Shimanto area (Kochi Prefecture), 10) the Chichibu area (Saitama Prefecture). (All of these areas are within a 10 kilometers radius of certain YAMADA DENKI stores.)

Part VI Remedies to address the problem provided by YAMADA DENKI

As mentioned in Part V above, the proposed acquisition of shares will substantially restrain competition in the 10 areas. Therefore, YAMADA DENKI offered to the JFTC the following remedies that it would implement to address this issue.

1. In each of the 10 areas, YAMADA DENKI will transfer one of the stores of the Parties that is located in the area (regardless of whether it belongs to YAMADA DENKI or BEST DENKI) to a third party (excluding any that belong to a group of combined companies of either of the Parties or one that doesn't intend to manage an electrical appliance retail business in the store), and conclude a transfer agreement by June 30, 2013 (when a franchised store of the Parties located in the area chooses to become a franchised store of a third party, this measure will be regarded as a transfer). However, because 4) the Isahaya area, and 5) the Omura area are next to each other, one of the stores of the Parties located in these areas will be transferred. In the same way, one of the stores of the Parties located in 8) the Sukumo area, and 9) the Shimanto area will be transferred. (A total of eight stores will be transferred.)

In areas where a transfer agreement is not concluded by June 30, 2013, or where a transfer agreement was concluded by the said date but the transfer was not carried out thereafter, a bidding procedure concerning one of the stores of the Parties located in the area (excluding franchised stores) shall be promptly undertaken under appropriate, reasonable methods and conditions.

2. During the period until the store transfers are completed, YAMADA DENKI will not impair the business value of the subject stores and shall not set prices that are unreasonably disadvantageous for consumers at the subject stores.
3. During the period until the store transfers are completed, YAMADA DENKI will regularly report to the JFTC the sales prices of the electrical appliances offered at each subject store, etc., and immediately report to the JFTC the status of the implementation, etc. of its store transfers.

Part VII Assessment of the remedies to address the issue

The remedies provided by YAMADA DENKI are structural remedies, and store transfers of the Parties in the 10 areas will create new independent competitors in those areas. Accordingly, the remedies can be assessed as being appropriate.

In addition, while the said remedies are to be carried out after the proposed acquisition of shares, the deadline for the conclusion of agreements concerning the transfer of these stores has been clearly defined,

making it mandatory for all such agreements to be concluded within a period of approximately six months from the proposed acquisition of shares. In this regard, the remedies are determined to be appropriate. In addition, YAMADA DENKI will not impair the business value of the stores to be transferred, and will not set prices that are unreasonably disadvantageous for consumers at these stores during the period until the store transfers are completed. Therefore, it is considered that the mechanism is in place to eliminate the negative effects on competition while retaining the competitiveness of the stores to be transferred until the transfers are implemented.

Accordingly, the remedies to address the issue provided by YAMADA DENKI can be judged as being appropriate.

Part VIII Conclusion

The JFTC has concluded that, along with the remedies to address the issue provided by YAMADA DENKI, the proposed acquisition of shares will not substantially restrain competition in the 10 areas.

Case 10 M&A between Tokyo Stock Exchange Group, Inc. and Osaka Security Exchange Co., Ltd.

Part I Outlines of the transaction

Tokyo Stock Exchange Group, Inc. (hereinafter “TSE”), which owns subsidiaries including Tokyo Stock Exchange Inc., establishing a financial instrument market with a license granted by the Prime Minister under the provisions of the Financial Instruments and Exchange Act, planned to acquire shares in Osaka Securities Exchange Co., Ltd. (hereinafter “OSE”), also establishing a financial instrument market with a license likewise and thereby to acquire more than half of the voting rights (hereinafter “the Business Combination”). The provision of applicable law is Article 10 of the AMA.

Part II Process of the review and the outline of the results

1. Process of the review

Prior to submission of a notification of the plan for the Business Combination to the JFTC, the parties voluntarily submitted written opinions and materials to the JFTC. They are stating that with respect to the services related to listing stocks, services related to trading actuals, and services related to derivatives trading etc. in which the parties were competing with each other, the parties reckon that the Business Combination will not substantially restrain competition. The JFTC held several meetings with the parties at the parties’ request. On January 4, 2012, Tokyo Stock Exchange Group, Inc. then filed a notification of the plan regarding the Business Combination in accordance with the provisions of Paragraph 2 of Article 10 of the AMA. Accordingly, the JFTC received the notification and commenced the primary review. The JFTC conducted the primary review based on the above notification and other materials submitted by the parties and the hearings with users and competitors etc. As a result of the primary review, the JFTC found that further detailed review was necessary. Accordingly, on February 3, 2012, the JFTC requested Tokyo Stock Exchange Group, Inc. for reports etc. On the same day, the JFTC publicly announced that it had commenced secondary review of the Business Combination and that it sought written opinions from third parties.

In the secondary review, the JFTC conducted a further review on the impact on competition from the Business Combination based on the reports etc. submitted by the parties, the results of interviews with users and competitors etc., the results of questionnaire survey and the opinions etc. received from the general public. By around April 2012, Tokyo Stock Exchange Group, Inc. had submitted most of the reports, etc. that the JFTC had requested. As a result, the JFTC found that clarification of the points of issues etc. was necessary. Accordingly, the JFTC explained the points of issues etc. based on the results of reviews at the time of the explanations. The parties, in response to this, submitted additional arguments and additional materials, and the JFTC examined the arguments and the materials the parties additionally submitted. Thereafter, the JFTC pointed out that, with respect to services related to listing stocks on emerging markets, services related to trading stocks, and services related to trading Japanese stock index futures, the Business Combination may substantially restrain competition. In response, Tokyo Stock Exchange Group, Inc. proposed the remedies to eliminate the competitive issues. The proposed remedies were scrutinized by the JFTC, thereafter. The parties then submitted a report on the changes of the notification in which the remedies were described.

Tokyo Stock Exchange Group, Inc. fulfilled the JFTC's request to submit reports etc. with the last report etc. submitted on June 15, 2012.

Between the JFTC and the parties, approximately 40 meetings were held from the time before the notification was submitted to the JFTC on the plan for the Business Combination and during the period of the review of the case.

2. Outline of review results

Regarding the case, with respect to services related to listing stocks on emerging markets, services related to trading stocks and services related to trading Japanese stock index futures, given the remedies that the parties presented to the JFTC, the JFTC has concluded that the Business Combination might not substantially restrain competition in any particular field of trade. The JFTC also concluded that the Business Combination might not substantially restrain competition with respect to the other fields of trade.

The details of the review results regarding the fields of trade for which the above remedies will be implemented are as shown in Part III to V below.

(reference)

On January 4, 2012, receipt of the notification of a plan regarding the share acquisition (start of primary review)

On February 3, request for reports, etc. (start of secondary review)

On June 15, receipt of all reports, etc. (deadline for prior notice: September 14, 2012)

On June 26, report submission by the parties on the changes of the notification, in which the remedies were described

On July 5, notice to the effect that a cease and desist order will not be issued

Part III Services related to listing stocks

1. Outline

Services related to listing are the duties to receive each listing application and to decide on whether clearance of eligibility for listing can be given to each application for actuals (share, bond, convertible bond, share option certificate, exchange traded funds (hereinafter “ETF”), real estate investment trust (hereinafter “REIT”), etc.) and to continuously manage and observe as to whether the eligibility of the actuals cleared to be listed is retained.

2. Particular field of trade

(1) Service range

a. Service range defined by type of actuals

Users of the services related to listing vary with the type of actuals. For example, users of the services related to shares are stock issuing companies, and users of the services related to ETFs are management companies. As a result, there is no substitutability for users between actuals. Accordingly, the JFTC defines a service range of services related to listing by actuals.

Below, we go on discussing the services related to listing stocks (excluding foreign shares; the same shall apply in Part III and IV below) that account for a large portion of the services related to listing provided by the parties.

b. Main market and emerging market

As the markets to apply for listing shares, there are main markets (Note 1) and emerging markets (Note 2). When a company that plans to list its shares chooses a market, there are two cases: Initial Public Offering and Market Alteration (alteration of the market on which a company’s shares are listed. This includes “reassignment” between the first and the second section of an exchange that adopts two section systems [meaning a financial instruments exchange and those who conduct the same type of business overseas as that conducted by a financial instruments exchange. The same shall apply hereinafter]). Initial Public Offering is conducted by a company whose shares have not been listed. Market Alteration is conducted by a listed company. In the case of Initial Public Offering, most companies choose emerging markets while in the case of market alteration most companies choose main markets.

Therefore, with respect to the services related to listing stocks, the JFTC

defines the service range by type of market: main markets or emerging markets.

Note 1: Main markets mean the principal markets of each exchange. Each party, either TSE or OSE, establishes a First section and a Second section as its main markets of each. .

Note 2: Emerging markets mean markets established mainly for emerging companies to raise funds. Each party establishes emerging markets: Mothers in TSE and JASDAQ in OSE.

(2) Geographical range

The parties argue that the geographical range of their businesses is Asian region mainly because there have been cases in which Japanese companies listed their shares on exchanges in Asia and because Asian exchanges are aggressively inviting Japanese companies to list their shares on their exchanges.

The number of the cases in which Japanese companies list their shares on Asian exchanges is, however, insignificant compared to that of the cases in which Japanese companies list their shares on domestic exchanges. Listing their shares on an Asian exchange places a considerable burden on Japanese companies because the costs for a Japanese company to list its shares on an Asian exchange are higher than those to list those on a domestic exchange and because they must abide by the local legal systems and disclosure regulations. According to the results of the interviews with and of the questionnaire survey on listed companies, companies that plan to list their shares, and related undertakings including securities companies, there is also no confirmed tendency among Japanese companies to positively list their shares on Asian exchanges.

Accordingly, the JFTC defines the geographical range as “all parts of Japan” both for main markets and emerging markets.

3. Review on substantial restraints of competition

(1) Changes in market structure

a. Main markets

With respect to the number of listings on the main markets for the past five-year period, which is an indicator of the status of each exchange in the

field of trade in which users mainly listed companies choose the main markets through market alteration, the combined post-merger market share of the parties will be around 85% (ranked 1st). After the merger, HHI will increase by about 350 to around 7,000, which will not meet the safe harbor thresholds for horizontal business combination.

[Market shares of the main markets based on the number of listings for the past five-year period]

Rank	Company name	Market share
1	TSE	Around 80%
2	Company A	Around 10%
3	Company B	0%-5%
4	Company C	0%-5%
5	OSE	0%-5%
	Total	100%

Looking at the main markets based on market capitalization, which is generally used as an indicator of comparing the size of markets established by exchanges, market shares of the main markets are as shown in the following table. The combined post-merger market share of the parties will be around 70%, and they will rank first. After the merger, HHI will increase by about 2,200 to about 5,200, which will not meet the safe harbor thresholds for horizontal business combination.

[Market shares of the main markets based on market capitalization as of the end of 2011]

Rank	Company name	Market share
1	TSE	Around 45%
2	OSE	Around 25%
3	Company D	Around 15%
4	Company E	Around 10%
5	Company F	Around 5%
	Total	100%

b. Emerging market

In the emerging markets, competition is mainly centered on winning initial offerings. Based on the number of listings for the past five-year period, the combined post-merger market share of the parties will be around 95% (ranked 1st). After the merger, HHI will increase by about 3,700 to about 9,100, which will not meet the safe harbor thresholds for horizontal business combination.

[Market shares in the emerging markets based on the number of listings for the past five-year period]

Rank	Company name	Market share
1	OSE (JASDAQ)	Around 70%
2	TSE (Mothers)	Around 30%
3	Company G	0%-5%
4	Company H	0%-5%
5	Company I	0%-5%
	Total	100%

(2) Current competition between the parties in the main markets

Many companies choose the markets established by TSE irrespective of whether in the first or second section, for listing. Most of the companies listed on the main markets established by OSE had listed their shares before the abolishment of the territory system (the rule that a company wishing to be listed is required to first list its shares on a market established by an exchange that controls the relevant region), or are located in the Kinki region. It is also uncommon in recent years for a company to be willing to list its shares on the main markets of OSE. In the actual trade practices, a company that intends to make a market alteration does not consider any other choices but the main markets of TSE. The tendency to be delisted from OSE is noteworthy mainly among companies that are dual-listed on the main markets of TSE and OSE.

It is, therefore, considered that the Business Combination will not have any impact on competition in the services related to listing stocks on main markets.

Below, in Part III-3, we go on considering the services related to listing stocks on emerging markets.

(3) Existing competition between the parties in the emerging markets

The parties argue that a clear “division of roles” exists between Mothers, the emerging market established by TSE, and JASDAQ, the emerging market established by OSE, therefore, Mothers and JASDAQ do not directly compete with each other on the ground that many companies that have high growth potential or that wish to make a market alteration to the main market of TSE in the future are willing to list their shares on Mothers, and companies with stable earnings are willing to list their shares on JASDAQ.

To a certain degree, such tendency the parties argued is confirmed. Differences are, however, not substantial in the characteristics between Mothers and JASDAQ because a number of companies listed on JASDAQ also have high growth potential and wish to make a market alteration to the main market of TSE in the future. Actually, some listed companies considered these two markets as substitutable alternatives for each other and chose one of them for listing. In addition, though it is not found that the parties aggressively use fees and services against listed companies as means to attract new listings, it is confirmed that they consciously conduct business activities reflecting their awareness of being competitors one another in the emerging markets. As a result, it cannot be deemed that the two do not directly compete with each other.

(4) Competitive pressures from users

The parties argue that the parties are exposed to competitive pressures from users because listed companies, users of their services, have their alternatives to listings such as delisting (by means of MBO, etc.), raising funds through indirect financing and bond issue.

Indeed, a listed company may delist its shares at any time. The JFTC, however, reckons that the purpose of listing shares for a company is not only the raising of funds but it also widely includes improvement of its public reputation, improvement of its credit strength, securing of outstanding human resources etc. Considering from those above perspectives, delisting is not a choice for many companies that intend to be newly listed and that wish to maintain their listing.

In addition, though companies may also raise funds through indirect financing or bond issue, the characteristics of fund-raising are greatly

different between indirect financing, etc. and stock issues. Moreover, most of the purposes of listing shares stated above may not be achieved through indirect financing, etc.

Accordingly, it is not confirmed that users are exerting competitive pressures.

(5) Competitive pressure from neighboring markets

The parties argue that there is competitive pressure from Asian exchanges as neighboring markets, though “all parts of Japan” is defined as the geographical range.

The JFTC, however, reckons that any competitive pressures from neighboring markets cannot be recognized, as stated in 2(2) above because no tendency was found among Japanese companies to positively list their shares on Asian exchanges and because the number of such listings is also not expected to increase significantly in the future.

(6) Efficiency

The parties argue that the Business Combination can improve efficiency since an annual cost reduction of around seven billion yen is expected as a result of the integration of systems following the Business Combination (meaning the prospective amount of the cost reduction achieved not only in services related to listing stocks but in all fields of trade).

As provided for in the Guidelines to Application of the AMA Concerning Review of Business Combination, efficiency is to be determined from the following aspects: (i) whether the improvement in efficiency is unique to a proposed business combination (specificity); (ii) whether the improvement in efficiency is feasible (feasibility); and (iii) whether the results from the improvement in efficiency contribute to users’ interest (the likelihood of increase in users’ interest).

The JFTC, however, reckons that the parties have not decided the timing, etc. when they will integrate the systems and achieve the cost reduction related to the systems. Explanations they have given about specificity and feasibility related to efficiency, and about the measures that increase interest of users are also not sufficient. The Business Combination will extremely boost up the market share of the parties in services related to listing stocks on the emerging markets to the extent which creates a state of

quasi-monopoly. Even if the improvement of efficiency can be materialized as the parties argued, therefore, there is no reason to assume that the parties would take competitive action such as price reductions.

Thus, the improvement in efficiency cannot be taken into our consideration.

(7) Other arguments from the parties

a. Business model of the exchanges

The parties argue that since the business model of exchanges is generally to facilitate listing of attractive companies by keep fees for services related to listing stocks at a low level and then to build revenues from obtaining transaction fees for active trades of the listed products, such incentives to seek to maintain listing fees at a low level will be the same even following the Business Combination.

It is indeed considered, as the parties argue, that the increase in the number of stocks that are actively traded could lead to large revenue from the fees for services related to trading stocks.

The JFTC, however, reckons that there is no measure that has similar to the functions and effects listing has. In addition, the price elasticity of demand for services of listing shares is considered to be low. Therefore,, it is easy for the parties in a position of quasi-monopoly in the services related to listing on the emerging markets to raise fees related to listing stocks within the range where the number of companies wishing to list their shares will not decrease.

Thus, it cannot be recognized that the parties have no discretion to decide on whether or not the parties will raise fees for services related to listing stocks, even considering the business models of the exchanges that the parties argue.

b. Existence of public function of exchanges

The parties argue that they will not irrationally raise fees for services related to listing stocks following the Business Combination because exchanges have public functions and are in the position to take the central role in efforts to recover the credibility of the emerging markets and to revitalize the markets.

As the parties argued, exchanges have their public functions, and

considering the fact that the parties have not actually raised fees related to listing stocks despite the current state that allows them to do so, there is a possibility that the existence of the public functions of exchanges limits the parties' actions to a certain degree.

On the other hand, the parties are stock corporations and also have the objective of earning profits. Even considering the public functions of exchanges, therefore, it cannot be concluded that fees for services related to listing stocks is never raised in the future.

c. Regulations on the fees and supervision by the Financial Services Agency

The parties shall be subject to notification when they change the fees in accordance with the provisions of the FIEA, The parties argue that they will not irrationally raise fees even following the Business Combination because they hold prior consultation with the Financial Services Agency and submit a notification upon obtaining the Agency's consent.

As the parties argued, according to the practical process for changing fees, there is a possibility that the raising of fees by the parties will be restricted, to a certain degree, from an effect of supervision by the Financial Services Agency.

On the other hand, it is also fact that the regulations concerning the fees under the provisions of the FIEA are a notification system, and their discretion over which type of fee they create is, in principle, being kept in their hands. Exchanges are therefore allowed to raise fees under the FIEA. Even in light of the regulations concerning fees and supervision by the Financial Services Agency, therefore, the JFTC would not be convinced by the parties' such argument that the parties would not raise fees for services related to listing stocks following the Business Combination.

4. Assessment under the AMA

(1) Assessment concerning main markets

As stated in 3(2) above, as for the main markets, it is true that a company planning to make a market alteration considers no other choices than that of moving to the TSE main market. The tendency to delist shares from OSE is prominent among companies already listed on the OSE main market. Accordingly, it is considered that the Business Combination will have no impact on the competitive situation, and the JFTC thus concluded that the

Business Combination may not substantially restrain competition in any particular field of trade.

(2) Assessment concerning emerging markets

With respect to the emerging markets, competition between the parties will be lost as a result of the Business Combination, which will create a state of quasi-monopoly. There will be no effective constraint on the market power of the parties to propel the fees.

In addition, with respect to services related to listing stocks on the emerging markets, it is not confirmed that that the parties aggressively use fees as a method for attracting new listings. However, according to the results of interviews and questionnaire survey with users, fees related to listing stocks are not insignificant for a company that plans to list its shares on an emerging market. Given the present circumstances, if either of the parties raises fees related to listing stocks to a substantially high level, it will place the fee-raising party at a competitive disadvantage against the other party. Accordingly, it is confirmed that with respect to raising fees there is a certain degree of mutual constraint between the parties. Considering the above, a situation may arise in which the parties, which will stand in a position of quasi-monopoly in services related to listing stocks on the emerging markets as a result of the Business Combination, may have some discretion to raise fees for services related to listing stocks. It is therefore considered that the Business Combination may substantially restrain competition in the field of trade for the services related to listing stocks on the emerging markets.

5. Proposal for remedies by the parties

As stated in 4(2) above, the Business Combination may substantially restrain competition in services related to listing stocks on the emerging markets. The parties therefore proposed adopting the following remedies so that decisions concerning fees related to listing stocks on the emerging markets will depend on the judgment of outside experts, and that the parties alone cannot decide such fees.

(i) While the establishment, abolishment and change, in the amount, of fees for services related to listing stocks on the emerging markets are matters subject to a resolution by the parties' boards of directors, each of them cannot conclude their resolution unless the respective standing advisory

committee of the TSE standing advisory committee and the OSE standing advisory committee (both are currently named “Market Structure Committee”) approves. A resolution by the advisory committee shall be made by a majority of the advisory committee members.

(ii) The TSE advisory committee shall, in accordance with the existing Advisory Committee Rules of TSE, consist of those who are appointed by the TSE board of directors from “people who are board members, executive officers or employees of trading participants” or “people who possess insights into the financial instruments exchange market, but are not those engaged in daily duties at a company carrying out business directly related to the financial instruments business”.

(iii) The OSE advisory committee shall consist of “people who are board members, executive officers or employees of trading participants” or “academic experts other than trading participants”, and those who are appointed by the president and CEO of OSE in accordance with the existing Advisory Committee Rules of OSE.

(iv) If the parties conduct consolidation, etc. of the operating companies of the emerging markets following the Business Combination, the parties shall establish an Advisory Committee in the board of directors that is substantively equivalent to the existing Market Structure Committee in size, member attributes, and function, thereby, to enforce the board of directors to have approval from the Advisory Committee before they proceed their resolution on establishment, abolishment of fees related to listing and the change of the amount of such fees.

(v) The implementation period of those remedies shall not be determined. The establishment or abolishment of fees, the change of fee amounts, the change of the Advisory Committee Rules (limited to the changes concerning fees related to listing stocks on the emerging markets), the change of the Rules on the Board of Directors (limited to the changes concerning fees related to listing stocks on the emerging markets), etc. shall be reported to the JFTC. The reporting period shall be ten (10) years following the Business Combination.

6. Assessment of remedies

(1) Pros and cons of measures other than structural ones

The remedies for competitive problems, in principle, are structural

remedies such as business transfer. The operation of an emerging market is not a business that is expected sure profits on its own. It is therefore difficult to find a transferee when, for example, the transfer of either Mothers or JASDAQ is sought. Even if a transferee is found, it is considered that many of the companies listed on the market subject to the transfer would have objections to becoming listed on a market other than those established by TSE or OSE. Accordingly, it is expected that there will be an increasing number of market alterations to be listed on other markets. Structural remedies are therefore not realistic.

Therefore, with regard to the case, it is difficult to transfer the business of the market of either Mothers or JASDAQ. If, however, there are remedies other than structural ones that are able to eliminate the problems concerning raising fees for services related to listing stocks stated in 4(2) above, we cannot say that structural remedies are essential as remedies.

(2) Appropriateness of remedies proposed by the parties

None of the members of the TSE advisory committee and the OSE advisory committee belongs to the parties. The JFTC assumes that this enables those members to express their opinions independently from the parties' policies on the changing of fees.

In addition, those currently dominate members in the advisory committees are board members, executive officers, or employees of securities companies that often become managing underwriters in the services related to listings stocks on the emerging markets or often become members of stock underwriting syndicates. This means that they are not only knowledgeable in the securities industry but also with IPO needs for enterprises to be fulfilled.. As a result, the members of the advisory committees tend to share common interests with their clients wishing to list their shares. They may, therefore, function as a constraint on inappropriate raise of fees.

With respect to those remedies proposed by the parties, in addition to the above, considering the public functions that exchanges have and an effect of supervision by the Financial Services Agency concerning the process of changing fees that are possibly restraining the parties' discretion to raise fees for services related to listing stocks to a certain extent, it is reckoned that such remedies that the parties proposed will be effective against the

competitive concerns under the AMA arise following the Business Combination.

7. Conclusion

The JFTC reckons that the Business Combination may not substantially restrain competition in the field of trade for the services related to listing stocks on main markets and that, given the remedies the parties proposed, the Business Combination may not substantially restrain competition in the field of trade for the services related to listing stocks on emerging markets.

Part IV Services related to trading actuals

1. Outline

A service related to trading actuals means a service that allows investors to conduct a trade in actuals by establishing a financial instruments exchange market or by operating a Proprietary Trading System (hereinafter, a “PTS”), either of which are necessary for such trading. A domestic exchange can only handle stocks listed on its own markets in services related to trading stocks. PTS is a system by using electronic data processing systems to make contracts of trading shares etc. PTS operation is permitted under the FIEA as part of the business of a Financial Instruments Business Operator. A PTS operator does not engage in services related to listing and can handle all stocks listed on exchanges. Despite such differences from exchanges, a PTS operator has the obligation to make public announcements of price information, etc. in the same manner as exchanges. With respect to services related to trading actuals, a PTS operator conducts operations similar to those conducted by exchanges.

2. Particular field of trade

(1) Service range

Actuals handled in services related to trading actuals are shares, government bonds, convertible bonds and ETFs etc. The characteristics of those instruments greatly differ from one another. As a result, there is no substitutability of demand between different actuals. Accordingly, the JFTC defines each service range for each of actuals.

Below, we discuss the services related to trading shares that account for a large portion of the services related to trading actuals conducted by the parties.

(2) Geographical range

The services related to trading shares are conducted by exchanges and PTS operators in Japan. Accordingly, its geographical range is defined as “all parts of Japan”.

3. Review on substantial restraint of competition

(1) Changes in market structure

The combined market share of the parties in the services related to trading

shares is around 95%. Following the Business Combination, HHI will increase by about 1,000 to around 9,300, which will not meet the safe harbor thresholds for horizontal business combination. In addition, PTS operators (Company J and Company K in the table below) and local exchanges exist as competitors of the parties, but the market share of each is small.

[Market shares of trading share related services in 2011]

Rank	Company name	Market share
1	TSE	Around 90%
2	OSE	Around 5%
3	Company J	0%-5%
4	Company K	0%-5%
	Others	Marginal
	Total	100%

(2) Current competition between the parties

The parties argue that there is no direct competitive relationship between the parties because (i) no competitive relationship between the parties regarding single-listed shares (meaning shares listed only on one of the parties) exists, and with respect to trades of dual-listed shares (meaning shares listed on both of the parties; the same shall apply hereinafter), trading is concentrated in one of the two markets because of the characteristics of liquidity (liquidity means the size of the aggregate trading value of a market [depth of the market], and the larger the depth of the market, the more orders can be filled, and there is a tendency for liquidity to be concentrated in one place), and there is no effective measure to transfer liquidity from the market in which trading is mostly conducted to another market, (ii) there will be no significant change in competition between the parties following the Business Combination because TSE has an extremely large market share compared to OSE whose market share is small, and (iii) TSE does not view OSE as a competitor.

Currently, many securities companies take the best execution policies (this is a policy of a securities company in order to execute a customer order for securities transactions under the best terms and conditions, and a securities company must establish and publicly announce its best execution policy pursuant to the provisions of the FIEA) under which a securities company

shall place emphasis on liquidity to choose a market for executing a customer order when there is no specific instruction from the customer. It is, therefore, not easy with respect to dual-listed stocks to transfer liquidity from a major market to another market. It is, however, found that the parties sought to capture more liquidity by improving its trading systems and measures for trading including seizing of liquidity from the other while recognizing themselves as competitors one another. Therefore, it is not recognized that there is no direct competitive relationship between the parties. Since TSE has an overwhelmingly large market share in the services related to trading shares, however, it is therefore not confirmed that OSE was exerting strong competitive pressure against TSE.

(3) Conditions of competitors

a. PTS operators

PTS operators have recently been growing within the services related to trading shares primarily because investors are highly likely to be able to perform transactions with more favorable terms and conditions with their highly sophisticated trading systems, low fees, and finely divided step values for bid and ask prices (prices for sales and purchases).

On the other hand, the market share of each PTS operator is 0%-5%, as stated in 3(1) above. They, therefore, cannot be deemed as leading competitors of the parties. In addition, as stated below, there are regulations that are considered to place restrictions on new entries and growth of PTS operators.

b. Regulations on PTS

As one of the rules that are not applicable to exchanges but are applicable only to PTS's, the "5% rule" that concerns tender offer bids exists (a regulation that requires investors in a purchase of shares in private transactions etc. to launch a tender offer bid if they will own more than 5% of the share certificates, etc. of any company as a result of such private transaction etc.). Since this rule makes it impossible for them to purchase shares through a PTS if such acquisition meets the 5% threshold concerning share certificates etc., many institutional investors do not currently use PTS's. It is, therefore, considered that the regulation places restrictions on new entries and growth of PTS operators.

The Financial Services Agency, however, plans to amend the 5% rule. When the amendment is made, a trade through a PTS that meets specific requirements will become exempt from application of the 5% rule (see reference, below). As a result of the amendment, the use by institutional investors of PTS's that will be exempt from application of the rule is expected to increase. Accordingly, it is considered that competitive pressure from PTS operators against the parties will become stronger.

In the results of interviews and questionnaire survey with securities companies and investors, there were also numerous opinions that many institutional investors would use PTS's if PTS's became exempt from application of the 5% rule.

(Reference) Financial Services Agency website

<http://www.fsa.go.jp/news/23/syouken/20120626-1.html>

(Public announcement of the “Cabinet Order on Partial Revision of the Order for Enforcement of the Financial Instruments and Exchange Act (bill)” and the “Cabinet Office Ordinance on Partial Revision of the Cabinet Office Ordinance on Disclosure Required for Tender Offer for Share Certificates, etc. by Person Other than Issuer (bill)”)

On October 31, 2012, the Cabinet Order and the Cabinet Office Ordinance were promulgated and put into effect.

(4) Competitive pressures from users

The parties argue that users are strongly exerting competitive pressure mainly because institutional investors can also trade on overseas exchanges. Most of the shares listed on the markets established by the parties are, however, not listed on overseas exchanges. Even if shares are listed both on domestic and overseas exchanges, their liquidity on overseas exchanges is not sufficient. Non-Japanese shares listed on overseas exchanges are also generally considered different from shares listed on the markets established by the parties in terms of procedures etc. necessary for trading. For an investor planning to invest in shares listed on the markets established by the parties, therefore, an overseas exchange is not an option. Accordingly, it is not recognized that users are exerting competitive pressure.

(5) Competitive pressures from neighboring markets

The parties argue that there is competitive pressure from the neighboring markets of other financial instruments and overseas exchanges.

It is, however, not recognized that there is competitive pressure from other financial instruments mainly because the characteristics of those instruments are greatly different from the characteristics of shares and because even if there are instruments similar to shares, their liquidity is not sufficient compared to that of shares. It is also not recognized that there is competitive pressure from overseas exchanges as stated in (4) above.

(6) Efficiency

The parties argue that, as stated in Part III-3(6), the Business Combination can improve efficiency also in the services related to trading shares because an annual cost reduction of around seven billion yen is expected from it as a result of the integration of systems following the Business Combination.

As stated in Part III-3(6), however, the parties have not decided the timing, etc. when they will integrate the systems and by which they will achieve the cost reduction related to the systems, etc. Explanations they have given about specificity and feasibility related to efficiency and about the measures by which the interests of users will increase are also not sufficient. As a result of the Business Combination, the market share of the parties in services related to trading shares will become extremely large, creating a state of quasi-monopoly. Even if the improvement of efficiency can be materialized as they argued, therefore, there is no reason to assume that the parties would take competitive action such as price reductions.

Accordingly, we cannot take the improvement of efficiency into our consideration.

(7) Other arguments of the parties

The parties argue, as stated in Part III-3(7) c, that they will not irrationally raise fees even following the Business Combination because exchanges' changes in fees shall be subject to notification in accordance with the provisions of the FIEA and because the Financial Services Agency supervises them. As stated in Part III-3(7) c, as an effect of supervision by the Financial Services Agency, the parties' discretion to raise fees is possibly restrained to a certain degree. On the other hand, since the fee regulations under the provisions of the FIEA adopt the notification system, it cannot be considered

that the parties would not raise fees. In addition that, whereas competitive measures in services related to trading shares are not limited only to differences in the amount of listing fees but also those in trading system competence and in the narrowness of each range of step value for bid and ask prices, etc., it cannot be considered that the Financial Services Agency's supervision based on the notification system can prevent competitive concerns from arising.

4. Japan Security Clearing Corporation taking clearing operations of PTS operators

When sales and purchase of shares are made, clearing operations such as assumption of obligations on transfer of shares and payment of consideration become necessary. Currently, Japan Security Clearing Corporation (hereinafter, "JSCC"), a subsidiary of Tokyo Stock Exchange Group, Inc., assumes obligations of clearing participants that conducted sale and purchase of shares not only on TSE and OSE but also on local exchanges and PTS operators under the same levels of terms and conditions. This forms the basis of the systematic structure that ensures the execution of sales and purchase of shares without counterparty risk (credit risk related to counterparty to trading stocks) also on local exchanges and PTS operators. Accordingly, it is considered that the JSCC's assumption of obligations arising from the sales and purchase of shares through PTS's is necessary to promotion of new entry and growth of PTS operators.

If, however, the JSCC forecloses or gives discriminatory treatment to PTS operators; it would impede new entry and growth of PTS operators and result in a loss of competitive pressure from PTS operators against the parties. If, especially, PTS operators expand their market shares because of the amendment of the 5% rule as stated in 3(3)b and are brought to have strong competitive pressure against the parties, it is considered that JSCC may take such action.

5. Assessment under the AMA

TSE has held an overwhelmingly strong position in the market with respect to services related to trading shares even prior to the Business Combination. Then, whereas it is not recognized that OSE was exerting strong competitive pressure against TSE, due to the Business Combination,

OSE will cease to be the only substantive competitor of TSE. As a result, the dominant position of TSE on the market will be maintained and reinforced.

On the other hand, there are PTS operators as competitors that are growing rapidly in recent years. As a result of amending the regulations, it is considered that the market share of the PTS operators will increase further and will exert a certain degree of braking power against the parties.

If, however, JSCC forecloses or gives discriminatory treatment to PTS operators; this could result in a loss of competitive pressure from the PTS operators against the parties. This could also give rise to a condition in which the parties may have some discretion over determining prices, etc. Accordingly, it is considered that the parties will substantially restrain competition in services related to trading shares.

6. Proposal for and assessment of remedy by the parties

The parties have proposed to the JFTC a remedy by which JSCC will continuously assume clearing operations concerning the sales and purchase of shares for competitors of the parties in the future on terms and conditions that are not substantially discriminatory and do not place competitors at a competitive disadvantage.

If the remedy the parties proposed is implemented, it is considered that a condition in which PTS operators can continue to entrust JSCC with the clearing operations will be ensured and that competitive pressure from the PTS operators against the parties will not be lost.

7. Conclusion

It is considered that, given the remedy the parties proposed, the Business Combination may not substantially restrain competition in the field of trade for services related to trading shares.

Part V Services related to trading concerning derivatives transactions

1. Outline

(1) Derivatives transaction

A derivatives transaction means a transaction whose economic value is derived from the economic value of some underlying assets. Underlying assets for derivatives transactions include shares, bonds, interest rates, foreign exchange, and various commodities (gold, grain, etc.). The underlying assets for derivatives transactions conducted on both TSE and OSE are shares (individual equities) or stock indexes. The main stock index used as underlying assets for derivatives transactions conducted on TSE is the Tokyo Stock Price Index (hereinafter, "TOPIX") and that on OSE is the Nikkei Stock Average.

(2) Types of derivatives transactions

Derivatives transactions are categorized by type into futures transaction, option transaction, and swap transaction. Those currently conducted on TSE and OSE are futures transactions and option transactions.

A futures transaction means a transaction to conclude in advance a contract that specifies the transaction price, etc. of a specific underlying asset on the condition that the trade will be settled during a specified period in the future. Futures transactions currently conducted on both TSE and OSE are Japanese stock index futures. The main Japanese stock index futures transactions conducted on TSE are TOPIX futures transactions with TOPIX underlying, and those conducted on OSE are Nikkei 225 futures transactions with the Nikkei Stock Average underlying.

An option transaction means a transaction to buy or sell the right to buy or sell a specific underlying asset during a specified period in the future at a specific exercise price. Option transactions currently conducted on both TSE and OSE are stock index option transactions and individual stock option transactions.

(3) Services related to trading concerning derivatives transactions

Services related to trading concerning derivatives transactions mean services to establish a financial instruments exchange market in which derivatives transactions are conducted and to strike sales and purchases between investors.

Below, we discuss Japanese stock index futures transactions and stock index option transactions that account for a large portion of the services related to trading concerning derivatives transactions conducted by the parties.

2. Particular field of trade

(1) Service range

a. Types of underlying assets

The parties argue that their service ranges should be defined by the whole set of derivatives transactions or by the whole set of derivatives transactions with underlying assets of shares or stock indexes.

There are, however, in general, two purposes of derivatives transactions: risk hedging and speculation. In trades for risk-hedging purposes, especially, it is considered that these trades may not be substituted with another derivatives transaction with a completely different type of underlying asset. In the results of interviews and questionnaire survey with securities companies and investors, there were also many opinions that derivatives transactions with the underlying assets of Japanese stock indexes may not be substituted with derivatives transactions with other types of underlying assets, no matter whether or not the trades are conducted for risk-hedging purposes.

Accordingly, it is considered to be no substitutability between derivatives transactions with the underlying assets of Japanese stock indexes and derivatives transactions with other types of underlying assets. Consequently, it is recognized that the service range for the derivatives transactions with the underlying assets of Japanese stock indexes is different from that for derivatives transactions with other types of underlying assets.

b. Futures transactions and option transactions

The parties argue that futures transactions and option transactions constitute the same service range.

According to the results of interviews with securities companies and investors, however, economic benefits from futures transactions and option transactions are not identical for many users, especially when these trades are conducted for risk-hedging purposes. It is, therefore, considered that, in principle, no substitutability exists between these transactions. Thus, it is

recognized that futures transactions and option transactions constitute different service ranges.

c. Over-the-counter transactions of derivatives

Derivatives transactions are comprised of derivatives transactions traded on exchanges (market transactions of derivatives) and derivatives transactions traded outside the exchanges (over-the-counter transactions of derivatives). The parties argue that the service range market transactions of derivatives constitute and that over-the-counter transactions of derivatives constitute are the same.

When the two are compared, however, the results of interviews with securities companies and investors indicate that there are fundamental differences between them. Those include: a counterparty risk is associated with over-the-counter transactions of derivatives; over-the-counter transactions of derivatives lack price transparency because trade terms are not disclosed; parties to over-the-counter transactions of derivatives have some discretion between one another over setting the terms and conditions of trade; and market transactions of derivatives are conducted electronically and for large orders while over-the-counter transactions of derivatives are still conducted by order placement via phone and other means which lead to fundamental difference between them such as difficulty of processing large volumes of transactions on a real-time basis.

Considering the above, it is recognized that market transactions of derivatives and over-the-counter transactions of derivatives constitute different service ranges.

d. Summary

As mentioned above, with respect to derivatives transactions, the JFTC defines the service range as “services related to trading concerning Japanese stock index futures” and “services related to trading concerning Japanese stock index option transactions.” There is also a decision not to include over-the-counter transactions of derivatives in the service range because the parties do not engage in services related to trading concerning over-the-counter transactions of derivatives.

(2) Geographical range

The parties argue that the geographical range for services related to trading concerning derivatives transactions is all parts of the world.

A large portion of users of services related to trading concerning Japanese stock index futures and services related to trading concerning Japanese stock index option transactions are foreign investors and securities companies (principal transactions). Of these two, most of securities companies (principal transactions) are certain type of securities companies such as major domestic securities companies and foreign owned securities companies. These foreign investors and securities companies can handle trading on overseas exchanges with a certain degree of ease.

Looking at domestic investors, institutional investors are offered services related to trading on overseas exchanges by major securities companies, etc., while individual investors are offered services related to trading on overseas exchanges by pure-internet-play securities companies with relatively low fees.

It is, therefore, found that users can participate in trading on overseas exchanges with a certain degree of ease. Accordingly, the JFTC sets the geographical range for either of the service ranges defined in (1) d above as “the entire world”.

Note that, despite the definition of the geographical range as being “the entire world,” the overseas exchanges that actually handle Japanese stock index futures and Japanese stock index option transactions are limited to only a few including Company L and Company M stated in 3(1) below.

3. Review of substantial restraint of competition

(1) Change in market structure

Regarding Japanese stock index futures transactions, the combined market share of the parties is around 70% and they rank first. After the Business Combination, HHI will increase by about 2,000 to around 5,300, which will not meet the safe harbor thresholds for horizontal business combination.

On the other hand, with respect to Japanese stock index option transactions, the combined market share of the parties is more than 95%. After the Business Combination, HHI will increase by less than 100 to around 9,600, which will meet the safe harbor thresholds for horizontal business combination. The JFTC concluded that competition in any particular field of

trade would not be substantially restrained.

Below, we will discuss Japanese stock index futures transactions.

[Market shares in Japanese equities index futures transactions in 2011]

Rank	Company name	Market share
1	OSE	Around 45%
2	TSE	Around 20%
3	Company L	Around 20%
4	Company M	5%-10%
	Others	0%-5%
	Total	100%

[Market shares in Japanese stock index option transactions in 2011]

Rank	Company name	Market share
1	OSE	More than 95%
2	Company N	0%-5%
3	TSE	0%-5%
	Total	100%

(2) Current competition between the parties

a. Arguments by the parties

The parties argue that they do not directly compete with each another in services related to trading stocks concerning Japanese stock index futures transactions because of the following reason. According to their arguments, whereas TOPIX futures transactions and Nikkei 225 futures transactions are the market heavyweights in Japanese stock index futures transactions handled by the parties, underlying assets of TOPIX are different from those of Nikkei Stock Average. Due to such differences in these indexes' characteristics, there is a low level of substitutability between them.

b. Review

(a) Substitutability between TOPIX futures transactions and Nikkei 225 futures transactions

It is generally described that TOPIX futures transactions are frequently used for risk-hedging purposes by domestic institutional investors that

implement asset management using TOPIX as a benchmark (a standard against which the investment performance of asset management can be evaluated) and that Nikkei 225 futures transactions are often used by foreign investors and individual investors that carry out short-term trading for speculative purposes. This description meets the parties' arguments. Investors, especially those of pension funds etc., who are obliged to use TOPIX as a benchmark under their general contractual conditions, investment policies etc. exist. , Such investors do not use Nikkei 225 futures transactions but rather TOPIX futures transactions.

A large portion of users of TOPIX futures transactions and of those of Nikkei 225 futures transactions are, however, foreign investors and securities companies (principal transactions). Apart from a few differences such as the fact that individual investors have a higher percentage as users of Nikkei 225 futures transactions, there is no crucial difference in users of these two types of transactions.

The parties have also admitted that institutional investors or securities companies (principal transactions) etc., other than domestic institutional investors that carry out asset management using TOPIX as a benchmark sometimes invest in both TOPIX futures transactions and Nikkei 225 futures transactions.

Moreover, according to the results of questionnaire survey conducted with securities companies and investors, the opinion were divided into the following two: one is that they use TOPIX futures transactions and Nikkei 225 futures transactions alternatively as taking their liquidity, correlativity and execution cost etc. into comprehensive consideration and the other is that they do not use these two types of transactions alternatively.

Considering the above, with respect to TOPIX futures transactions and Nikkei 225 futures transactions, it is reckoned that the users are varied from "those who are highly likely to selectively use both due to the high substitutability for the users between TOPIX futures transactions or Nikkei 225 futures transactions" to "those who see the substitutability between TOPIX futures transactions and Nikkei 225 futures transactions low and see themselves those not likely to selectively use either TOPIX futures transactions and Nikkei 225 futures transactions, then, are exclusively use either TOPIX futures transactions or Nikkei 225 futures transactions".

(b) Competition between the parties with respect to Japanese stock index futures transactions

As stated in (a) above, there are some users that alternatively use TOPIX futures transactions and Nikkei 225 futures transactions. The parties compete with each other targeting such users. It is recognized that TSE especially aggressively acted to seize liquidity from Nikkei 225 futures transactions on OSE.

It is also recognized that the parties knowingly compete with each other in terms of fees, new product development, etc. in the entire range of services related to trading concerning Japanese stock index futures transactions.

(c) Summary

It is recognized that the parties compete with each other regarding Japanese stock index futures transactions.

(3) Status of competitors of the parties

With respect to Japanese stock index futures transactions, Company L and Company M are competitors of the parties. L and M are overseas undertakings and have certain degrees of market share in Japanese stock index futures transactions.

Company L handles Nikkei 225 futures transactions and exerts strong competitive pressure against OSE which also handles Nikkei 225 futures transactions. Company L has competitive strength in many respects such as the legal systems of the country in which it is located and the environment of the markets in which it operates.

It is, however, considered that Nikkei 225 futures transactions Company L deals with do not have effective competitive pressure against TOPIX futures transactions traded on TSE. According to the results of questionnaire survey conducted with securities companies and investors, there were some opinions that the substitutability between Nikkei 225 futures transactions offered by Company L and TOPIX futures transactions traded on TSE is lower than that between Nikkei 225 futures transactions offered by Company L and Nikkei 225 futures transactions traded on OSE. While it is recognized that TSE is strongly aware of Nikkei 225 futures transactions traded on OSE as a competitive instrument against TOPIX futures transactions traded on TSE,

according to the results of interviews conducted with securities companies and investors, there was no opinion that TSE and Company L competed with each other reflecting their strong awareness of being competitors. The JFTC could not confirm the fact that TSE is aware of Nikkei 225 futures transactions traded on Company L as a competitive instrument against TOPIX futures transactions traded on TSE.

Considering the above, while we can assess Company L as a leading competitor of the parties, Nikkei 225 futures transactions traded on Company L do not exert effective competitive pressure against TOPIX futures transactions traded on TSE.

There is also Company M that handles Nikkei 225 futures transactions as a competitor of the parties. The market share it holds is, however, small and we could not find the fact that the parties were engaging in aggressive competition based on their awareness of Company M as a competitor. As a result, we cannot assess Company M as a leading competitor of the parties. In addition, as Company L, Company M does not handle TOPIX futures transactions and it is not thus considered that Company M exerts effective competitive pressure with respect to TOPIX futures transactions.

(4) Competitive pressure from neighboring markets

The parties argue that over-the-counter transactions of derivatives as a neighboring market exert competitive pressure.

As stated in 2(1) c, however, there are fundamental differences between market transactions of derivatives and over-the-counter transactions of derivatives including that over-the-counter transactions of derivatives, unlike with market transactions of derivatives, pose a counterparty risk, lack price transparency, and cannot process large volumes of orders because order placement via phone and other methods is still used for over-the-counter transactions. Accordingly, it is not considered that there is competitive pressure from over-the-counter transactions of derivatives as a neighboring market against market transactions of derivatives.

According to the results of interviews and questionnaire survey conducted with securities companies and investors, there was no opinion that over-the-counter transactions of derivatives as a neighboring market exert competitive pressure against Japanese stock index futures transactions.

(5) Efficiency

The parties argue that the Business Combination can improve efficiency in services related to trading concerning stock index futures transactions since an annual cost reduction of around seven billion yen is expected as a result of the integration of systems following the Business Combination, as stated in Part III-3 (6).

As stated in Part III-3 (6), however, the parties have not decided the timing, etc. when they will integrate the systems and by which they will achieve the cost reduction related to the systems. Explanations they have given about specificity and feasibility related to efficiency and about the means by which the interests of users will increase are also not sufficient.

Accordingly, we cannot take the improvement of efficiency into our consideration.

(6) Other arguments of the parties

The parties argue, as stated in Part III-3(7) c, that they will not irrationally raise fees even following the Business Combination because they shall submit a notification and then be subject to the supervision of the Financial Services Agency under the provisions of the FIEA.

As stated in Part III-3(7) c, it can be said that the parties' discretion to raise fees is being restrained to a certain extent as an effect of the supervision by the Financial Services Agency. On the other hand, since the regulation of the provisions of the FIEA is a notification system, it cannot be ensured that the parties would not raise their fees. In addition, with respect to Japanese stock index futures transactions, whereas the tools of competition such as fees, new product developments etc. exist, the Financial Services Agency's supervision based on the notification system cannot be deemed as those of such which can prevent competitive concerns from arising.

4. Assessment under the AMA

Following the Business Combination, the parties will have a market share of around 70% in Japanese stock index futures transactions. Company L will continue to be a leading competitor of the parties following the Business Combination. It is considered that Company L has strong competitive strength against OSE while the competitive pressure of Company L will not directly affect TOPIX futures transactions traded on TSE. There is no other

decision factor that is considered as maintaining and promoting competition such as competitive pressures from neighboring markets.

Users of services relating to trading concerning TOPIX futures transactions are largely categorized into (i) users that are highly likely to selectively use TOPIX futures transactions and Nikkei 225 futures transactions because for such users substitutability between those two types of transactions is high (hereinafter “Selective Users”) and (ii) users that exclusively use TOPIX futures transactions because for such users substitutability between TOPIX futures transactions and Nikkei 225 futures transactions is low (hereinafter “TOPIX Core Users”). Aggressive competitive actions of TSE against OSE that mainly focus on Selective Users will be lost as a result of the Business Combination.

For example, if the parties raise fees related to TOPIX futures transactions, there is a possibility for the Selective Users to switch to other instruments. The most promising alternative to be switched to is, however, Nikkei 225 futures transactions currently dealt with by OSE, therefore, switching to other instruments due to their raising of fees will be absorbed within the same company following the Business Combination. In addition to that, the TOPIX Core Users will also have no choice but to accept the fee raise related to TOPIX futures transactions. Accordingly, it is considered that the parties will be successful in raising fees related to TOPIX futures transactions following the Business Combination.

In addition, it is considered that incentives for the development of new products related to TOPIX, etc. will likely decline as a result of the Business Combination. Negative effects from such loss of competition will impact both on the TOPIX Core Users and on the Selective Users.

Therefore, it is considered that a situation where the parties independently have some discretion to raise fees may arise following the Business Combination that may substantially restrain competition.

5. Proposal for remedies by the parties

As stated in 4 above, the Business Combination may substantially restrain competition in services related to trading concerning Japanese stock index futures transactions. The parties, therefore, proposed adopting remedies regarding the license of TOPIX, etc. that centers on the extension of trading hours for TOPIX futures transactions permitted to NYSE Liffe.

(1) NYSE Liffe

NYSE Liffe is an exchange located in London and belonging to the NYSE Euronext Group. It handles the world's largest volumes of trades regarding interest futures transactions, interest rate option transactions and stock index futures transactions, etc.

NYSE Liffe is licensed the rights concerning TOPIX from TSE and has been handling TOPIX futures transactions since 2010.

(2) Content of the remedies the parties proposed

a. Extension of trading hours for TOPIX futures transactions on NYSE Liffe

In the contract with NYSE Liffe, TSE places restrictions on the trading hours for TOPIX futures transactions on NYSE Liffe so that they are traded from 3 p.m. to 6 a.m. JST (to 5 p.m. in the daylight savings season in the United Kingdom) to avoid trading hour overlaps with the time period of 9 a.m. to 3 p.m. JST where the trading volume of TOPIX futures transactions on TSE is comparatively large. TSE will provide NYSE Liffe with the license regarding the use of TOPIX on reasonable terms and conditions by the closing date of the Business Combination in order to allow the handling of TOPIX futures transactions by NYSE Liffe during the time period of 9 a.m. to 3 p.m. JST (10 a.m. to 3 p.m. JST excluding the daylight savings season in the United Kingdom) where the trading volume of TOPIX futures transactions on TSE is comparatively large.

b. Reduction of license fees for TOPIX for NYSE Liffe

TSE collects license fees from NYSE Liffe concerning the use of TOPIX. TSE will make the license fees below the current levels in response to NYSE Liffe's request.

c. Granting of a license for indexes other than TOPIX

Upon request from NYSE Liffe, TSE will newly provide NYSE Liffe with a license on the use of TOPIX-related indexes other than TOPIX itself on reasonable terms and conditions.

6. Assessment of the remedies

When the remedy stated in 5(2) a is implemented, NYSE Liffe will have a

direct competitive relationship with the parties during the hours the trading volume of TOPIX futures transactions on TSE is comparatively large. When the remedy stated in 5(2) b is implemented, NYSE Liffe's profitability with respect to TOPIX futures transactions will improve, thereby reinforcing NYSE Liffe's competitive strength in these transactions.

In addition, when the remedy stated in 5(2) c is implemented, incentives for the parties for development of new products will unlikely decline and should be maintained at the same level as those the parties have prior to the Business Combination.

Considering the above, since a party can conduct services related to trading concerning stock index futures transactions only if it has trading systems and a license on the use of stock shares indexes, licenses on TOPIX etc. granted to NYSE Liffe which handles the world's largest trading volumes with respect to derivatives transactions would strengthen the existing competitors in services related to trading concerning Japanese stock index future transactions so that they will acquire an effective constraint against the parties. Therefore, it is considered that the above would be effective remedies.

7. Conclusion

It is considered that the Business Combination may not substantially restrain competition in the field of trade for the services related to trading concerning Japanese stock index futures transactions if the remedies that the parties proposed are implemented.

Case 11 Absorption-type company split of Mitsubishi Corporation's gold and platinum reserve business by Tanaka Kikinzoku Kogyo K.K

Part I Outline of the transaction

In this case, Tanaka Kikinzoku Kogyo K.K. (hereinafter referred to as "Tanaka Kikinzoku"), which is primarily engaged in the business of manufacturing, selling, importing, and refining precious metals, planned to acquire the gold and platinum reserve business operated by Mitsubishi Corporation, which is primarily engaged in wholesale businesses of various products by an absorption-type company split. The provision of applicable law is Article 15-2 of the AMA.

Part II Definition of the particular field of trade

1. Service range

In a gold or platinum reserve business, the company operating the reserve business (hereinafter referred to as "reserve firm") makes a contract with a user and continually purchases on the user's behalf precious metals (either gold or platinum or both) equivalent to a certain value specified by the user. The reserve firm reserves the purchased precious metal bullion in trust, and the user can either resell the accumulated bullion to the reserve firm for cash or take back the bullion. Individual investors account for the majority of the users of gold and platinum reserve business.

Gold and platinum are traded at different prices and are subject to different price fluctuations and trends, thus, gold reserve businesses and platinum reserve businesses may have different characteristics and applications. Consequently, the JFTC recognizes that substitutability for users between gold reserve businesses and platinum reserve businesses is limited. However, reserve firms do not have difficulties procuring either gold or platinum, and the systems utilized in accumulating gold and platinum reserves, the other facilities and personnel needed to supply the reserves are identical for both gold and platinum. As a result, the JFTC recognizes that there is substitutability for suppliers between the reserve businesses.

Accordingly, the JFTC defined "gold and platinum reserve business" as the service range in this case.

2. Geographic range

Users throughout Japan make gold and platinum reserve contracts with reserve firms by applications via postal mail or other means. They also resell accumulated gold and platinum reserves for cash by applications via telephone, fax, online, or other means.

Accordingly, the JFTC defined “all regions of Japan” as the geographic range in this case.

Part III Impact of the business combination on competition

1. Market share

The domestic market for gold and platinum reserves (as measured by trading volume) in FY 2011 was approximately ¥200 billion.

With this transaction, the combined market share of the companies concerned will be ranked in the 1st place, with approximately 65 percent of the market. The HHI after the transaction will be approximately 5,000, and the increment is about 1,500. These figures do not fall within the range of the horizontal safe-harbor.

FY 2011 Shares in the gold and platinum reserve business (by trading volume)

Rank	Company	Market Share
1	Tanaka Kikinzoku	Approximately 50%
2	A	Approximately 25%
3	Mitsubishi Corporation	Approximately 15%
4	B	Approximately 5%
Total		100%

2. Status of competitors

(1) Number of competitors

There is one leading competitor with a market share over 10 percent.

(2) Status of past competition

A reserve firm’s brand value is an important factor when users select a reserve firm, since users are concerned whether they can entrust with reassurance their assets in gold and platinum to the reserve firm. Brand value is largely determined by the creditworthiness of the entire firm and its tradition as a precious metals dealer.

On the other hand, reserve firms generally do not release the number of contracted users in their gold and platinum reserve businesses. This means that the number of users is not a constituent factor in brand value and that having many users does not directly translate into an advantage in acquiring more users.

Therefore, although it is expected that Tanaka Kikinzoku will experience an increase in contracted users after taking over the gold and platinum reserve business from Mitsubishi Corporation by an absorption-type company split, Tanaka Kikinzoku is not granted to use the Mitsubishi Corporation brand and, thus, it will not see a large increase in its brand value or an immediate increase in its ability to capture users.

3. Entry pressure

The gold and platinum reserve business is not subject to any official authorization or licenses; thus, there are no institutional barriers to entry. Furthermore, large initial investments in entering a gold and platinum reserve business are not deemed necessary; thus, the practical barriers to entry are considered low as well.

In fact, a securities company, a new entrant to the field of trade, started a gold, platinum, and silver reserve business in May 2012.

Accordingly, the JFTC recognizes that there is entry pressure to a certain degree.

4. Competitive pressure from related markets

Gold and platinum can be invested through precious metal exchange-traded funds (ETFs), a type of ETF. Institutional investors and individual investors trade Gold and platinum ETFs via securities companies. Over ¥180billion worth of actual gold and platinum-backed precious metal ETFs alone were traded during FY 2011. Gold and platinum reserve firms purchase and reserve precious metals on behalf of their users. With actual-backed precious metal ETFs, users can also invest without having to reserve the purchased precious metals by themselves. Thus, although the user's investment method is different, gold and platinum reserves and gold and platinum precious metal ETFs are deemed to have aspects that result in similar benefits. Accordingly, the JFTC recognizes that there is competitive pressure from gold and platinum precious metal ETFs to a certain degree.

Furthermore, gold and platinum reserves are products designed to be relatively stable money managements. Accordingly, financial products such as bank deposits, government bonds, and certain types of investment trusts are also deemed to exert competitive pressure on gold and platinum reserves to a certain degree.

Part IV Conclusion

Taking the above instances into account, the JFTC concluded that the transaction is unlikely to substantially restrain competition in any particular fields of trade.

Regulations on Business Combinations

1. Regulations on business combinations

The AMA prohibits acquisition or possession of the shares of a company, the merger of companies, the split of a company, joint-share transfer or the acquisition of business where it creates a business combination that is likely to substantially restrain competition in any particular fields of trade. In response thereto, the 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 business combination plans pursuant to the AMA (for a flowchart on reviews of business combinations, see paragraph 2, Appendix 2)

When a business combination is implemented between companies that satisfy certain requirements, the AMA requires such companies to make a notification on their business combination plan in advance to the JFTC (for a summary of the conditions requiring notification, see paragraph 1, Appendix 2).

The JFTC conducts a review of whether or not the business combination regarding which prior notification has been made needs a detailed review within 30 days after receiving the notification. When the case in question does not raise any issues in light of the provisions of the AMA, the JFTC concludes its review within the prescribed period. If the JFTC judges that the case requires further review, it requests that the companies submit reports, etc. and determines whether or not the business combination in question may raise any issues, in light of the provisions of the AMA, within 90 days after receiving all the reports, etc.

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

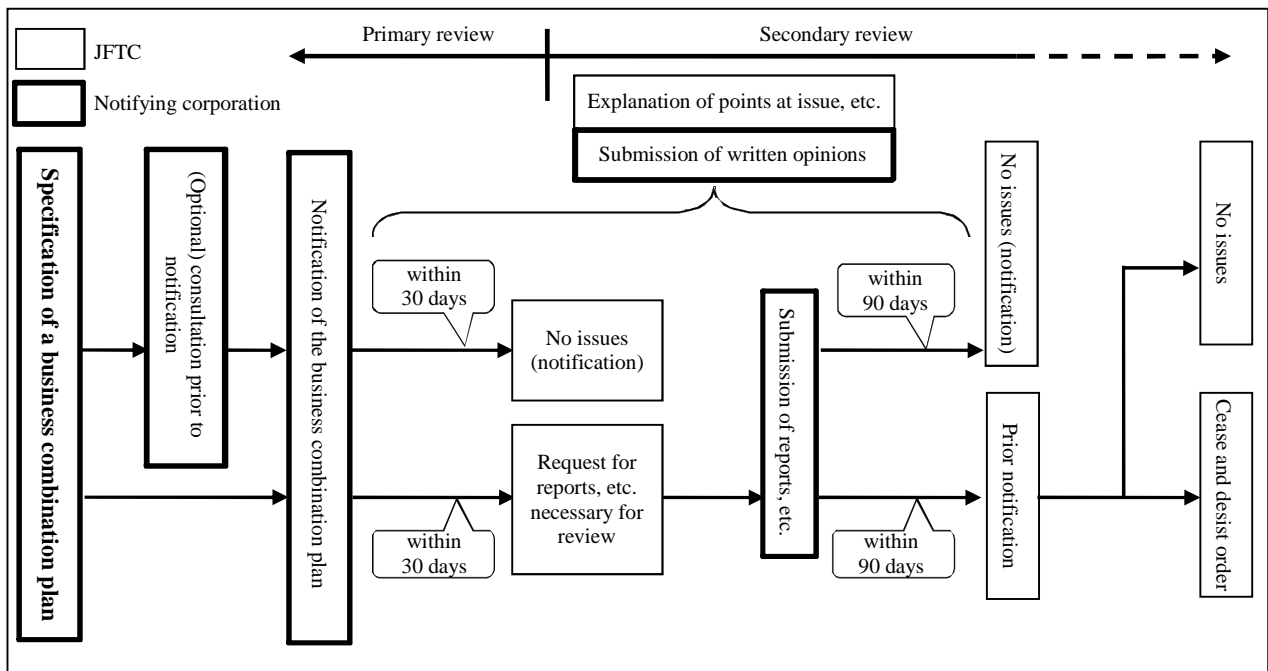
1. Summary of conditions requiring notification for business combinations

Type of business combination (the provisions of the AMA applied to the case)		Summary of conditions requiring notification for business combinations
Acquisition of shares (Article 10)		(1) A company with domestic total turnover ^(Note 1) exceeding 20 billion Japanese yen (2) acquires shares of a company whose domestic turnover, together with those of its subsidiaries, exceed 5 billion Japanese yen and (3) whose proportions of voting rights held ^(Note 2) accounts for more than 20% or 50%.
Merger (Article 15), Joint share transfer (Article 15-3)		(1) A company with domestic total turnover exceeding 20 billion Japanese yen and (2) a company with domestic total sales exceeding 5 billion Japanese yen (3) merge (or conduct a joint share transfer).
Split (Article 15-2)	Joint incorporation-type company split	(1) A company with domestic total turnover exceeding 20 billion Japanese yen and (2) a company with domestic total turnover exceeding 5 billion Japanese yen (3) establish a company by joint incorporation-type company split, to which all the businesses are transferred, etc.
	Absorption-type company split	(1) A company with domestic total turnover exceeding 20 billion Japanese yen and (2) a company with domestic total turnover exceeding 5 billion Japanese yen (3) acquire all the businesses, etc.
Acquisition of business, etc. (Article 16)		(1) A company with domestic total turnover exceeding 20 billion Japanese yen (2) acquires all the businesses transferred from a company with domestic turnover exceeding 3 billion Japanese yen; or (1) A company with domestic total turnover exceeding 20 billion Japanese yen (2) acquires any substantial part of a business with domestic turnover exceeding 3 billion Japanese yen (or all or any substantial part of the fixed assets used for business).

(Note 1) Domestic total turnover mean the aggregate domestic turnover of companies, etc. belonging to a business combination group (a group consisting of "the ultimate parent company" of the notifying company and its subsidiaries).

(Note 2) Proportion of voting rights held means the proportion of voting rights held by the group of combined companies to which the notifying company belongs.

2. Flowchart for review of business combinations



Status of Notifications of Recent Acquisition of Share, etc. Received and Reviewed

		2010	2011	2012
Number of notifications	Acquisition of Shares	184	224	285
	Merger	11	15	14
	Split	11	10	15
	Joint Share Transfer	5	6	5
	Acquisition of Business, etc.	54	20	30
	Total	265	275	349
Review status	Cases closed at the primary review	263	270	340
	Cases closed at the secondary review	1	4	5
	Cases decided to raise no issues under the AMA given the implementation of remedies	2 (2)	3 (0)	3

(Note 1)

"Review status" is the status as of May 31, 2013 regarding acquisition of shares, etc. notified for the respective fiscal years. Cases not included in the "review status" column are under review or have been withdrawn by the notifying companies due to their circumstances concerning the proposed business combinations

(Note 2)

In the field "Cases decided to raise no issues under the AMA given the implementation of remedies," the figures in parentheses indicate the number of cases in the 2010 and 2011 fiscal years that were decided to raise no issues under the AMA given the implementation of remedies submitted by the concerned companies during the prior consultation process.

(Note 3)

The notification of Case 10, M&A between the Tokyo Stock Exchange Group, Inc. and the Osaka Securities Exchange Co., Ltd., was accepted in FY 2011. Thus, the case was included in the FY 2011 figures in the field, "Cases decided to raise no issues under the AMA given the implementation of remedies."

*For the status of notifications in 2011, see the JFTC Web site at:
(<http://www.jftc.go.jp/dk/kiketsu/toukeishiryō/doukou.html>)