

**Major Business Combination Cases in Fiscal Year 2014  
(Tentative Translation)**

June 10, 2015  
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 2014 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 2014

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(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 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) In each case, a horizontal business combination refers to a business combination between companies with a competitive relationship in the same particular field of trade, a vertical business combination refers to a business combination between companies at different transaction stages, such as a merger between a manufacturer and a distributor that sells its products, and a compound business combination refers to a business combination that is neither a horizontal business combination nor a vertical business combination, such as the acquisition of shares between companies in different geographic ranges for the same particular field of trade.

## **Case 1 Transfer of business of manufacture and sales of packaged rice cake of Kimura Foods Co., Ltd. to Sato Foods Industries Co., Ltd.**

### **Part I Outline of this case**

Muromachi Foods Co., Ltd. established by Sato Foods Industries Co., Ltd. (hereinafter referred to as “Sato Foods” ; the group of combined companies whose ultimate parent company is Sato Foods shall be referred to as “Sato Foods Group”) which manufactures and distributes packaged rice cake in August 2014 as a subsidiary of Sato Foods planned to acquire the packaged rice cake manufacturing and sales business of Kimura Foods Co., Ltd. (hereinafter, “Kimura Foods”; Sato Foods Group and Kimura Foods are hereinafter collectively referred to as “the Parties”.)

The applicable provision in this case is Article 16 of the AMA.

### **Part II Particular field of trade**

#### **1. Product range**

Packaged rice cake is aseptic-packaged rice cake preservable at room temperature and has some varieties depending on the shape, thickness, and whether or not it has been sterilized by heat. However, there is no great difference in ingredients, tastes, and effects among them and price levels are not largely different either. Therefore, substitutability for users is deemed to exist among different types of packaged rice cake products.

As for Kagamimochi, round rice cake offered to a deity, it is used normally for year-end and new-year decoration, and thus has limited substitutability for users with other types of packaged rice cake. However, Kagamimochi usually comes as packaged rice cake in a container for decoration and there is no special equipment, technique, or process required to produce such containers for Kagamimochi. Therefore, substitutability for suppliers is deemed to exist between Kagamimochi and other types of packaged rice cake products.

In consideration of the above, the JFTC defined “packaged rice cake” which includes Kagamimochi as the product range in this case.

#### **2. Geographic range**

The Parties sell packaged rice cake products nationwide and users purchase them from enterprises all over Japan. As well, there is no regional difference in products sold or their prices.

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

case.

### **Part III Impact of conduct of this case on competition**

#### **1. Market position of the Parties**

With the conduct of this case, the total market share of the Parties would be approximately 40% (the largest) and the increment of HHI approximately 750. Therefore, the acquisition does not meet the safe harbor standards for horizontal business combinations.

**【Market share of packaged rice cake in 2013】**

Rank	Company name	Market share
1	A	Approx. 25%
2	Sato Foods Group	Approx. 25%
3	Kimura Foods	Approx. 15%
4	B	Approx. 10%
5	Others	Approx. 25%
Total		100%

#### **2. The competitive situation**

Company A and B are major competitors in the business of manufacturing and sales of packaged rice cake. Apart from them, there are other enterprises with a certain degree of competitiveness, including some manufacturers which produce private brand goods (hereinafter, "PB goods") for major distributors. As the sales of PB goods have grown in recent years, competitors of this kind constitute substantial competitive pressure against the Parties.

#### **3. Competitors' excess capacity**

Some major competitors have a certain degree of excess capacity.

#### **4. Competitive pressure from users**

The chief sales channel for packaged rice cake is merchandisers. The Parties sell large volume to major trading firms and mass merchandisers which are larger than themselves in the size of business. Mass merchandisers are facing tough competition in terms of prices and a lineup of products including packaged rice cake, and thus have to purchase goods which could attract many customers at cheaper prices. In light of this, packaged rice is not necessarily attractive to mass merchandisers because its

sales are concentrated around the turn of the year and consumers, especially youths, are turning away from rice cake due to the change in Japanese lifestyle. Some mass merchandisers claim that packaged rice cake products of the Parties can easily be substituted with those made by other companies while the sales of PB goods are growing as well. In consideration of this, it is reasonable to think that customers of the Parties have strong price bargaining power and that price cutting pressure from users is strong.

In consideration of the above, competitive pressure from users is deemed to be effective.

#### **5. Financial conditions of Kimura Foods**

Kimura Foods was in the midst of civil rehabilitation proceedings at the time of the review of this case. Had it not been for assistance from others, Kimura Foods would not have been able to obtain an additional loan, and thus would not have been able to purchase ingredients in the first place when the company had to shift into high gear in activities such as purchase of ingredients, production and sales in time for the demand season for packaged rice cake in the year-end and winter.

In consideration of the above, it is reasonable to think that Kimura Foods had limited business capabilities at the time of the review of this case, compared to other manufacturers of packaged rice cake.

#### **Part IV Conclusion**

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

## **Case 2 Transfer of business of the Procter & Gamble Company of Japan Limited to Ridgeback Acquisition LLC**

### **Part I Outline of this case**

Ridgeback Acquisition LLC (headquartered in the US), a subsidiary of Mars Incorporated (headquartered in the US; hereinafter referred to as “Mars”; a group of combined companies whose ultimate parent company shall be referred to as the “Mars Group”), which manufactures and distributes pet food, planned to acquire the whole business of domestic pet food sales of the Procter & Gamble Company of Japan Limited (hereinafter; “P&G”; Mars and P&G are collectively referred to as “the Parties”), a Japanese subsidiary of Procter & Gamble Co. (headquartered in the US), which manufactures and distributes pet food.

The applicable provision in this case is Article 16 of the AMA.

### **Part II Definition of particular field of trade**

#### **1. Product range**

##### **(1) General classification of pet food**

Pet food is in general classified into dog food and cat food. Each group is further divided into a dry type and a wet type depending on the form. They again break down into commonly-used products (hereinafter, “general products”), premium food, and dietetic food depending on the price range, usage, etc. Premium food and dietetic food are mainly of a dry type while difference between a dry type and a wet type in these two groups is not as significant as that in general products.

##### **(2) Definition of product range**

Apart from the difference in nutrients and their quantity required for healthy growth, dogs and cats have different tastes for food as well. In consideration of such differences, pet food manufacturers are developing, commercializing, and distributing food for dogs and cats respectively and consumers are also purchasing them accordingly.

Dry type products, characterized by their high calories and nourishment efficiency, are usually sold in large units, such as in a large bag at a lower price per unit. On the other hand, wet type products typically contain a lot of water in them, and thus have a pleasing flavor and are easy to eat. They are usually sold in small units such as in cans and bags at a higher price per unit. For this reason, consumers tend to purchase dry type products as main dish and wet type as side dish for their

pets.

Compared to general products, premium food is a high-quality/luxury product made of fine ingredients and sold at a high price range. Pet food manufacturers differentiate this type of product from other products when they develop, commercialize, and distribute it. Consumers, in the meantime, tend to choose general products or premium food interchangeably depending on the preference at the moment based on the price and quality.

Dietetic food is a type of goods which promotes improvement of symptoms of a specific disease of dogs or cats with nutrients adjusted according to the symptoms of the disease. Pet food manufacturers differentiate this type of products from others when they develop and commercialize it, and sell it mainly through veterinary hospitals. However, dietetic food is not medicinal supplies and thus not subject to approval or authorization concerning manufacture and sales, or regulations for representation. For this reason, pet food manufacturers develop, commercialize, and distribute products labeled as dietetic food on the basis of a benchmark of their own. Consumers tend to distinguish dietetic food from other types of products focusing on the special effects of dietetic food.

As well, there is little substitutability for suppliers between dry type and wet type products due to the difference in production facilities.

In consideration of the above, classification is made as in the table below and the product range of this case is defined accordingly.

The Parties compete with each other in all the fields of trades in the table below, among which, the following discusses the dry type of dog food (hereinafter, “dry dog food”) and dietetic food for dogs (hereinafter, “dietetic dog food”), both of which do not meet the safe harbor standards for horizontal business combinations.

**【Product range in this case and competing relationship between the Parties】**

	Dry type	Wet type	Dietetic food
Dog food	●		●
Cat food			

(Note) “●” suggests a product range which does not meet the safe harbor standards for horizontal business combinations.

## **2. Geographic range**

In general, all the products whose range is defined in the above 1 are traded throughout the country without geographical restrictions and the Parties consider the



whole country as their market. As well, there is no regional difference in selling prices.

Accordingly, for all the products whose range is defined in the above 1 the JFTC defined “all regions of Japan” as the geographic range in this case.

### **Part III Impact of conduct of this case on competition**

#### **1. Dry dog food**

##### **(1) Market positions of the Parties**

With the conduct of this case, the total market share of the Parties would be the largest at approximately 40%. As well, HHI would be approximately 2,400 and the increment of HHI approximately 650. Therefore, the acquisition does not meet the safe harbor standards for horizontal business combinations.

**【Market share of dry dog food in 2013】**

Rank	Company name	Market share
1	Mars Group	Approx. 30%
2	A	Approx. 25%
3	B	Approx. 10%
4	P&G	Approx. 10%
5	C	Approx. 5%
	Others	Approx. 20%
Total		100%

##### **(2) Conditions of competitors**

Apart from the Parties, major competitors include Company A which has approximately 25% of the market and Company B with approximately 10% of the market. There are dozens of other competitors.

Although each competitor does not have sufficient excess capacity, major competitors such as Company A and B have a certain degree of excess capacity respectively.

##### **(3) Import pressure**

Much of dry dog food available in Japan is produced in factories overseas, with the same ingredients and production facilities as those used for products sold in other countries. In general, dry dog food sold in Japan is different from that sold overseas only in its package. Therefore, products for Japanese market can be easily produced just by changing packages. It is true that importing pet food to Japan

requires an advance notification to the Minister of Agriculture, Forestry and Fisheries and the Minister of the Environment based on the “Law for Ensuring the Safety of Pet Food” (Act No. 83 of 2008; hereinafter referred to as “Pet Food Safety Act”). However, this is not considered as an institutional import barrier. Of all the dry dog food, there are only few taxable products, for which a tariff rate is low as well. Moreover, as imports are usually transported by ship, the transportation cost accounts for a very small portion of a sales price.

Because other institutional or practical import barriers hardly exist either, it is relatively easy for manufacturers of foreign products to enter Japanese market. In fact, some foreign enterprises have recently entered Japanese market and others are doing the same.

Therefore, a certain degree of import pressure is deemed to exist.

#### (4) Entry pressure

Although starting pet food manufacturing and sale business requires a notification to the Minister of Agriculture, Forestry and Fisheries and the Minister of the Environment based on the Pet Food Safety Act, it is not considered as an institutional barrier to entry. As well, while dedicated facilities are necessary for producing dry dog food, required investment is in the range of 100 million yen to 1 billion yen, which is deemed to be recoverable within three to four years in general. Because other institutional or practical barriers to entry hardly exist either, it is relatively easy for other enterprises to enter the dry dog food market. In fact, there are some enterprises which have recently started dry dog food manufacturing business.

Therefore, a certain degree of entry pressure is deemed to exist.

#### (5) Summary

Based on the above consideration, the conduct of this case would not be deemed to substantially restrain competition in the field of trade of dry dog food with unilateral conduct by the Parties or coordinated conduct with competitors.

## **2. Dietetic dog food**

### (1) Market positions of the Parties

With the conduct of this case, the total market share of the Parties would be the largest at approximately 55%. As well, HHI would be approximately 4,500 and the increment of HHI approximately 300. Therefore, the acquisition does not meet the

safe harbor standards for horizontal business combinations.

【Market share of dietetic dog food in 2014】

Rank	Company name	Market share
1	Mars Group	Approx. 50%
2	A	Approx. 40%
3	P&G	Approx. 5%
	Others	Approx. 5%
Total		100%

(2) Conditions of competitors

Apart from the Parties, major competitors include Company A which has approximately 40% of the market. There are five or more other competitors.

Although each competitor does not have sufficient excess capacity, Company A, a major one, has a certain degree of excess capacity.

(3) Import pressure

As in the case of dry dog food, institutional or practical import barriers hardly exist for dietetic dog food either. Therefore, it is relatively easy for manufacturers of foreign products to enter Japanese market. In fact, some foreign enterprises have recently entered Japanese dietetic dog food market and others are planning to doing the same.

Therefore, a certain degree of import pressure is deemed to exist.

(4) Entry pressure

As in the case of dry dog food, starting dietetic dog food manufacturing business requires a notification to the Minister of Agriculture, Forestry and Fisheries and the Minister of the Environment based on the Pet Food Safety Act. Apart from this, however, there are no institutional regulations concerning representation or others. As well, dietetic dog food can be produced with the same production facilities as those for general products. In general, research results on ingredients, nutrients, and the compounding ratio effective to symptoms of specific diseases are publicly available, making it fully possible to develop and manufacture dietetic dog food products based on such published research results. Especially for existing dog food manufacturing and distributing enterprises, it is deemed to be relatively easy to produce dietetic dog food. In fact, some enterprises have recently started dietetic

dog food manufacture and distribution business and others are doing the same.

Moreover, there is relatively large incentive for market entry on the grounds that the market for dietetic dog food is growing year by year and that this type of products, usually sold at a higher price range, can be highly profitable compared to other products.

Therefore, a certain degree of entry pressure is deemed to exist.

#### (5) Competitive pressure from users

As discussed previously in II 1 (2), dietetic dog food is distributed mainly through veterinary hospitals. However, as dietetic dog food has recently become available through internet and large-scale mass merchandisers which have a pet shop inside, a growing number of consumers are comparison shopping among these different channels. Because large-scale mass merchandisers possess strong bargaining power over pet food manufacturing and distributing enterprises, and veterinary hospitals are also demanding that wholesalers should reduce prices of dietetic dog food so as not to lose users to other channels, it is reasonable to think that users are able to put a damper on price-increase initiatives by the Parties.

Therefore, a certain degree of competitive pressure from users is deemed to be effective.

#### (6) Summary

Based on the above consideration, the conduct of this case would not be deemed to substantially restrain competition in the field of trade of dietetic dog food with unilateral conduct by the Parties or coordinated conduct with competitors.

### **Part IV Conclusion**

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

### **Case 3 Acquisition of stock of Chuetsu Pulp & Paper Co., Ltd. by Oji Holdings Corporation**

#### **Part I The Parties**

Oji Holdings Corporation (hereinafter referred to as “Oji Holdings”) is a holding company which has a subsidiary manufacturing and distributing paper and pulp products. (Oji Holdings and companies which have already formed joint relationship with Oji Holdings are hereinafter referred to as “Oji Group”.)

Chuetsu Pulp & Paper Co., Ltd. (hereinafter, “Chuetsu Pulp & Paper”) is a company manufacturing and distributing paper and pulp products. (Chuetsu Pulp & Paper and companies which have already formed joint relationship with Chuetsu Pulp & Paper are hereinafter referred to as “Chuetsu Pulp & Paper Group”.)

Oji Group and Chuetsu Pulp & Paper Group are collectively referred to as “the Parties” hereinafter.

#### **Part II Outline of this case and applicable provision of the Act**

Oji Holdings planned to acquire the stocks of Chuetsu Pulp & Paper, thereby acquire 20.9% of the voting rights.

The applicable provision in this case is Article 10 of the AMA.

#### **Part III Sequence of events and brief summary of the investigation**

##### **1. Sequence of events**

Since October 2014, the Parties voluntarily submitted written opinions and materials to the JFTC stating that the acquisition would not substantially restrain competition, and the JFTC held meetings several times with the Parties in response to requests by the Parties. Subsequently, on November 4th, 2014, the JFTC accepted a written notification of the plan of the acquisition submitted by the notifying company based on the regulations of the AMA, and commenced the preliminary investigation. The JFTC proceeded with the preliminary investigation based on the abovementioned written notification and other documents submitted by the Parties, etc. As a result, the JFTC decided to open the secondary investigation, because of necessity of further investigation. On December 3rd, 2014, the JFTC requested the notifying company to provide reports, etc. made the investigation public, and solicited public comments from third persons.

In the secondary investigation, the JFTC held meetings several times with the Parties in response to requests by the Parties. The JFTC also proceeded with the

secondary investigation on the effect of the acquisition on competition, based on the results etc. of hearings and written surveys over users, distributive businesses, competing rivals, in addition to the reports etc. sequentially submitted by the notifying company.

Regarding the request for provision of reports, etc. to the notifying company, submission of all reports, etc. was completed with the reports etc. submitted on February 25th, 2015.

## **2. Brief summary of the investigation**

The JFTC examined about 35 fields of trades which the Parties competed in or traded with and concluded that the acquisition would not substantially restrain competition in any particular field of trade including printing tissue paper, art paper, base stock for back carbon paper, unglazed shipping sacks kraft paper, other unglazed bag and sack paper, and unglazed bleached kraft paper, provided that the remedies proposed by the Parties are implemented. The results of examination of the above fields of trades are discussed later in VI to XI.

The JFTC also concluded that the acquisition would not substantially restrain competition in any particular field of trade other than listed above.

## **Part IV Examination of joint relationship generated by the acquisition**

Joint relationship would be formed between Oji Group and Chuetsu Pulp & Paper since Oji Group, which currently holds a little less than 10% of the voting rights of Chuetsu Pulp & Paper, would increase the stake to more than 20% of the voting rights, the largest in terms of the ratio of the voting rights, as a result of the acquisition of stock in this case.

The Parties argue that the degree of joint relationship between them would not be strong on the grounds that the objective of the acquisition of stocks in this case is not to obtain control of management policies of Chuetsu Pulp & Paper Group; that the increase of the ratio of the voting rights would be limited; and that the effect of interlocking directorates would be limited. So far as facts argued by the Parties are concerned, the degree of joint relationship would be deemed not necessarily strong.

However, the JFTC concluded that the degree of joint relationship between the Parties formed by the acquisition would be deemed not necessarily weak on the grounds that Oji Holdings considers that an objective of the acquisition is clearly defining Chuetsu Pulp & Paper as an Oji Group company through making Chuetsu Pulp & Paper an Oji Holdings' affiliated company accounted for by the equity-method of

accounting; and that the Parties are planning to avail themselves of the acquisition of stocks in this case to make business collaboration.

## **Part V Overview of the paper industry**

### **1. Market scale**

Domestic demand for paper and paperboard remained in the 30-million ton range after having reached a peak in 2000, which was followed by a sharp decline to about 28 million tons in the post-2008 financial crisis in 2009. Since then it has remained in the 27- and 28-million ton ranges.

Of the above, domestic demand for paper alone reached its peak in 2006 in the 19 million ton range, which has since been on the downward trend due to the shrinking population and computerization, falling below 16 million tons in 2014.

### **2. Excess capacity of major paper manufacturers**

Equipment playing a central role in paper and paperboard production is paper machines which make paper from pulp. There are a variety of paper machines. While usually a single paper machine is used to produce multiple types of paper and paperboard, types of products that can be produced are dependent on the type of paper machine used.

As for the state of excess capacity of major paper manufacturers, Oji Group has a certain level of excess capacity whereas, in general, its competitors do not.

### **3. Commercial distribution**

Paper and paperboard produced by manufacturers are sold through agents and wholesalers.

Of them, an “agent” is a dealer specialized in distribution of paper and mainly sells products to major users and wholesalers discussed below. Agents usually deal in paper produced by multiple paper manufacturers.

On the other hand, a “wholesaler” is a distributive business selling products mainly to small and medium users. Wholesalers do not normally buy paper from paper manufacturers directly. Instead, they buy paper from agents and sell it to users. Wholesalers’ business is usually smaller than that of agents.

### **4. Features of pricing of paper and paperboard and coordinated conduct**

(1) A simultaneous increase in prices by paper manufacturers

If paper manufacturers plan to raise prices of paper and paperboard, they make

announcement on their intention of raising prices, the desired markup and timing of introduction. Then, agents negotiate with downstream enterprises (wholesalers, end users, etc.) accordingly.

It is characteristic that major paper manufacturers announce a price rise in any type of product almost simultaneously and that their desired markup and timing of introduction are almost the same. However, the desired increase of price tends not to take place as announced by the paper manufacturers. In fact, a price rise often takes effect with a smaller price increment a few months later than announced, as a result of the said negotiation.

## (2) Consideration

As discussed in the above (1), coordinated conduct can be observed among the paper manufacturers where they announce virtually the same price rise at the same time and then they follow it up with negotiation with their customers. This practice is considered to have been followed for a long time.

“Guidelines to application of the antimonopoly act concerning review of business combination” (Japan Fair Trade Commission, May 31st, 2004. Hereinafter referred to as “Guidelines for business combination”) lists determining factors in deeming substantial restraint of competition through coordinated conduct in a horizontal business combination. (Section 3 of Part IV of “Guidelines for business combination”) In light of those determining factors, the following situation is observed in this case.

A. Some fields of trades where the Parties compete present situation where only a few competitors exist or the market share is concentrated on a few leading enterprises, as discussed in VI and thereafter:

B. As for the state of excess capacity of paper manufacturers, in general, there is only limited excess capacity except for Oji Group which has a certain level of excess capacity.

Difference in excess capacity could affect firms’ incentive for taking coordinated conduct with competitors. On the other hand, the past actions by paper manufacturers show that they tend to raise prices at almost the same time regardless of whether they have excess capacity or not and rarely intend to increase transaction volume by taking advantage of a price hike by competitors. In other words, even if a paper manufacture has excess capacity, it has seldom



tried to increase its market share by lowering its products' prices and taking away the market share of competitors. In such situation, it is not reasonable to assume that activities to increase transaction volume taken more often than before in the market with a heightened degree of oligopoly through the acquisition of stocks in this case.

C. Because agents deal in goods of multiple paper manufacturers, it is possible for paper manufacturers to acquire information on sales prices of competitors' goods through agents.

D. Although demand in the paper industry is on the downward trend, the range of fluctuation is not substantially large. As well, based on the fact that technological innovations do not take place frequently and that the lifecycle of goods is not short, it cannot be concluded that coordinated conduct with competitors is not likely to be taken.

E. Paper manufacturers have announced increase of prices at almost the same time with almost the same details; such practice has been continuously followed for a long time. Although the paper manufacturers have not been able to raise prices the way they have announced, it should be considered only a result of the individual negotiation.

Based on the fact that Oji Group is one of the two largest groups in the domestic paper industry and holds a large market share in multiple types of products, and that the acquisition of stocks in this case would form a joint relationship between the Parties, which, as discussed in the above IV, is deemed not necessarily weak, it would be more likely than before that coordinated conduct is taken by the Parties and competitors at least in the fields of trades discussed in VI and thereafter.

## **Part VI Printing tissue paper**

### **1. Outline**

Printing tissue paper is a general term for ultrathin uncoated printing paper which is used for dictionaries and other types of books with many pages, insurance policy conditions, etc.

### **2. Particular field of trade**

(1) Product range

Because usage of printing tissue paper is limited for dictionaries and other types of books with many leaves, printing tissue paper is not fully interchangeable with other types of products.

Although the Parties argue that any type of uncoated printing paper including printing tissue paper can be produced by the same manufacturing facilities, it is deemed that substitutability for suppliers does not necessarily exist between printing tissue paper and other uncoated printing paper because there are not many cases where the same paper machine is used to produce both printing tissue paper and other types of uncoated printing paper. Even if substitutability for suppliers does exist, suppliers are not the same and there is significant difference in their market share between these different types of products. Therefore, substitutability for suppliers alone does not necessarily justify defining “uncoated printing paper, etc.” including printing tissue paper as the product range of the particular field of trade. Accordingly, the JFTC defined “printing tissue paper” as the product range in this case.

On another note, substitutability between printing tissue paper and base stock for back carbon paper is discussed later in VIII.

(2) Geographic range

Agents and major users nationwide are purchasing printing tissue paper from paper manufacturers all over Japan and there is no geographical restriction in terms of transportation or regional price difference. Accordingly, the JFTC defined “all regions of Japan” as the geographic range.

**3. Examination of substantial restraint of competition**

(1) State of competition, etc.

A. Market positions of the Parties

With the conduct in this case, HHI would be approximately 4,500, the total market share of the Parties the largest at approximately 60%, the increment of HHI approximately 800. Therefore, the acquisition does not meet the safe harbor standards for horizontal business combinations.

**【Market share of printing tissue paper in 2013】**

Rank	Company name	Market share
1	Oji Group	Approx. 50%
2	A	Approx. 35%

3	B	5-10%
4	Chuetsu Pulp & Paper Group	5-10%
5	C	0-5%
	Imports	0-5%
	Total	100%

#### B. Existence of competitors

As a major competitor, Company A has approximately 35% of the market. Competitors have a certain level of excess capacity. However, as discussed previously in V-4, even with excess capacity, competitors are not likely to take competitive actions by making use of it when the Parties have raised prices, in light of the past cases of simultaneous price hike by the paper manufacturers.

#### (2) Imports

Imports account for a limited percentage of the printing tissue paper market. Even in 2012, when the imports of printing and communication paper saw a peak due to the trend of strong yen, imports accounted for only less than 4% of the total domestic shipment. Today, imports are not increasing either. In consideration of these facts, imports are not likely to drastically increase even if domestic prices rise by the Parties' price hike.

Therefore, import pressure is not recognizable.

#### (3) Competitive pressure from related markets

In some cases of insurance policy conditions among the types of printing tissue paper usage, printing tissue paper has been replaced by thin woodfree printing paper or ultra light weight coated paper. However, it has seldom been substituted with other types of paper in the usage for dictionaries and other books with many pages. Therefore, competitive pressure from related markets is not deemed to be in full effect.

#### (4) Competitive pressure from users

The Parties argue that users of printing tissue paper have strong price bargaining power for printing tissue paper due to its shrinking market, through which strong competitive pressure from users exists.

In this respect, it may be reasonable to think that a certain degree of competitive pressure from users exists in both sectors of commercial printing (flyers, brochures,

pamphlets, etc.) and publication based on the ease of changing suppliers, purchasing volume, etc. as long as printing and communication paper in general is concerned.

However, major distributive businesses do not recognize price bargaining power of printing tissue paper users on the grounds that the product has very limited usage.

In consideration of the above, competitive pressure from users is deemed to be limited in its effect.

#### **4. Legal assessment based on the Antimonopoly Act**

With the acquisition of stocks in this case, the domestic printing tissue paper market would lose a competing player and the total market share of the Parties would reach approximately 60%. While Company A is deemed to remain a major competitor which has approximately 35% of the market, the acquisition of stocks in this case would be deemed to substantially restrain competition in the field of trade of printing tissue paper by unilateral conduct or by coordinated conduct with competitors, on the grounds that import pressure is not recognizable; that competitive pressure from related market is not deemed to be in full effect; that competitive pressure from users is deemed to be limited in its effect; and that paper manufacturers tend to raise prices at the same time.

### **Part VII Art paper**

#### **1. Outline**

Art paper is a type of paper which has been layered with coating to realize better color development for printing (hereinafter, "coated paper, etc.") and used for brochures, magazine covers, etc.

Apart from art paper, coated paper, etc. includes coated paper, light weight coated paper, and ultra light weight coated paper. These types of paper differ in the amount of coating and quality of base paper; art paper is heavily coated and uses wood free paper as a base.

#### **2. Particular field of trade**

##### **(1) Product range**

It is true that a certain degree of substitutability for users is recognizable among different types of coated paper, etc., especially between art paper and wood free coated paper. However, on the grounds that each type of goods is recognized

separately from others by distributive businesses and users, that price difference is not small between art paper and wood free coated paper, and that the correlation<sup>1</sup> of the two types of goods turned out weak, and stationarity<sup>2</sup> of the price ratio not recognizable as a result of economic analysis, substitutability for users is deemed to be limited between the two types of goods.

On the other hand, coated paper, etc. can be produced in manufacturing facilities with a standard coated paper machine without taking any particular measure. Therefore, there is a certain level of substitutability for suppliers among the types of paper in this group. However, suppliers are not the same and there is significant difference in their market share between these different types of products of coated paper, etc. Therefore, substitutability for suppliers alone does not necessarily justify defining the goods of the particular field of trade as coated paper, etc. As a result, in this case, the JFTC defined “art paper” as the product range based on the fact that distributive businesses and users recognize art paper as separate goods.

With regard to coated paper, etc. other than art paper, a review will be made of whether or not they can be evaluated as competitive pressure from related markets or entry pressure.

## (2) Geographic range

Agents and major users nationwide are purchasing art paper from paper manufacturers all over Japan, and there is no geographical restriction in terms of transportation or regional price difference. Accordingly, the JFTC defined “all regions of Japan” as the geographic range.

### 3. Examination of substantial restraint of competition

#### (1) State of competition, etc.

##### A. Positions of the Parties

With the acquisition of stock in this case, HHI would be approximately 6,100, the total market share of the Parties the largest at approximately 75%, the increment of HHI approximately 1,100. Therefore, this case falls outside the safe

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<sup>1</sup> Correlation is the relationship between two variables described by correlation coefficients. A correlation coefficient is a value between -1 and 1. The closer to one the absolute value of the correlation coefficient is, the higher the linkage between the variables is.

<sup>2</sup> Stationarity is a property that even where a series deviates from a certain level at a given time, it comes back to the level as time passes.

harbor rule for a horizontal business combination.

**【Market share of art paper in 2013】**

Rank	Company name	Market share
1	Oji Group	Approx. 70%
2	Company D	Approx. 20%
3	Chuetsu Pulp & Paper Group	5-10%
	Others	0-5%
	Total	100%

**B. Positions of the Parties**

As a major competing rivals, the Company D has approximately 20% of the market. However, it has little excess capacity for art paper production.

**(2) Imports**

In light of the result of a written survey, etc. for distributive businesses, currently imports of art paper are not on the rise. As well, quality required for art paper used for brochures of luxuries, art books, etc. is quite high, and it has not been replaced by imports although quality of imported paper in general has improved in recent years. In consideration of these facts, imports of art paper are not likely to drastically increase even if domestic prices rise led by the Parties' price hike.<sup>3</sup>

Therefore, import pressure is not recognizable.

**(3) Entry (regarding a switch from other types of products)**

According to the Parties, art paper can be produced with the manufacturing facilities for other coated paper, etc. without taking any particular measure; therefore, it is deemed to be possible to switch production from any other type of coated paper to art paper. However, it is reasonable to think that there is not enough incentive for such a change to art paper production to readily take place on the grounds that the competitor has little excess capacity as discussed previously in (1)

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<sup>3</sup> On the foreign trade statistics, data for art paper alone is not available. Instead, the statistics provides data for a group of products including art paper, wood free coated paper, and light weight coated paper. (Hereinafter, this group of products is referred to as "wood free coated paper, etc.") In the economic analysis regarding import of wood free coated paper, etc. conducted by using this data, a tendency of declining sales of domestically-produced art paper was not observed as imports of wood free coated paper, etc. went up. In consideration of this, no substitutability was confirmed between them. In other words, the result of the economic analysis does not suggest that imports of wood free coated paper, etc. present significant competitive pressure against art paper produced in Japan.

B), and that the long-term trend of declining domestic demand for art paper continues to shrink the size of the market.

As a result, coated paper, etc. other than art paper is not deemed to be working as entry pressure against the art paper market.

(4) Competitive pressure from related markets

Art paper has usage in commercial prints such as posters, brochures, pamphlets, and calendars and publication of photo collections and art books, the usage common to wood free coated paper which is less expensive although with less coatings. In fact, there have been some cases where art paper has been substituted with wood free coated paper.

As discussed previously in 2 (1), however, on the grounds that price difference is not small between art paper and wood free coated paper, and that the correlation of the two types of goods turned out weak, and stationarity of the price ratio not recognizable as a result of economic analysis, competitive pressure from related markets is deemed to be limited.

(5) Competitive pressure from users

The Parties argue that users of art paper have strong price bargaining power for the paper resulted from the substantial share of the art paper market controlled by major printing firms, through which strong competitive pressure from users is working.

In this respect, it may be reasonable to think that a certain degree of competitive pressure from users is affecting both sectors of commercial printing and publication based on the ease of changing suppliers, purchasing volume, etc. as long as printing and communication paper in general is concerned.

However, major distributive businesses do not recognize price bargaining power of art paper users on the grounds that the product is traded in small units. In consideration of the above, competitive pressure from users is deemed to be limited in its effect.

**4. Legal assessment based on the Antimonopoly Act**

With the acquisition of stocks in this case, the domestic art paper market would lose a competing player and the total market share of the Parties would reach approximately 75%. While there exists a major competitor controlling approximately 20% of the market, the acquisition of stock in this case would be

deemed to substantially restrain competition in the field of trade of art paper with coordinated conduct by the Parties alone or in coordination with competitors on the grounds that neither import pressure nor entry pressure is recognizable; that competitive pressure from both related market and users is deemed to be limited in its effect; and that paper manufacturers tend to raise prices at the same time.

## **Part VIII Base stock for back carbon paper**

### **1. Outline**

Base stock for back carbon paper is base paper used to produce back carbon paper by having its back coated with carbon for copying.

### **2. Particular field of trade**

#### **(1) Product range**

Base stock for back carbon paper is produced solely for back carbon paper and is not expected to be substituted for other types of products.

In this respect, the Parties argue that there is not much difference in quality between base stock for back carbon paper and printing tissue paper. A written survey for competitors and distributive businesses shows their understanding that it is not possible to substitute printing tissue paper for base stock for back carbon paper in terms of paper properties. For this reason, the two types of products are not deemed to share substitutability for users between them.

On the other hand, a certain degree of substitutability for suppliers is deemed to exist between base stock for back carbon paper and printing tissue paper on the grounds that the two types of products can both be produced with the standard manufacturing facilities without taking any particular measure. However, suppliers are not the same and there is significant difference in their market share between base stock for back carbon paper and printing tissue paper. Therefore, substitutability for suppliers alone does not necessarily justify defining the goods of the particular field of trade through lumping together printing tissue paper and base stock for back carbon paper. Hence, in this case the JFTC defined “base stock for back carbon paper” as the product range on the recognition that printing tissue paper and base stock for back carbon paper cannot be used interchangeably in terms of paper properties.

With regard to printing tissue paper, a review will be made of whether or not it can be evaluated as entry pressure.



(2) Geographic range

As agents and major users nationwide are purchasing base stock for back carbon paper from paper manufacturers all over Japan, there is no geographical restriction in terms of transportation or regional price difference. Accordingly, the JFTC defined “all regions of Japan” as the geographic range.

**3. Examination of substantial restraint of competition**

(1) State of competition, etc.

A. Positions of the Parties

With the conduct in this case, HHI would be approximately 5,500, the total market share of the Parties the largest at approximately 65%, the increment of HHI approximately 2,100. Therefore, the acquisition does not meet the safe harbor standards for horizontal business combinations.

【Market share of base stock for back carbon paper in 2013】

Rank	Company name	Market share
1	Oji Group	Approx. 40%
2	Company E	Approx. 35%
3	Chuetsu Pulp & Paper Group	Approx. 30%
	Total	100%

B. Positions of the Parties

As a major competitor, the Company E has approximately 35% of the market. However, it is not deemed to have sufficient excess capacity for production of base stock for back carbon paper.

(2) Imports

Currently, there is no import of base stock for back carbon paper. As well, from the result of a written survey over users, it was found that there are very limited alternatives available overseas to domestic products in the area of communication paper due to the quality issue and that market competitiveness of imports would be small. In consideration of the above, imports of base stock for back carbon paper are not likely to drastically increase even if domestic prices rise led by the Parties’ price hike.

Therefore, import pressure is not recognizable.

(3) Entry (regarding a switch from other types of products)

According to the Parties, it is possible to switch production of printing tissue paper to that of base stock for back carbon paper, which can be produced with the production facilities for printing tissue paper without taking any particular measure. However, the acquisition of stock in this case would substantially restrain competition in the field of trade of printing tissue paper. Therefore, printing tissue paper cannot be evaluated as entry pressure.

It is reasonable to think that there is not enough incentive for a switch to production of base stock for back carbon paper to readily take place on the grounds that, in consideration of the paper manufacturers' practice of raising prices simultaneously as discussed previously in V-4, competitors are not likely to take competitive actions by taking advantage of excess capacity, although they do have some, in case of a price hike by the Party; and that the long-term trend of declining domestic demand for base stock for back carbon paper continues to shrink the size of the market. As a result, any type of products other than base stock for back carbon paper is not likely to work as entry pressure against the market of base stock for back carbon paper.

Therefore, entry pressure cannot be recognized against the market of base stock for back carbon paper.

(4) Competitive pressure from related market

The Parties argue that there is not much difference in quality between base stock for back carbon paper and printing tissue paper, based on which there is possibility that printing tissue paper possesses competitive pressure against base stock for back carbon paper as adjacent market.

Competitive pressure from related market (competing goods), however, is not deemed to exist on the grounds that competing rivals and distributive businesses rejected the idea of substitution of base stock for back carbon paper with printing tissue paper, etc. and that the acquisition of stock in this case would substantially restrain competition in the field of trade of printing tissue paper.

(5) Competitive pressure from users

The Parties argue that users of base stock for back carbon paper have strong price bargaining power for the product due to its shrinking market, through which strong competitive pressure from users is working.

However, major distributive businesses do not recognize price bargaining

power of users of base stock for back carbon paper on the grounds that the product has limited usage and is usually traded on a regular basis.

In the meantime, a limited degree of competitive pressure does exist from the downstream market where back carbon paper, the only product which base stock for back carbon paper is used as material to produce, is competing with non-carbon paper and thermal paper.

In consideration of the above, competitive pressure from users is deemed to be limited in its effect.

#### **4. Legal assessment based on the Antimonopoly Act**

With the acquisition of stock in this case, the domestic market of base stock for back carbon paper would lose a competing player and the total market share of the Parties would reach approximately 65%. While there exists a major competitor controlling approximately 35% of the market, the acquisition of stock in this case would be deemed to substantially restrain competition in the field of trade of base stock for back carbon paper by unilateral conduct or by coordinated conduct with competing rivals on the grounds that neither import pressure nor entry pressure is recognizable; that competitive pressure from related markets is not deemed to exist either; that competitive pressure from users is deemed to be limited in its effect; and that paper manufacturers tend to raise prices at the same time.

### **Part IX Unglazed shipping sacks kraft paper**

#### **1. Outline**

Unglazed shipping sacks kraft paper is classified as unbleached wrapping paper and used to produce large kraft paper sacks for farm products such as rice and wheat, fertilizers, and cement.

#### **2. Particular field of trade**

##### **(1) Product range**

Substitutability for users does not exist between unglazed shipping sacks kraft paper and other types of paper since unglazed shipping sacks kraft paper is a type of product requiring greater strength among all the wrapping papers and cannot be replaced by other types of paper.

On the other hand, among all the wrapping papers, unglazed shipping sacks kraft paper, unglazed grocery paper and other unglazed bag and sack paper can be produced with the standard paper machine used for making wrapping paper

without taking any particular measure, and unglazed bleached kraft paper can also be produced with the same machine by taking a certain measure. Therefore a certain degree of substitutability for suppliers can be recognized among these types of products. However, suppliers are not the same and there is significant difference in their market share among these different types of products. Therefore, substitutability for suppliers alone does not necessarily justify defining the goods through lumping all these different types of products together. Hence, in this case the JFTC defined “unglazed shipping sacks kraft paper” as the product range on the grounds that substitutability for users does not exist between unglazed shipping sacks kraft paper and other wrapping papers.

With regard to types of products which have a certain degree of substitutability for suppliers with unglazed shipping sacks kraft paper, a review will be made of whether or not they can be evaluated as entry pressure against unglazed shipping sacks kraft paper.

(2) Geographic range

As agents and major users nationwide are purchasing unglazed shipping sacks kraft paper from paper manufacturers all over Japan, there is no geographical restriction in terms of transportation or regional price difference. Accordingly, the JFTC defined “all regions of Japan” as the geographic range.

**3. Examination of substantial restraint of competition**

(1) State of competition, etc.

A. Positions of the Parties

With the acquisition of stock in this case, HHI would be approximately 3,100, the total market share of the Parties the largest at approximately 50%, the increment of HHI approximately 1,100. Therefore, the acquisition does not meet the safe harbor standards for horizontal business combinations.

**【Market share of unglazed shipping sacks kraft paper in 2013】**

Rank	Company name	Market share
1	Oji Group	Approx. 30%
2	Chuetsu Pulp & Paper Group	Approx. 20%
3	Company F	Approx. 15%
4	Company G	Approx. 15%
5	Company H	10-15%

6	Company I	5-10%
	Imports	0-5%
	Total	100%

#### B. Existence of competitors

As major competing rivals, the Company F, G and H have over 10% of the market respectively while the Company I has a certain market share as well. However, these companies have only limited excess capacity.

#### (2) Imports

The Parties argue that if the price of unglazed shipping sacks kraft paper produced in Japan rises in the future users could easily switch to imports, thus conclude that import pressure is fully working.

However, as seen in 2013 when imports accounted for less than 1% of the domestic market of unglazed shipping sacks kraft paper, imports cover only a limited portion of the total unglazed shipping sacks kraft paper demand. Even when imports saw a historic peak in the coverage of the domestic market in 2012, they accounted for only about 1%. This is corroborated by the hearing from competing rivals and distributive businesses where many said that Japanese users tend to ask for small, frequent, and quick deliveries of high-quality products and that import cannot meet such demand in terms of quality and delivery while no one thought imports would increase in the market of unglazed shipping sacks kraft paper in future.

Based on this, import pressure is not deemed to exist.

#### (3) Entry (regarding a switch from other types of products)

As discussed previously in 2 (1), since a certain degree of substitutability for suppliers exists among some types of wrapping papers, enterprises producing other types of wrapping papers could switch to production of unglazed shipping sacks kraft paper. However, on the grounds that, in general, competitors which are producing such wrapping papers do not have sufficient excess capacity, and that the acquisition of stock in this case would substantially restrain competition in the fields of trades of other unglazed bag and sack paper and unglazed bleached kraft paper among all these types of wrapping papers, it is unreasonable to evaluate such competitors as entry pressure against the market of unglazed shipping sacks kraft paper.

Therefore, entry pressure cannot be recognized against the market of unglazed shipping sacks kraft paper.

(4) Competitive pressure from users

The Parties argue that users of unglazed shipping sacks kraft paper have strong price bargaining power for the product due to limited product quality difference among paper manufacturers and the product's shrinking market, through which strong competitive pressure from users is working.

However, as many users of unglazed shipping sacks kraft paper are medium- and small-sized bag manufacturers, many distributive businesses answered in a written survey that the product's users do not seem to possess strong price bargaining power.

As well, paper manufacturers first announce a price rise for various types of wrapping papers including unglazed shipping sacks kraft paper at the same time, and then go on to negotiate with distributive businesses for the price markup, which is followed by a talk between distributive businesses and users to pass the increase on to the users. As a result, a certain degree of price increase has been achieved although with a little differences in increments and timing across paper manufacturers.

Based on all these, competitive pressure from users is not deemed to be in full effect.

**4. Legal assessment based on the Antimonopoly Act**

With the acquisition of stock in this case, the domestic market of unglazed shipping sacks kraft paper would lose a competing player and the total market share of the Parties would reach approximately 50%. While there exist four competing rivals including three major ones, the acquisition of stock in this case would be deemed to substantially restrain competition in the particular field of trade by unilateral conduct or by coordinated conduct with competitors on the grounds that neither import pressure nor entry pressure is recognizable; that competitive pressure from users is deemed to be limited in its effect; and that paper manufacturers tend to raise prices at the same time.

**Part X Other unglazed bag and sack paper**

**1. Outline**

Other unglazed bag and sack paper is a type of "other unglazed bag paper" in

the category of unbleached wrapping paper.

Apart from other unglazed bag and sack paper, unglazed grocery paper is classified as “other unglazed bag paper”. The difference between other unglazed bag and sack paper and unglazed grocery paper is that the former is a little whiter than the latter because pulp, its raw material, is bleached to some degree. Unglazed grocery paper is used for adhesive tape, square bags, etc. whereas other unglazed bag and sack paper is often used for envelopes.

## **2. Particular field of trade**

### **(1) Product range**

As discussed in the above 1, other unglazed bag and sack paper is different from unglazed grocery paper in its color and usage; it is often used for envelopes. As well, as a result of economic analysis, while the price ratio of the two products is stationary, there is a clear downward trend and price difference is getting larger. Based on this, substitutability for users between other unglazed bag and sack paper and unglazed grocery paper is deemed to be limited.

On the other hand, as discussed previously in IX-2 (1), because some types of wrapping papers including other unglazed bag and sack paper can be produced with the standard paper machine used for making wrapping paper without taking any particular measure, a certain degree of substitutability for suppliers exists among these types of products. However, suppliers are not the same and there is significant difference in their market share among these different types of products. Therefore, substitutability for suppliers alone does not necessarily justify defining the goods through lumping all these different types of products together. Hence, in this case the JFTC defined “other unglazed bag and sack paper” as the product range on the understanding that substitutability for users is limited between other unglazed bag and sack paper and unglazed grocery paper, the latter also classified as other unglazed bag paper.

With regard to types of products which have a certain degree of substitutability for suppliers with other unglazed bag and sack paper, a review will be made of whether or not they can be evaluated as entry pressure against other unglazed bag and sack paper.

### **(2) Geographic range**

As agents and major users nationwide are purchasing other unglazed bag and sack paper from paper manufacturers all over Japan, there is no geographical

restriction in terms of transportation or regional price difference. Accordingly, the JFTC defined “all regions of Japan” as the geographic range.

### 3. Examination of substantial restraint of competition

#### (1) State of competition, etc.

##### A. Positions of the Parties

With the acquisition of stock in this case, HHI would be approximately 3,600, the total market share of the Parties the largest at approximately 45%, the increment of HHI approximately 700. Therefore, the acquisition does not meet the safe harbor standards for horizontal business combinations.

#### 【Market share of other unglazed bag and sack paper in 2013】

Rank	Company name	Market share
1	Oji Group	Approx. 35%
2	Company J	Approx. 30%
3	Company K	Approx. 25%
4	Chuetsu Pulp & Paper Group	Approx. 10%
	Others	A little
	Total	100%

##### B. Existence of competitors

As major competitors, the Company J and K have over 10% of the market respectively.

These competing rivals have a certain degree of excess capacity. However, as discussed previously in V-4, even with excess capacity, they are not likely to take competitive actions by making use of it when the Parties have raised prices, in light of the past cases of a uniform price hike by the paper manufacturers.

#### (2) Imports

The Parties argue that if the price of other unglazed bag and sack paper produced in Japan rises in the future users could easily switch to imports, thus conclude that import pressure is fully working.

However, imports cover only a limited portion of the total demand for other



unglazed bag and sack paper. As well, in the hearing from competitors and distributive businesses, many said that Japanese users tend to ask for small, frequent, and quick deliveries of high-quality products and that import cannot meet such demand in terms of quality and delivery while no one thought imports would increase in the market of other unglazed bag and sack paper in future.

Based on this, import pressure is not deemed to exist.

(3) Entry (regarding a switch from other types of products)

As discussed previously in IX-2 (1), since a certain degree of substitutability for suppliers exists among some types of wrapping papers, enterprises producing other types of wrapping papers could switch to production of other unglazed bag and sack paper. However, on the grounds that, in general, competitors which are producing such wrapping papers do not have sufficient excess capacity, and that the acquisition of stock in this case would substantially restrain competition in the fields of trades of unglazed shipping sacks kraft paper and unglazed bleached kraft paper among all these types of wrapping papers, it is unreasonable to evaluate such competitors as entry pressure against the market of other unglazed bag and sack paper.

Therefore, entry pressure cannot be recognized against the market of other unglazed bag and sack paper.

(4) Competitive pressure from users

The Parties argue that users of other unglazed bag and sack paper have strong price bargaining power for the product due to limited product quality difference among paper manufacturers and the product's shrinking market, through which strong competitive pressure from users is working.

However, as found in hearings and a written survey, some users think that it is impossible to switch to other suppliers of wrapping papers because they use them on a continuous basis. Coupled with this, many distributive businesses answered in a written survey that the users of other unglazed bag and sack paper do not seem to possess strong price bargaining power.

As well, paper manufacturers first announce a price rise for various types of wrapping papers including other unglazed bag and sack paper at the same time, and then go on to negotiate with distributive businesses for the price markup, which is followed by a talk between distributive businesses and users to pass the increase on to the users. As a result, a certain degree of price increase has been

achieved although with a little differences in increments and timing across paper manufacturers.

Based on all these, competitive pressure from users is not deemed to be in full effect.

#### **4. Evaluation based on the Antimonopoly Act**

With the acquisition of stock in this case, the domestic market of other unglazed bag and sack paper would lose a competing player and the total market share of the Parties would reach approximately 45%. While there exist two competitors, the acquisition of stock in this case would be deemed to substantially restrain competition in the particular field of trade by unilateral conduct by the Parties or coordinated conduct with competitors on the grounds that neither import pressure nor entry pressure is recognizable; that competitive pressure from users is deemed to be limited in its effect; and that paper manufacturers tend to raise prices at the same time.

### **Part XI Unglazed bleached kraft paper**

#### **1. Outline**

Of all the wrapping papers, white papers which are produced by bleaching raw material pulp are classified as bleached wrapping paper. Bleached wrapping paper is quite different in its appearance from unbleached wrapping paper. It breaks down into machine glazed poster paper, bleached kraft paper, and other bleached wrapping paper. Bleached kraft paper is further classified into two types of products: unglazed bleached kraft paper and machine glazed bleached kraft paper.

Unglazed bleached kraft paper and machine glazed bleached kraft paper are quite different in appearance and print properties according to whether or not having one side glazed. Unglazed bleached kraft paper is used for shopping bags, etc.

#### **2. Particular field of trade**

##### **(1) Product range**

As discussed in the above 1, bleached wrapping paper including unglazed bleached kraft paper, and unbleached wrapping paper appear quite different, which makes substitutability between them limited. Of bleached wrapping paper, unglazed bleached kraft paper, which is classified as bleached kraft paper, and machine glazed bleached kraft paper are also quite different in appearance and print properties according to whether or not having one side glazed. Therefore, substitutability for users between them is deemed to be limited.

In the meantime, substitutability for suppliers does not exist between unglazed bleached kraft paper and machine glazed bleached kraft paper either because production of the latter requires a Yankee machine (a type of paper machine which has a Yankee dryer with a mirror-finished surface installed in its dryer part. Wet paper becomes one-side glazed paper after being stuck and dried on the Yankee dryer surface.) However, as unglazed bleached kraft paper can be produced with the standard paper machine used for making wrapping paper by taking particular measures, a certain degree of substitutability for suppliers exists with some types of products. Nevertheless, suppliers are not the same and there is significant difference in their market share among these different types of products. Therefore, substitutability for suppliers alone does not necessarily justify defining the goods through lumping all these different types of products together. Hence, in this case the JFTC defined “unglazed bleached kraft paper” as the product range on the grounds that substitutability for users is limited between bleached wrapping paper and unbleached wrapping paper, and that it is also limited between unglazed bleached kraft paper and machine glazed bleached kraft paper, both classified as bleached kraft paper.

With regard to types of products which have a certain degree of substitutability for suppliers with unglazed bleached kraft paper, a review will be made of whether or not they can be evaluated as entry pressure against unglazed bleached kraft paper.

## (2) Geographic range

As agents and major users nationwide are purchasing unglazed bleached kraft paper from paper manufacturers all over Japan, there is no geographical restriction in terms of transportation or regional price difference. Accordingly, the JFTC defined “all regions of Japan” as the geographic range.

### **3. Examination of substantial restraint of competition**

#### (1) State of competition, etc.

##### A. Positions of the Parties

With the acquisition of stock in this case, HHI would be approximately 3,700, the total market share of the Parties the largest at approximately 55%, the increment of HHI approximately 1,200. Therefore, this case falls outside the safe harbor rule for a horizontal business combination.

**【Market share of unglazed bleached kraft paper in 2013】**

Rank	Company name	Market share
1	Oji Group	Approx. 40%
2	Company L	Approx. 15%
3	Company M	Approx. 15%
4	Chuetsu Pulp & Paper Group	Approx. 15%
5	Company N	5-10%
6	Company O	0-5%
7	Company P	0-5%
	Imports	0-5%
	Total	100%

#### B. Existence of competitors

As major competitors, the Company L and M have over 10% of the market respectively.

These competing rivals have a certain level of excess capacity. However, as discussed previously in V-4, even with excess capacity, they are not likely to take competitive actions by making use of it when the Parties have raised prices, in light of the past cases of a uniform price hike by the paper manufacturers.

#### (2) Imports

The Parties argue that if the price of unglazed bleached kraft paper produced in Japan rises in the future users could easily switch to imports, thus conclude that import pressure is fully working.

However, imports cover only a limited portion of the total demand for unglazed bleached kraft paper. In 2013, imports accounted for a very little portion, about 1%, of the domestic market of unglazed bleached kraft paper, which was more or less the case during the preceding five years as well. As well, in the hearings from competitors and distributive businesses, many said that Japanese users tend to ask for small, frequent, and quick deliveries of high-quality products and that import cannot meet such demand in terms of quality and delivery while no one thought imports would increase in the market of unglazed bleached kraft paper in future.

Based on this, import pressure is not deemed to exist.

#### (3) Entry (regarding a switch from other types of products)

As discussed previously in (1), since a certain degree of substitutability for

suppliers exists among some types of wrapping papers, rivals producing other types of wrapping papers could switch to production of unglazed bleached kraft paper. However, on the grounds that the acquisition of stock in this case would substantially restrain competition in the fields of trades of unglazed shipping sacks kraft paper and other unglazed bag and sack paper among all these types of wrapping papers, it is unreasonable to evaluate such competitors as entry pressure against the market of unglazed bleached kraft paper.

Therefore, entry pressure cannot be recognized against the market of unglazed bleached kraft paper.

(4) Competitive pressure from users

The Parties argue that users of unglazed bleached kraft paper have strong price bargaining power for the product due to limited product quality difference among paper manufacturers and the product's shrinking market, through which strong competitive pressure from users is working.

However, as found in hearings and a written survey, some users think that it is impossible to switch to other suppliers of wrapping papers because they use them on a continuous basis. Coupled with this, many distributive businesses answered in a written survey that the users of unglazed bleached kraft paper do not seem to possess strong price bargaining power.

As well, paper manufacturers first announce a price rise for various types of wrapping papers including unglazed bleached kraft paper at the same time, and then go on to negotiate with distributive businesses for the price markup, which is followed by a talk between distributive businesses and users to pass the increase on to the users. As a result, a certain degree of price increase has been achieved although with a little differences in increments and timing across paper manufacturers.

Based on all these, competitive pressure from users is not deemed to be in full effect.

#### **4. Evaluation based on the Antimonopoly Act**

With the acquisition of stock in this case, the domestic market of unglazed bleached kraft paper would lose a competing player and the total market share of the Parties would reach approximately 55%. While there exist five competitors including two major ones, the acquisition of stock in this case would be deemed to substantially restrain competition in the particular field of trade with unilateral conduct by the

Parties or coordinated conduct with competitors on the grounds that neither import pressure nor entry pressure is recognizable; that competitive pressure from users is deemed to be limited in its effect; and that paper manufacturers tend to raise prices at the same time.

## **Part XII Remedies proposed by the Parties and evaluation of them**

### **1. Remedies proposed by the Parties**

In response to the Commission's argument regarding VI-4, VII-4, VIII-4, IX-4, X-4, and XI-4, the Parties proposed taking the following measures as remedies.

- (1) The Parties conduct business activities independently from each other with regard to production and distribution of six types of products discussed previously from VI to XI (printing tissue paper, art paper, base stock for back carbon paper, unglazed shipping sacks kraft paper, other unglazed bag and sack paper, and unglazed bleached kraft paper; the same applies hereinafter.) In case of a business combination or a business collaboration being carried out between the Parties in the production and distribution of the six types of products, the Party will have the Commission's prior understanding accordingly.
- (2) The Parties do not disclose to each other information related to the production and distribution of the six types of products which is not known to the public but significant in terms of competition. (Hereinafter referred to as "classified information"; it includes, but not limited, to production cost, production volume, sales prices, sales volume, and buyers).
- (3) Director posts in Chuetsu Pulp & Paper Group which can be assumed by Oji Group's executives or employees are limited to one external director which has no role in business management.
- (4) As part of the measure (2), the Parties confirm that the interlocking directors have an obligation to not disclose classified information of an assignee company to his or her home company, and make sure that the directors comply with the obligation. As well, the Parties confirm and make sure it is known that employees on loan between the Parties will be subject to a disciplinary action if they disclose classified information of their assigned company to home company. Moreover, the Parties confirm that executives from Oji Holdings and companies of the Parties which produce and distribute the six types of products have an obligation to not disclose classified information to the other Party, and confirm and make sure it is known that employees of production and sales divisions of the six types of products (hereinafter, "persons in charge") will be subject to a disciplinary action

if they disclose classified information to the other Party.

- (5) The Parties review the work regulations, stipulate that the Antimonopoly Act must be followed and that violators will be subject to a disciplinary action, and make sure that executives from Oji Holdings and executives and persons in charge from companies of the Parties which produce and distribute the six types of products will be fully aware of the above (1) to (4) and a code of conduct in compliance with the Antimonopoly Act concerning sales activities of their own goods. As well, the Parties carry out training on a regular basis (at least once a year) on observance of the Antimonopoly Act concerning production and distribution of the six types of products.
- (6) The Parties inspect implementation of the remedies and report the result to the JFTC once a year.
- (7) The respective board of directors of Oji Holdings and Chuetsu Pulp & Paper adopts a resolution for the above (1) to (6) and reports it to the Commission by July 1<sup>st</sup>, 2015.

## **2. Legal assessment based on the Antimonopoly Act**

The Parties have promised in the above 1 that, after the acquisition of stock in this case, they would conduct business activities independently from each other with regard to production and distribution of the six types of products and that they would not share classified information related to the said production and distribution. In addition to this, through the acquisition of stock in this case, Oji Group would hold only a little more than 20% of the voting rights of Chuetsu Pulp & Paper Group while the number of interlocking directors would be limited to one. In consideration of this, the Parties are deemed to maintain independent business activities in future with regard to the production and distribution of the six types of products.

## **Part XIII Conclusion**

The acquisition of stock in this case is not deemed to substantially restrain competition in any particular field of trade, provided that the remedies which the Parties proposed will be implemented.

## **Case 4 Transfer of business from GlaxoSmithKline K.K. to Novartis International AG**

### **Part I Outline of this case**

A group of combined companies whose ultimate parent company is Novartis International AG (headquartered in Switzerland; hereinafter referred to as “Novartis”; the group of combined companies is hereinafter referred to as “Novartis Group”), a holding company, planned to acquire a substantial part of the business related to anticancer drug products from a group of combined companies whose ultimate parent company is GlaxoSmithKline plc (headquartered in the UK; hereinafter referred to as “GSK”; the group of combined companies is hereinafter referred to as “GSK Group”; Novartis Group and GSK Group are hereinafter collectively referred to as “the Parties”), a holding company of GlaxoSmithKline K.K. which manufactures mainly ethical drugs. (The group is hereinafter referred to as “GSK Group”; Novartis Group and GSK Group are hereinafter collectively referred to as “the Parties”.)

The applicable provision in this case is Article 16 of the AMA.

### **Part II Particular field of trade**

#### **1. Methods of treatment for cancer**

For cancer treatment, there are a variety of methods including surgical operations, radiation treatment, chemotherapy, molecular target therapy, immunotherapy, etc., which are used individually or together.

As chemotherapy and immunotherapy, molecular target therapy is a type of pharmacotherapy, preventing growth and increase of cancer cells by aiming at relevant specific molecules and impeding their influence. This therapy has the property of giving lower adverse drug reaction (side effects) to healthy cells, compared to other methods of treatment including chemotherapy and radiation treatment, because it focuses on molecules and mutant cells specific to cancer. On the other hand, even molecular target drugs which aim at common molecules responsible for multiple types of cancer are usually only effective to a derivative of specific cancer, not multiple types of cancer.

Based on clinical guidelines and approval, doctors choose methods of treatment in consideration of the type of cancer, stage of disease (staging), the patient’s reaction to prior treatment and prognosis. As well, multiple methods of treatment are used together in each stage in some cases, while different methods of treatment are



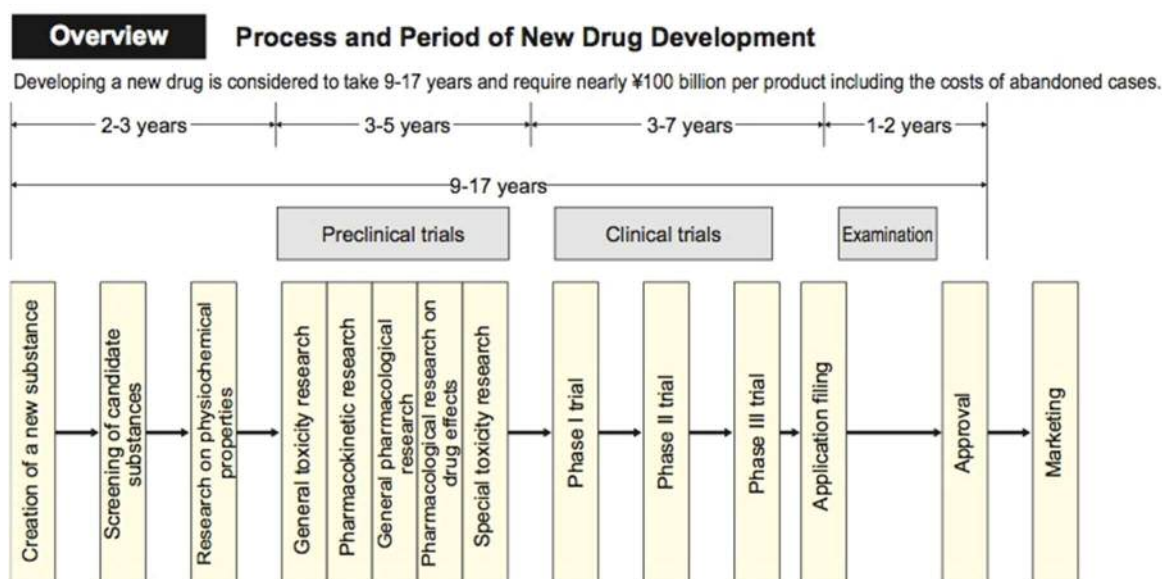
provided in a certain order<sup>4</sup> in other cases.

## 2. Process of research and development and approval of drugs

Research and development and approval of drugs follows the following process: (i) a search for a new substance, (ii) preclinical trials to examine drug effects, physical properties, disposition, and toxicity, (iii) clinical trials at a medical institution, (iv) application to Pharmaceuticals and Medical Devices Agency (hereinafter, “PDMA”) for approval of manufacture and sales by filing results of the nonclinical and clinical tests; review by PDMA and the Ministry of Health, Labour and Welfare; and approval by the Minister of Health, Labour and Welfare.

This process from searching for a new substance to sales of a new drug after receiving approval usually takes 9 to 17 years. And development cost for drugs, including cost for development which has been abandoned along the way, could reach up to about 100 billion yen per a new drug. Especially, clinical tests, which are made of tests of phase I, II, and III, require a great amount of time and money (Refer to Fig. 1.).

【Fig. 1: Process and period of new drug development】



(Source: “Annual Health, Labour and Welfare Report 2014 Edition, References, 02 Health and Medical Services”, the Ministry of Health, Labour and Welfare)

## 3. Product range

<sup>4</sup> The order of methods of treatment provided is called “treatment line”.

## (1) Ethical drugs

With regard to ethical drugs<sup>5</sup>, it is deemed to be reasonable that every product range is defined in accordance with the functions and effects of drugs from the perspective of users, that is, medical institutions, etc.

For classification of ethical drugs, the ATC classification system<sup>6</sup>, which European Pharmaceutical Market Research Association (EphMRA) developed, is widely used. In the ATC classification system, drugs are provided with a code of Level 1 to 4 (called ATC code) and thereby classified.

In past business combination cases, competitive products were usually specified according to the Level 3 code of ATC classification and, if drugs were given the same Level 3 code but their functions and effects were not equivalent from the perspective of medical institutions, etc. (for example, in cases where drugs were not used interchangeably in light of actual practice of medication to patients or decision of doctors), the product range was defined according to Level 4 or further detailed classification<sup>7</sup>.

To define the product range in this case, a similar approach is taken as well.

## (2) Antiemetics and antinauseants

The Parties manufacture and distribute ondansetron, granisetron, ramosetron, Navoban<sup>8</sup>, and Zofran (first four by Novartis Group, the last GSK Group). All of these products are used to reduce nausea and vomiting caused by chemotherapeutic drugs administered for cancer treatment.

Based on the ATC classification system, these products are all classified as “ANTIEMETICS AND ANTINAUSEANTS” with the Level 3 code (A4A) and “Serotonin antagonist antiemetics/antinauseants” with the Level 4 code (A4A1). Under the Level 3 classification, serotonin antagonists are classified together with “Other antiemetics and antinauseants” (A4A9) which are used to reduce nausea and vomiting caused by motion sickness, Meniere’s disease, etc. but not to reduce nausea and vomiting caused by chemotherapeutic drugs administered for cancer treatment. Therefore, the products produced by the Parties and “Other antiemetics and antinauseants” are different in effects and efficacy, and thus not used

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<sup>5</sup> Ethical drugs are drugs supplied with objectives of being used by medical doctors or dentists or being used under their prescription or instruction.

<sup>6</sup> The ATC classification system stands for “Anatomical Therapeutic Chemical Classification System”. Classification criteria include anatomical parts on which drugs act, indication, usage, chemical composition, and action mechanism.

<sup>7</sup> For example, in the “Capital Alliance between Kirin Group and Kyowa Hakko Group” (Case collection 2008, Case 1), the product range was defined by taking this approach.

<sup>8</sup> Manufacture and sales of Navoban in Japan ended in the end of February 2014.

interchangeably.

Based on this, the JFTC defined “Serotonin antagonist antiemetics/antinauseants” (A4A1) as the product range.

### (3) Protein kinase inhibitor antineoplastics (L1H)

#### A. Products with which the Parties compete with each other

“PROTEIN KINASE INHIBITOR ANTINEOPLASTICS (L1H)” was newly added to the ATC classification in 2014. Since it includes molecular target drugs whose indication encompasses a wide variety of cancer, it is not appropriate to define the product range with the Level 3 ATC classification.

The Parties are respectively developing molecular target drugs with effects and efficacy for the same type of cancer. These drugs would belong to “PROTEIN KINASE INHIBITOR ANTINEOPLASTICS (L1H)” under the Level 3 ATC classification. Novartis Group is researching and developing LGX818 (B-RAF inhibitor) and MEK162 (MEK inhibitor) (conducting the phase III clinical test) whereas GSK Group is researching and developing Tafinlar (B-RAF inhibitor) and Mekinist (MEK inhibitor) (preparing application for approval of manufacture and sales).

With regard to these products, (i) all of them are for the same indication of B-RAF mutation positive advanced melanoma and share types of cancer which they are for and stages where they are administered; (ii) there are possibilities that they will be used in the same treatment line; (iii) Tafinlar and Mekinist presuppose that they will be used together while LGX818 and MEK162 presuppose joint or individual use as well. Therefore, there is a high probability of these products of the Parties being used interchangeably at medical institutions once research and development has completed and they have been approved for sales by the Minister of Health, Labour and Welfare.

Based on the above consideration, the JFTC defined “protein kinase inhibitor antineoplastics for the indication of B-RAF mutation positive advanced melanoma” as the product range.

#### B. Potential competition

As discussed in A), the products of the Parties are all under development. However, (i) Tafinlar and Mekinist of GSK Group are at the phase of preparing application for approval of manufacture and sales, and thus estimated to hit the market with high possibilities and (ii) LGX818 and MEK162 of Novartis Group

are at the phase III clinical test, and thus have a certain level of probability of being placed on the market as well. Therefore, it is deemed reasonable to think that potential competition between the Parties would cease to exist by the conduct of this case. For this reason, impact on the competition is examined.

#### 4. Geographic range

For all the products defined previously in 3, ethical drug manufacturing and distributing enterprises conduct business nationwide and there is no special circumstances restricting transportation, etc. while users including medical institutions are able to purchase products on the same conditions anywhere in Japan. Accordingly, the JFTC defined “all regions of Japan” as the geographic range.

### Part III Impact of conduct of this case on competition

#### 1. Serotonin antagonist antiemetics/antinauseants (A4A1)

With the conduct of this case, the total market share of the Parties would be approximately 5% or less. As well, HHI would be approximately 3,800 at maximum and the increment of HHI approximately 5. Therefore, the acquisition meet the safe harbor standards for horizontal business combinations.

【Market share of serotonin antagonist antiemetics/antinauseants in 2013】

Rank	Company name	Market share
1	A	Approx. 60%
2	B	Approx. 10%
3	C	Approx. 10%
7	GSK	talApprox. 0-5%
10	Novartis	Approx. 0-5%
	Others	Approx. 15%
Total		100%

#### 2. Protein kinase inhibitor antineoplastics for the indication of B-RAF mutation positive advanced melanoma

##### (1) Market positions of the Parties

Positions of the Parties are unknown since none of the products of the Parties is in the market.

##### (2) Conditions of competitors

There is no enterprise manufacturing and distributing protein kinase inhibitor antineoplastics for the indication of B-RAF mutation positive advanced melanoma under approval in Japan. However, there is one enterprise which has filed for approval prior to the Parties. This company's product is also estimated to hit the market with a high probability, and thus estimated to present a certain degree of competitive pressure against the products of the Parties.

Furthermore, as three companies including the previous one are currently conducting the phase III clinical test, there is a certain level of probability that drugs of these companies become available, and thus they are estimated to present competitive pressure.

As well, four companies are conducting the phase I or II clinical test at the moment.

### (3) Competitive pressure from related markets

Some drugs for the indication of B-RAF mutation positive advanced melanoma could potentially be used in a stage and a treatment line similar to those of molecular target therapy. For example, immunotherapeutic drugs, dendritic cell therapeutic drugs, cancer vaccines, etc. are considered highly effective and could impose significant competitive pressure against protein kinase inhibitors for the indication of B-RAF mutation positive advanced melanoma. As for immunotherapeutic drugs in Japan, an anti-PD-1 drug developed by a domestic manufacturer showed high effects for treatment in the clinical results and got approved in 2014, followed by commercialization. With regard to other immunotherapeutic drugs, one enterprise has filed for approval, another at the phase III clinical test.

As well, there are two companies at the phase III clinical test, one for a dendritic cell therapeutic drug and the other a cancer vaccine.

Based on the above consideration, a substantial degree of competitive pressure from related markets is deemed to exist.

### (4) Summary

Based on the above consideration, the conduct of this case would not be deemed to substantially restrain competition in the field of trade of protein kinase inhibitor antineoplastics for the indication of B-RAF mutation positive advanced melanoma with unilateral conduct by the Parties or coordinated conduct with competitors on the grounds that there are multiple competitors which are developing products

(waiting for approval and conducting the phase III clinical test) which would be used interchangeably at medical institutions once they are placed on the market; and that a substantial degree of competitive pressure is expected from related market (competing goods).

#### **Part IV Conclusion**

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

## **Case 5 Integration of LP gas business by Cosmo Oil Co., Ltd., Showa Shell Sekiyu K.K., Sumitomo Corporation, TonenGeneral Sekiyu K.K., etc.**

### **Part I Outline of this case**

Cosmo Oil Co., Ltd., Showa Shell Sekiyu K.K., Sumitomo Corporation, TonenGeneral Sekiyu K.K., etc. (hereinafter referred to as “Parties”), which respectively conduct primary distribution of liquefied petroleum gas (hereinafter, “LP gas”) planned to integrate their businesses by having Gyxis Corporation (former trade name: Cosmo Petroleum Gas Co., Ltd.) take over the LP gas primary distribution business, etc. through the form of absorption-type split<sup>1</sup>.

The applicable provisions in this case are Article 10 and 15 (ii) of the AMA.

In this case, the JFTC conducted economic analysis with regard to impact of the integration on competition.

The past case of “Integration of liquefied petroleum gas business between JX Nippon Oil & Energy Corporation and Mitsui Marubeni Liquefied Gas Co., Ltd” (hereinafter, “2011 integration”; Case collection FY2010, Case 8) is similar to this case, and thus discussion is simplified on things in common between the two cases.

### **Part II Particular field of trade**

#### **1. Outline of the product**

There are two types of LP gas: propane and butane. Eighty percent of LP gas distributed in Japan is imported.

Propane is normally sold from primary distributors through wholesalers or retailers to end users (general consumers, etc.) (approximately over 90%) whereas butane is more likely to be directly sold from primary distributors to end users including factories, city gas companies, power companies, chemical manufacturers (approximately 50%).

As for distribution of LP gas, imports and domestic products are first transported from import storage facilities and oil factories respectively to secondary storage facilities by tank trucks or tankers capable of regulating pressure. Then, the gas is delivered from the secondary storage facilities directly to end users by using tank truckers or cylinders, or to gas stations by tank truckers, where the gas is placed in cylinders and sent to general households.

LP gas primary distributors in Japan where most of LP gas is supplied from other

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<sup>1</sup> The parties would have Gyxis Corporation take over their LP gas primary distribution businesses, etc. through absorption-type split, and then acquire 25% of the voting rights of Gyxis Corporation respectively.

countries generally decide a sales price of LP gas by using a price formula based on the CP<sup>2</sup> of LP gas. The price formula used is different among primary distributors, and includes factors such as CP, ocean freight, currency exchange rates, maintenance and operation cost of import storage facilities, petroleum and coal tax, etc.

Contract between primary distributors and wholesalers, etc. are largely divided into fixed term contract and spot contract. Trade under fixed term contract requires deciding about (i) a pricing method (formula) and (ii) trade quantity (a yearlong purchasing plan starting from the contract start date) and is carried out based on the price and purchasing plan. Spot contract handles unexpected surplus LP gas which is generated in the refining process at oil factories of primary distributors, and thus deals with small trading volume in general, where sales prices are a little lower than those under fixed term contract.

## **2. Product range**

LP gas is classified into propane and butane according to the carbon number. They are different in composition, properties, main usage, and facilities concerning distribution, storage, and usage by end users due to the difference in boiling points. Therefore, there is only small substitutability for users between them. As well, propane and butane are different in facilities and methods used concerning production and stocking, and thus, substitutability for suppliers is also small.

Based on the above consideration, the JFTC defined “propane” and “butane” as the product range.

## **3. Geographic range**

Although LP gas can be purchased at almost the same price anywhere in Japan because prices are decided based on formulas, there is a possibility that regional LP gas primary distribution market is formed on the grounds that the area of transportation is limited, in consideration of transportation cost, inside a regional bloc which has an oil factory or import storage facilities; and that LP gas primary distributors are conducting sales activities by regional bloc.

Based on this consideration, the JFTC defined “all regions of Japan” and “each regional bloc”(Note) overlappingly for the geographic range of primary distribution business of propane and butane.

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<sup>2</sup> CP stands for Contract Price. It is an LP gas sales price for the following month which Saudi Aramco, a Saudi Arabian national petroleum company, unilaterally notifies to its customers every month, and adopted as a base price for trades of propane and butane worldwide.



(Note) The table below shows regional blocs

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

### Part III Impact of conduct of this case on competition

#### 1. Market position of the Parties

##### (1) Primary distribution business of propane

With the conduct of this case, the total market share of the Parties, HHI, and the increment of HHI in the market of primary distribution business of propane in all regions of Japan and in each bloc<sup>3</sup> can be shown in the following table.

#### 【Primary distribution business of propane】

Region	Rank	Total market share	HHI after the conduct	Increment of HHI
Tohoku	3	Approx. 10%	Approx. 4,000	Approx. 40
Kanto	1	Approx. 30%	Approx. 2,500	Approx. 600
Chubu	1	Approx. 40%	Approx. 3,000	Approx. 750
Kinki	1	Approx. 40%	Approx. 3,000	Approx. 900
Chugoku	4	Approx. 10%	Approx. 3,000	Approx. 70
Shikoku	1	Approx. 30%	Approx. 2,500	Approx. 700
Kyushu	3	Approx. 20%	Approx. 3,000	Approx. 150

<sup>3</sup> The Parties are not competing with each other in either Hokkaido bloc or Okinawa bloc since both regional blocs have only one of the Parties selling propane.

All regions of Japan	2	Approx. 30%	Approx. 2,500	Approx. 500
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As shown above, the acquisition meets the safe harbor standards for horizontal business combinations (the increment of HHI 150 or less) in regional blocs of Tohoku, Chugoku, and Kyushu. Thus, further examination is conducted in regional blocs of Kanto, Chubu, Kinki, and Shikoku, and all regions of Japan where the acquisition does not meet the safe harbor standards.

(2) Primary distribution business of butane

With the conduct of this case, the total market share of the Parties, HHI, and the increment of HHI in the market of primary distribution business of butane in all regions of Japan and in each bloc<sup>4</sup> can be shown in the following table.

【Primary distribution business of butane】

Region	Rank	Total market share	HHI after the conduct	Increment of HHI
Tohoku	3	Approx. 0-5%	Approx. 7,000	Approx. 10
Kanto	1	Approx. 35%	Approx. 2,500	Approx. 850
Chubu	1	Approx. 40%	Approx. 3,500	Approx. 1,000
Kinki	1	Approx. 40%	Approx. 3,500	Approx. 1,000
Chugoku	3	Approx. 20%	Approx. 3,000	Approx. 100
Shikoku	4	Approx. 15%	Approx. 2,500	Approx. 100
Kyusyu	4	Approx. 10%	Approx. 2,500	Approx. 50
Okinawa	1	Approx. 60%	Approx. 4,500	Approx. 300
All regions of Japan	1	Approx. 30%	Approx. 2,500	Approx. 650

As shown above, the acquisition meets the safe harbor standards for a horizontal business combinations (the increment of HHI 150 or less) in regional blocs of Tohoku, Chugoku, Shikoku and Kyushu. Thus, further examination is conducted in regional blocs of Kanto, Chubu, Kinki, and Okinawa, and all regions of Japan where the acquisition does not meet the safe harbor standards.

<sup>4</sup> The Parties do not conduct primary distribution business of butane in Hokkaido bloc.

## **2. Conditions of competitors**

With respect to both propane and butane, there are three or more competitors including multiple major ones controlling over 15% of the market respectively, in each regional bloc and all regions of Japan. As well, each competitor have sufficient excess capacity.

## **3. Competitive pressure from related markets**

### **(1) Competing goods**

There are various competing goods against propane and butane for each type of usage. As discussed in the following, a substantial degree of competitive pressure is deemed to exist from city gas (for household, business, and industrial use), electricity (for household, business, and industrial use), and gasoline (for automobiles).

#### **A. City gas**

Currently, city gas pipe extension is underway nationwide and a growing number of users for households, business, and industry are switching to city gas accordingly. As well, the number of cases where LP gas for industry usage has been switched to city gas is increasing recently.

#### **B. Electricity**

From the growing interest in feed in tariff for renewable energy launched in FY 2012 and energy-producing homes<sup>5</sup>, a growing number of households have adopted an all-electric home which is equipped with a solar photovoltaic device. It is noteworthy that there are some wholesalers which are seeing sales of LP gas for household and business going down. Not limited to household and business usage, similar change is happening in industrial usage where LP gas has been replaced with electricity because users cannot keep a security-licensed employee or could get rid of storage facilities by the switch.

#### **C. Gasoline**

Taxis, the only vehicles which use LP gas (mainly butane) as fuel, are switching to gasoline-powered vehicles since LPG automobile service stations to supply LP

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<sup>5</sup> Energy-producing homes are homes built based on the idea of actively generating energy by using a photovoltaic power system, etc.

gas for vehicles has not become widely available. Therefore, demand for LP gas for vehicles is falling year after year.

## (2) Geographically neighboring market

In prefectures adjacent to other regional blocs, some wholesalers, etc. are purchasing propane or butane from import storage facilities, etc. belonging to the adjacent regional blocs if the distance from the facilities justifies it and transportation is available. In fact, in regional blocs of Kanto, Chubu, and Shikoku, there have been cases of purchase from neighboring regional blocs respectively. In Okinawa bloc, however, it is difficult to purchase from shipping facilities in adjacent blocs because there is no overland route connecting Okinawa bloc to other regional blocs.

Based on the above consideration, all the regional blocs except for Okinawa bloc are subject to a certain degree of competitive pressure from neighboring regional blocs.

## (3) Summary

As discussed in the above, a substantial degree of competitive pressure from related market (competing goods and other regional blocs) is deemed to be effective.

## 4. Competitive pressure from users

As of FY2012, there are about 1,100 wholesalers and 21,000 retailers of propane or butane in Japan, where it is deemed reasonable to assume that competition is vigorous in downstream market due to constant exposure to price competition on the grounds that end users for households and business are frequently switching to other wholesalers and retailers, and that industrial users are also calling for bids from every month to every half a year.

As another issue, wholesalers and retailers are usually purchasing from multiple suppliers for various reasons and purposes such as stable procurement, restraints on purchasing cost by comparison shopping and adjusting trading volume from each supplier, and creation of business relationship to ensure technical assistance. Therefore, it is easy for them to switch suppliers and adjust trading volume thereby switching from the Parties to competitors.

In consideration of the above, a certain degree of competitive pressure from users is deemed to exist on the grounds that competition is vigorous in downstream market and that users have price bargaining power based on their capabilities to easily

switch suppliers.

## 5. Summary

As discussed so far, the Commission, first, decided that unilateral conduct by the Parties would not substantially restrain competition in primary distribution business of propane and butane in any regional bloc or the country as a whole on the grounds that (i) in each regional bloc and Japan as a whole, multiple competitors including major ones exist and have sufficient excess capacity respectively, (ii) neighboring market (city gas, electricity, and other competing goods, as well as other regional blocs) is imposing a substantial degree of competitive pressure (in fact, in regional blocs of Kanto, Chubu, and Shikoku, there has been cases of purchase from neighboring regional blocs respectively) and (iii) competition is vigorous in downstream market and switching suppliers is easy.

Second, the Commission also decided that coordinated conduct would not substantially restrain competition in primary distribution business of propane and butane on the grounds that (iv) it is not necessarily easy to agree upon common strategic moves with regard to prices and quantity among competitors because, in addition to (ii) and (iii) above, it would require them to estimate various factors used in pricing formulas by other companies, such as the standard time based on which CP and the currency exchange rate have been acquired, specific cost of ocean freight, etc., all of which are different across primary distributors.

## Part IV Economic analysis

The 2011 integration (carried out in March 2011) had the same level of post-integration HHI and increment of HHI as the conduct of this case would result in. In order to examine whether or not the conduct of this case would lead to the rise in the primary distribution price of propane, the Commission used difference-in-differences design<sup>6</sup> to see whether there was a statistically significant difference in change of the primary distribution price of propane in the 2011 integration between regional blocs (Hokkaido, Tohoku, and Kyushu<sup>7</sup>), which had especially high post-conduct HHI and

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<sup>6</sup> Difference-in-differences design is a method of analysis used to study and estimate effects of an event by taking advantage of two different groups, one which can be strongly influenced by the event and the other which is not affected.

<sup>7</sup> In Hokkaido bloc, a remedy was adopted in which the newly integrated company resulted from the 2011 integration would sign contract of deposit for consumption with other primary distributors, which would let them use shipping facilities of the newly integrated company. For this reason, analysis was made again after removing Hokkaido bloc from samples, which still resulted in an outcome similar to that discussed later.

increment of HHI, and the other regional blocs.

According to the result of this analysis, there was no statistically significant difference in fluctuations of the primary distribution price between regions with especially high post-conduct HHI and increment of HHI and the other regions after the 2011 integration. As well, a rise of a primary distribution price which cannot be accounted for by change in import prices was not observed after 2011. From this fact and the above analysis result, it is reasonable to presume that the same level of competitive pressure was effective in all the regional blocs after the 2011 integration. Based on this consideration, it is also reasonable to presume that the conduct of this case would not lead to a rise of primary distribution prices.

This presumption concurs with the review result discussed previously in Part III that the conduct of this case would not lead to the Parties being somewhat capable of controlling the primary distribution price of propane on the grounds that major competitors have sufficient excess capacity and that pressure from related market and users are effective.

## **Part V Conclusion**

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

## **Case 6 Acquisition of stock of Nippon Shindo Company, Limited by CK San-Etsu Co., Ltd.**

### **Part I Outline of this case**

CK San-Etsu Co., Ltd. (hereinafter referred to as “CK San-Etsu”; the group of combined companies whose ultimate parent company is CK San-Etsu shall be referred to as “CK San-Etsu Group”) which has a subsidiary manufacturing and distributing brass rods and bars planned to acquire stocks of Nippon Shindo Company, Limited (hereinafter, “Nippon Shindo”; Nippon Shindo and CK San-Etsu Group are hereinafter collectively referred to as “the Parties”), which also manufactures and distributes brass rods and bars, thereby acquire a majority of the voting rights.

The applicable provision in this case is Article 10 of the AMA.

The Parties are in horizontal relationship with each other in multiple goods. Among them, brass rods and bars, brass wires, and reflow tin-plated wires, of which the Parties have relatively large share, and thus are deemed to have relatively large impact on competition, are discussed in PartII and thereafter.

### **Part II Particular field of trade**

#### **1. Wrought copper and copper alloy products**

Wrought copper and copper alloy products are a general term for products in forms of board, strip, pipe, stick, and wire, shaped by placing “copper” and copper alloy, which includes “brass”, an alloy made of copper and zinc, and “phosphor bronze” made of copper, tin, and phosphorus, through a process of melting, casting, rolling, drawing, forging, etc. Wrought copper and copper alloy products assume different properties according to their composition and combination ratios and are used in a variety of ways including wiring for electrical appliances, circuits, valves, parts for air conditioners depending on the characteristics.

Production methods of wrought copper and copper alloy products are different according to their forms, and users choose products in a form appropriate for their usage and purpose of processing.

#### **2. Product range**

##### **(1) Brass rods and bars**

Brass rods and bars, a type of brass product in the form of stick, include free cutting brass rods and bars which are produced by adding 2-3% of lead and have high machinability; brass rods and bars for forgings which are produced by adding

1-2% of lead and are excellent in both hot forging properties and machinability; dezincification resistant brass rods and bars which have been treated for prevention of corrosion caused by zinc elution; naval brass rods and bars which are produced by adding tin and have corrosion resistance and seawater resistance; and high strength brass rods and bars which are produced by adding iron, etc. and have high intensity and corrosion resistance. These products are used in a variety of areas including electrical and electronic equipment, automobiles, waterworks, and gas, as various parts such as screws, bolts, valves, and tap components according to their properties. As well, brass made by adding zinc to copper (hereinafter, “general material”) is used for environmentally-friendly products made of cadmium-free material or lead-free, cadmium-free material containing lead and/or cadmium less than a certain amount.

Since users choose from the above products according to their usage and purpose of processing, there is no substitutability for users between the products. Although some products may use different materials (general material, cadmium-free material or lead-free, cadmium-free material), users do not necessarily select products by material because there is no regulations concerning the content of lead or cadmium in wrought copper and copper alloy products used in Japan at the moment. Therefore, substitutability for users among materials is deemed to exist.

Since the above products can be produced in the same production facilities and process, substitutability for suppliers among the products is deemed to exist. As well, brass rods and bars and free cutting brass wires (refer to (2) below for more details for free cutting brass wires) share each process of melting, casting, and extruding, and thus can be produced in the same production facilities, where production can be easily switched between the two products just by choosing equipment for the drawing process (rods and bars) or the wire drawing process (wires). Based on this consideration, substitutability for suppliers is deemed to exist between brass rods and bars and free cutting brass wires.

Therefore, the JFTC defined “brass rods and bars (which include free cutting brass wires, hereinafter)” as the product range.

## (2) Brass wires

Brass wires are a type of brass product in a linear form, and includes those excellent in rollability and expansibility (hereinafter, “general brass wires”), free cutting brass wires which are produced by adding 2-3% of lead and have high machinability, brass wires for welding, brass wires for nipples, etc. Brass wires are,



according to their properties, used as various types of parts in a variety of areas including electrode wires for wire cut discharge processing machines, connectors, rivets for pachinko, screws, nails for pachinko, nipples, welding rods, welding lines, etc.

Since users are choosing products according to their usage, purpose of processing, and processing method, there is no substitutability for uses among the products.

On the other hand, since products except for free cutting brass wires can be produced in the same production facilities and process, substitutability for suppliers among the products except for free cutting brass wires is deemed to exist.

Therefore, the JFTC defined “brass wires” which exclude free cutting brass wires as the product range.

### (3) Reflow tin-plated wires

Reflow tin-plated wires are produced by providing reflow treatment (reheating close to tin’s melting point) to tin-electroplated wires, which are made by placing brass wires, pure copper lines, etc. through electroplating process, so that crystal whiskers causing a short circuit would not be generated. Reflow tin-plated wires are mainly used as material for terminal pins for connectors with relatively small distance between each pin found in home appliances, electronic devices, automobiles, etc. On the other hand, tin-electroplated wires are used for electric wires for construction and power, automobile parts, and terminal pins for connectors with relatively large distance between each pin.

Since reflow tin-plated wires are more expensive than tin-electroplated wires and users choose products according to their usage considering whether distance between each terminal pin is large or small, there is no substitutability for users. As well, producing reflow tin-plated wires requires reflow treatment facilities, and thus there is no substitutability for suppliers between reflow tin-plated wires and tin-electroplated wires, either.

Based on the above consideration, the JFTC defined “reflow tin-plated wires” as the product range.

## **3. Geographic range**

Since none of the products defined previously in 2 are subject to transportation cost and other institutional restrictions and they are sold all over the country, the JFTC defined “the whole of Japan” as the geographic range in this case.

### Part III Impact of conduct of this case on competition

#### 1. Brass rods and bars

##### (1) Positions of the Parties

With the conduct of this case, the total market share of the Parties would be approximately 45% and the increment of HHI approximately 650. Therefore, the acquisition does not meet the safe harbor standards for horizontal business combinations.

Rank	Company name	Market share <sup>1</sup>
1	CK San-Etsu Group	Approx. 40%
2	A	Approx. 20%
3	B	Approx. 20%
4	Nippon Shindo	Approx. 10%
	Others	Approx. 10%
Total		100%

##### (2) State of competitors

In addition to two major competitors controlling approximately 20% of the market respectively, there are five or more competitors. All the competitors have sufficient excess capacity.

##### (3) Import pressure

There is no institutional barrier concerning import of brass rods and bars. In recent years, quality difference between domestic products and imports (mostly from South Korea) has become smaller, and thus switch to imports is on the rise; imports jumped from about 1,000 tons in FY2008 to about 4,000 tons in FY2013.

Therefore a substantial degree of import pressure is deemed to exist.

##### (4) Competitive pressure from related market

For brass rods and bars, there are competing goods made of other materials, such as aluminum products (brake oil valves, camera parts, etc.), plastic products (water heaters, etc.), stainless products (joints for water pipes, etc.), and ironware (stud pins for printers). Users of such products do not necessarily choose brass rods

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<sup>1</sup> Imports are not included.

and bars because of the metal specific properties of brass, and thus they could easily switch to competing goods.

Therefore, a substantial degree of competitive pressure from related market is deemed to exist.

(5) Competitive pressure from users

General products which account for approximately 95% of brass rods and bars conform to the Japanese Industrial Standard, and thus are not differentiated by manufacturers, making it easy to switch suppliers. In fact, wholesale dealers and users are trading with multiple manufacturers and adjusting purchase volume according to the price presented in order to promote price competition and ensure stable supply.

In consideration of this, a certain degree of competitive pressure from users is deemed to exist.

(6) Section summary

As discussed in the above, although the market share of the Parties would reach approximately 45%, the conduct of this case would not be deemed to substantially restrain competition in the field of trade of brass rods and bars with unilateral conduct by the Parties or coordinated conduct with competitors on the grounds that there are many competitors including major ones, that a substantial degree of import pressure and competitive pressure from related market is deemed to exist, and that a certain degree of competitive pressure from users is deemed to exist.

## 2. Brass wires

(1) Positions of the Parties

With the conduct of this case, the total market share of the Parties would be approximately 30% and the increment of HHI approximately 290. Therefore, the acquisition does not meet the safe harbor standards for horizontal business combinations.

Rank	Company name	Market share <sup>2</sup>
1	CK San-Etsu Group	Approx. 25%
2	C	Approx.15%

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<sup>2</sup> Imports are not included.

3	D	Approx.15%
4	E	Approx.15%
7	Nippon Shindo	Approx.5%
	Othes	Approx.10%
Total		100%

(2) State of competitors

In addition to three major competitors controlling approximately 15-20% of the market respectively, there are five or more competitors. All the competitors have sufficient excess capacity.

(3) Import pressure

There is no institutional barrier concerning import of brass wires. In recent years, quality difference between domestic products and imports (substantial portions from China) has become smaller, and thus switch to Chinese products is on the rise; imports jumped from about 2,000 tons in FY2008 to about 4,000 tons in FY2013.

Therefore a substantial degree of import pressure is deemed to exist.

(4) Competitive pressure from users

General products which account for approximately 99% of brass wires conform to the Japanese Industrial Standard, and thus are not differentiated by manufacturers, making it easy to switch suppliers. In fact, wholesale dealers and users are trading with multiple manufacturers and adjusting purchase volume according to the price presented in order to promote price competition and ensure stable supply.

In consideration of this, a certain degree of competitive pressure from users is deemed to exist.

(5) Section summary

As discussed in the above, although the market share of the Parties would reach approximately 30%, the conduct of this case would not be deemed to substantially restrain competition in the field of trade of brass wires with unilateral conduct by the Parties or coordinated conduct with competitors on the grounds that there are many competitors including major ones, that a substantial degree of import

pressure is deemed to exist, and that a certain degree of competitive pressure from users is deemed to exist.

### 3. Reflow tin-plated wires

#### (1) Positions of the Parties

With the conduct of this case, the total market share of the Parties would be approximately 70% and the increment of HHI approximately 2,000. Therefore, the acquisition does not meet the safe harbor standards for horizontal business combinations.

Rank	Company name	Market share
1	CK San-Etsu Group	Approx. 40%
2	Nippon Shindo	Approx. 30%
3	F	Approx. 20%
4	G	Approx. 5%
5	H	Approx. 5%
	Others	Approx.0-5%
Total		100%

#### (2) State of competitors

In addition to a major competitor controlling approximately 20% of the market, there are four or more competitors. These competitors have sufficient excess capacity which is, at least, greater than 50% of actual sales volume made by the Parties in FY2013. As well, there are other potential competitors manufacturing solely for captive consumption.

#### (3) Competitive pressure from users

As a competing product of reflow tin-plated wires which are mainly used as material for terminal pins for connectors, reflow tin-plated strips (with its market dozens of times as large as that of reflow tin-plated wires), which are produced by placing brass strips, etc. through electroplating and reflow treatment, have the properties similar to those of reflow tin-plated wires and are used in the same way.

While some terminal pin processors, direct users of reflow tin-plated wires, only have processing facilities specialized in wire rods, connector manufacturers which purchase terminal pins for connectors consider specifications and prices of connectors, and choose products by comparing quality, price, etc. between terminal

pins made from wire rods and those from strips. Based on this, it is reasonable to assume that reflow tin-plated wires are subject to price cutting pressure from connector manufacturers, users in downstream market, through terminal pin processors. Therefore, strong competitive pressure from users is deemed to exist.

(4) Section summary

As discussed in the above, although the market share of the Parties would reach approximately 70%, the conduct of this case would not be deemed to substantially restrain competition in the field of trade of reflow tin-plated wires with unilateral conduct by the Parties or coordinated conduct with competitors on the grounds that there are major competitors with sufficient excess capacity, and potential competitors as well, and that strong competitive pressure from users is deemed to exist.

**Part IV Conclusion**

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

## **Case 7: Transaction of Zimmer, Inc. and Biomet, Inc.**

### **Part I The Parties**

Zimmer, Inc. (the corporate group to which the company belongs is hereinafter referred to as “Zimmer”) is a company that conducts medical device marketing business, etc.

Biomet, Inc. (the corporate group to which the company belongs is hereinafter referred to as “Biomet”) is a company that conducts medical device marketing business, etc.

Zimmer and Biomet are collectively referred to as “the Parties” hereinafter.

### **Part II Outline and applicable provisions of the Act**

The Transaction is (1) for a subsidiary company of Zimmer, Inc. and a parent company of Biomet, Inc. to merger with the parent company of Biomet, Inc. to be the surviving company, and (2) for Zimmer, Inc. to acquire all the stocks of the company after the merger.

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

Zimmer, Inc. and Biomet, Inc. are companies that conduct medical device marketing business, and there are a wide range of products marketed by both companies or their subsidiaries that are in horizontal relations<sup>1</sup>. From Section 3 below onward, among such products, investigation was carried out for artificial joints<sup>2</sup> (artificial hip joints, artificial knee joints, artificial shoulder joints and artificial elbow joints; the same shall apply hereinafter), because the Parties have a relatively large market share for them and it was considered that the influence of the Transaction on competition would be relatively significant.

### **Part III Sequence of events and brief summary of the investigation**

#### **1. Sequence of events**

Since June 2014, the Parties voluntarily submitted written opinions and

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<sup>1</sup> Refers to being in competition within the same field of trade.

<sup>2</sup> Regarding artificial joints, medical institutions (physicians) select products and purchase from wholesalers. Artificial joints are covered by the insurance reimbursement system (material price standard system). In the system, insurance reimbursement prices (hereinafter referred to as “reimbursement prices”) are specified by the Ministry of Health, Labour and Welfare (MHLW) for medical materials that constitute each medical device (refers to designated insured medical materials; the same shall apply hereinafter), and medical institutions that performed medical services using artificial joints are uniformly reimbursed of the reimbursement prices from a health insurance society, etc. Reimbursement prices are revised once every two years after investigation by MHLW on the purchase prices of medical devices by medical institutions and selling prices of similar products in overseas. In most cases, medical institutions purchase medical devices at prices cheaper than reimbursement prices by a certain degree, since purchasing at prices higher than the reimbursement prices results in the difference between the reimbursement prices and the purchase prices (including consumption tax) becoming a loss.

materials to the JFTC stating that the Transaction would not substantially restrain competition, and the JFTC held meetings several times with the Parties in response to requests by the Parties. Subsequently, on August 4<sup>th</sup>, 2014, the JFTC accepted a written notification of the plan of the Transaction submitted by the notifying companies based on the regulations of the Antimonopoly Act, and commenced the preliminary investigation. The JFTC proceeded with the preliminary investigation based on the abovementioned written notification and other documents submitted by the Parties, hearing to users, etc. As a result, the JFTC decided to open the secondary investigation, because of necessity of further investigation on September 3, 2014, the JFTC requested the notifying companies to provide reports etc, made the investigation public, and solicited public comments from third persons .

In the secondary investigation, the JFTC held meetings several time with the Parties in response to requests by the Parties. The JFTC also proceeded with the secondary investigation on the effect of the Transaction on competition, based on the results etc. of hearing from medical institutions, wholesalers and competing rivals, in addition to the reports etc. sequentially submitted by the notifying companies.

Regarding the request for provision of reports etc. to the notifying companies, submission of all reports etc. was completed with the reports etc. submitted on December 25<sup>th</sup>, 2014.

## **2. Brief summary of the investigation**

In the Transaction, on the premise that the remedy described in Section 7 below on “UKA” and “artificial elbow joints” among artificial joints proposed to the JFTC by the Parties would be taken, the JFTC concluded that the Transaction would not substantially restrain competition in any particular fields of trades, including fields of trade other than the two.

Details of investigation results pertaining to the artificial joints are described in Sections 4 and 5.

### **Part IV Particular field of trade**

#### **1. Product range**

(1) Artificial hip joints

##### **A. Product description**

Artificial hip joints are medical devices used as a replacement of hip joints for when the function of the original hip joints is impaired.

Replacement therapy using artificial hip joints is roughly divided into two



methods. One is total hip arthroplasty (THA; hereinafter refers to artificial hip joints used for this therapy method) to replace both of the acetabular side (pelvic side) and the femoral side that constitute hip joints to artificial joints for when damage is identified in both sides. The other is “artificial femoral head (AFH) replacement” to replace the femoral side only to artificial joints for when the neck part of the bone head at the tip of femur is fractured.

THA consists of pelvic side medical materials “acetabular cup” and “acetabular liner” and femoral side medical materials “femoral stem”, “femoral head”, etc., while AFH consists of “femoral stem” and “femoral head” only.

Two types of products are available for THA and AFH. One is “primary” that is used for the first surgery and the other is “revision” that is used for repeat surgery. Further, there are two types of femoral stem or acetabular cup products depending on the joining method with the bone. One is cement-less type that is used for direct fixing by means of bone fusion (property of bone fusing with titanium) and the other is cement type that is used for indirect fixing by means of bone cement.

#### B. Substitutability for users

Among artificial hip joints, while THA is used for when replacing both the acetabular side and the femoral side, AFH is used for when replacing the femoral side only. Applicable conditions are different between THA and AFH, and thus there is no substitutability for users between the two. Regarding primary and revision, basically primary products are used for the first surgery and revision products are used for repeat surgery, and thus their substitutability for users is limited. Meanwhile, regarding cement-less type products and cement type products, physicians make the selection depending on the condition of the patient, experience, etc., but they share the basic usage and thus there is substitutability for users.

#### C. Substitutability for suppliers

Medical materials that constitute AFH are basically the same as a part of medical materials that constitute THA, and thus there is substitutability for suppliers between THA and AFH.

Regarding primary and revision, while there are some differences in the form or structure, basically they can be manufactured using the same manufacturing technology and equipment. Further, regarding sales, while sales require approval

etc. based on the Pharmaceuticals and Medical Devices (PMD) Act<sup>3</sup> (see Section 2 below) and it usually takes 6-12 months from application to approval, the required time becomes shortened considerably when similar products are available in the market.

For that reason, it is considered that an enterprise that currently markets primary products only (or revision products only) is able to manufacture and market revision products (or primary products) in a short period of time without bearing a large amount of additional expense. Therefore, there is substitutability for suppliers between primary and revision.

#### D. Summary

As described above, a certain degree of substitutability for users and substitutability for suppliers is identified among the abovementioned product types, and the JFTC defined the product range to be “artificial hip joints”.

### (2) Artificial knee joints

#### A. Product description

Artificial knee joints are medical devices used as a replacement of knee joints for when the function of the original knee joints is impaired.

Replacement therapy using artificial knee joints is roughly divided into two methods. One is total knee arthroplasty (TKA, which hereinafter refers to artificial knee joints used for this therapy method) to replace both the inner side and the outer side of knee joints to artificial joints for when damage is identified in both sides. The other is “unicompartmental knee arthroplasty” (UKA; hereinafter refers to artificial knee joints used for this therapy method) to replace the inner or outer side of knee joints to artificial joints for when damage is identified in one side only.

While TKA and UKA both consist of medical materials “femoral component” to be attached to the femur, “tibial component” to be attached to the tibia, and “articular surface (bearing insert)” to be attached to the sliding portion, the form etc. of each medical material is different between TKA and UKA.

Similar to artificial hip joints, there are primary products and revision

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<sup>3</sup> Former Pharmaceutical Affairs Act. The “Act for Partial Amendment of the Pharmaceutical Affairs Act, etc.” came into force on November 25, 2014, and it was renamed to “Act on Securing Quality, Efficacy and Safety of Pharmaceuticals, Medical Devices, Regenerative and Cellular Therapy Products, Gene Therapy Products, and Cosmetics” (abbreviation: Pharmaceuticals and Medical Devices Act or PMD Act).

products for TKA, and there are cement-less type and cement type products for each of the abovementioned components of TKA and UKA.

#### B. Substitutability for users

Among artificial knee joints, while TKA is used for when replacing the whole knee joints, UKA is used for when replacing one side only. Applicable conditions are different between TKA and UKA, and thus there is no substitutability for users between the two. Similar to artificial hip joints, substitutability for users between primary and revision of TKA is limited, and there is substitutability for users between cement-less type and cement type products.

#### C. Substitutability for suppliers

While the form etc. of medical materials that constitute TKA and UKA is different, the technology required for manufacturing is similar, and equipment required for manufacturing is almost identical. Further, while sales of TKA and UKA by manufacturers etc. in Japan require approval etc. based on the PMD Act and it usually takes 6-12 months from application to approval, the required time becomes shortened considerably when similar products are available in the market. For that reason, it is considered that an enterprise that currently markets TKA only (or UKA only) is able to manufacture and market UKA (or TKA) in a short period of time without bearing a large amount of additional expense. Therefore, there is substitutability for suppliers between TKA and UKA. Additionally, similar to artificial hip joints, there is substitutability for suppliers between primary and revision of TKA.

#### D. Summary

As described above, there is no substitutability for users yet there is substitutability for suppliers between TKA and UKA, and there is substitutability for users among abovementioned product types of TKA and UKA. For that, it is possible to define the product range to “artificial knee joints (TKA and UKA)”. However, in addition to the fact that there is no substitutability for users between TKA and UKA due to different applicable conditions, the competition environment (composition of suppliers and the situation of market share) of the TKA market is significantly different from that of the UKA market. Therefore, it is appropriate to consider that TKA and UKA form different markets.

For that reason, the JFTC separately defined the product range to be “TKA” and

“UKA”.

### (3) Artificial shoulder joints

#### A. Product description

Artificial shoulder joints are medical devices used as a replacement of shoulder joints for when the function of the original shoulder joints is impaired.

Replacement therapy using artificial shoulder joints is roughly divided into two methods. One is total shoulder arthroplasty (TSA, which hereinafter refers to artificial shoulder joints used for this therapy method) to replace both the humeral side and the scapular side that constitute shoulder joints to artificial joints for when damage is identified in both sides. The other is “artificial humeral head (AHH) replacement” to replace the humeral side only to artificial joints for when damage is identified only in the bone head at the humeral side of shoulder joints.

TSA consists of medical materials “humeral stem” and “humeral head” to be attached to the humerus and “glenoid” to be attached to the scapula, while AHH consists only of “humeral stem” and “humeral head” on the humeral side.

Similar to artificial hip joints, there are primary products and revision products for artificial shoulder joints, and there are cement-less type and cement type products for humeral stem and glenoid.

In Japan, “reverse type” artificial shoulder joints where the head and glenoid have a reverse structure (head is attached to the scapular side, and glenoid is attached to the humeral side) are marketed since 2014. Reverse type products are applicable to conditions where major damage has occurred to the rotator cuff, which could not be treated with TSA.

#### B. Substitutability for users

Among artificial shoulder joints, while TSA is used for when replacing both of the humeral side and scapular side, AHH is used for when replacing the humeral side only. Applicable conditions are different between TSA and AHH, and thus there is no substitutability for users between the two. Similar to artificial hip joints, substitutability for users between primary and revision is limited, and there is substitutability for users between cement-less type and cement type products.

Regarding the reverse type goods, the applicable conditions are different from that of TSA and there is no substitutability for users between TSA and reverse

type goods.

### C. Substitutability for suppliers

Medical materials that constitute AHH are basically the same as a part of medical materials that constitute TSA, and thus there is substitutability for suppliers between AHH and TSA. Additionally, similar to artificial hip joints, there is substitutability for suppliers between primary and revision.

Regarding TSA and reverse type products, applicable conditions are different and the technology required for designing is thus different. Further, reverse type products are new products approved for the first time in Japan in 2014, and it is considered that approval etc. based on the PMD Act takes a longer period of time compared to other existing artificial joints such as TSA. Therefore, it is considered difficult for TSA manufacturers to manufacture and market reverse type products in a short period of time without bearing a large amount of additional expense, and there is no substitutability for suppliers among them.

### D. Summary

From the abovementioned understanding, the JFTC defined the product range to be “artificial shoulder joints (excludes reverse type)”<sup>4</sup>.

## (4) Artificial elbow joints

### A. Product description

Artificial elbow joints are medical devices used as a replacement of elbow joints for when the function of the original elbow joints is impaired.

Replacement therapy using artificial elbow joints is roughly divided into two methods. One is total elbow arthroplasty (TEA, which hereinafter refers to artificial elbow joints used for this therapy method) to replace both the humeral side and the ulnar side of elbow joints to artificial joints for when damage is identified in both sides. The other is “artificial radial head (ARH) replacement” to replace the section near the radial head to artificial joints for when damage is identified in the section.

TEA consists of medical materials “humeral component” to be attached to the humerus and “ulnar component” to be attached to the ulna, while ARH consists of “radial component” to be attached to the radius.

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<sup>4</sup> One of the Parties does not market reverse type products and reverse type products are not in horizontal relations between the Parties, and thus the market is not separately defined for reverse type products.

There are linked type (the abovementioned components are completely linked) and non-linked type (the abovementioned components are not completely linked) products for TEA. Basically, applicable conditions are common for the both types, and either of linked type and non-linked type products is used when the collateral ligament functions, and non-linked type products are selectively used in relatively severe exceptional cases where damage is identified in the collateral ligament.

Similar to artificial hip joints, there are primary goods and revision goods for TEA, and there are cement-less type and cement type products for each of the abovementioned components.

#### B. Substitutability for users

Among artificial elbow joints, while TEA is used for when replacing both of the humeral side and ulnar side, ARH is used for when replacing the radial head. Applicable conditions are different between TEA and ARH, and thus there is no substitutability for users between the two. Regarding the linked type and non-linked type products, while physicians make the selection depending on the condition of the patient, experience, etc., applicable conditions are basically the same for them except some exceptional cases where the collateral ligament is not functioning. Therefore, there is substitutability for users between linked type and non-linked type products. Additionally, similar to artificial hip joints, substitutability for users between primary and revision of TEA is limited, and there is substitutability for users between cement-less type and cement type products.

#### C. Substitutability for suppliers

While the form etc. of medical materials that constitute TEA and ARH is different, the technology required for manufacturing is similar, and equipment required for manufacturing is almost identical. Further, while sales of TEA and ARH in Japan require approval etc. based on the PMD Act and it usually takes 6-12 months from application to approval, the required time becomes shortened considerably when similar products are available in the market. For that reason, it is considered that an enterprise that currently markets TEA only (or ARH only) is able to manufacture and market ARH (or TEA) in a short period of time without bearing a large amount of additional expense. Therefore, there is substitutability for suppliers between TEA and ARH. Additionally, similar to artificial hip joints,

there is substitutability for suppliers between primary and revision of TEA.

#### D. Summary

From the abovementioned understanding, the JFTC defined the product range to be “artificial elbow joints”.

### 2. Geographic range

Regarding artificial hip joints, TKA, UKA, artificial shoulder joints (excludes reverse type) and artificial elbow joints, sales of individual products by domestic manufacturers, Japanese subsidiaries of overseas manufacturer or sole import distributorships require approval etc. based on the PMD Act. Additionally, the current situation is that medical institutions as users purchase the approved goods designed for marketing in Japan via wholesalers.

Therefore, the JFTC defined the geographic range to be “all parts of Japan”.

## Part IV Examination of substantial restraint of competition

### 1. Artificial hip joints

By the Transaction, the Herfindahl-Hirschman Index (HHI) will be approximately 1400, the combined market share and ranking of the Parties become approximately 30% and the first place, respectively, and the incremental HHI will be approximately 280. Therefore, the Transaction comes under the safe harbor rules for horizontal business combination.

[Market share of artificial hip joints in FY2012]

Rank	Company name	Market share
1	Zimmer	Approx. 20%
2	Company A	Approx. 20%
3	Company B	Approx. 10%
4	Company C	Approx. 10%
5	Biomet	Approx. 10%
	Others	Approx. 30%
Total		100%

### 2. TKA

#### (1) Position of the Parties

By the Transaction, HHI will be approximately 2400, the combined market

share and ranking of the Parties become approximately 40% and the first place, respectively, and the incremental HHI will be approximately 720. Therefore, the Transaction does not come under the safe harbor rules for horizontal business combination.

[Market share of TKA in FY2012]

Rank	Company name	Market share
1	Zimmer	Approx. 30%
2	Company D	Approx. 20%
3	Biomet	Approx. 10%
4	Company E	Approx. 10%
5	Company F	Approx. 5%
6	Company G	0-5%
	Others	Approx. 15%
Total		100%

(2) Conditions of competitors

There exist influential competitors, company D with the market share of approximately 20% and company E with the market share of approximately 10%. Additionally, there exist multiple competitors.

Further, it is considered that each company possesses a certain level of excess capacity.

(3) Entry pressure

It is considered that the possibility of frequent new entry into the market in the future is low, for the fact that a majority of influential overseas manufacturers have already entered the Japanese market, the fact that the enterprises newly entered into the market in late years have not acquired a certain level of market share, and there is no sign of the scale of domestic market significantly expanding in a short period of time.

Therefore, it is considered that entry pressure is not acting adequately.

(4) Competitive pressure from adjacent markets

Regarding the treatment methods of diseases pertaining to joints, while there are rheumatism treatment methods using biological preparations or autologous cartilage transplantation, these treatment methods are preventively used during



the relatively early stage of disease and rarely applied to patients with advanced conditions where knee replacement arthroplasty becomes applicable. Therefore, it is considered that competitive pressure from adjacent markets is not acting.

(5) Competitive pressure from users

At medical institutions as users, there is a strong tendency where physicians who perform surgery select products depending on the quality of products and experience. In late years, there are some cases observed where prices are taken into account in the selection, such as cases where medical institutions request to lower prices by holding discount negotiations with multiple wholesalers. However, medical institutions (physicians) still have a tendency to set high value on the quality of products and experience. Additionally, while special surgery equipment is used on performing artificial joint replacement, the method of use of such equipment varies depending on the manufacturer, and it is necessary to acquire a certain level of skills to use the equipment. Also from this viewpoint, physicians tend not to change to products from other manufacturers frequently. Therefore, it is considered that such a situation has not come to a state where discount negotiations conducted by medical institutions can be assessed as competitive pressure.

The Parties are claiming that the reimbursement prices are acting as suppression pressure on price increase. As a matter of fact, medical institution almost never purchase artificial joints (e.g., TKA) at prices higher than the reimbursement prices. However, manufacturers compete at the price range that is below the reimbursement prices, and the reimbursement prices themselves are revised once every two years reflecting the actual selling prices. Therefore, it is considered not appropriate to assess the reimbursement prices as adequate suppression pressure on price increase.

Therefore, it is considered that competitive pressure from users is not acting adequately.

(6) Legal assessment based on the Antimonopoly Act

After the Transaction, the market share of the Parties in the TKA market will become approximately 40%, and the number of companies competing in the market will reduce by one. However, there still exist company D and company E as influential competitors in the market, and there also exist other competitors. Additionally, each competitor possesses a certain level of excess capacity, and there is no circumstance identifiable that will facilitate highly accurate prediction of each

other's actions by the enterprises.

Therefore, the JFTC concluded that the Transaction would not substantially restrain competition in the TKA market because of unilateral conduct of the Parties or coordinated conduct with competitors.

### 3. UKA

#### (1) Position of the Parties

By the Transaction, HHI will be approximately 7800, the combined market share and ranking of the Parties become approximately 90% and the first place, respectively, and the incremental HHI will be approximately 3800. Therefore, the Transaction does not come under the safe harbor rules for horizontal business combination.

[Market share of UKA in FY2012]

Rank	Company name	Market share
1	Zimmer	Approx. 50%
2	Biomet	Approx. 40%
3	Company H	Approx. 10%
4	Company I	0-5%
	Others	0-5%
Total		100%

#### (2) Conditions of competitors

While there exists company H that holds the market share of approximately 10% as an influential competitor, the gap from the Parties is large and the market share of other competitors is extremely small (competitors that are influential in other artificial joints markets do not hold much market share in the UKA market). Additionally, the Parties occupied the market as the first place and the second place with similar market shares of approximately 50% and approximately 40%, recognized each other as a competitor and actively competed in the past. Therefore, it is considered that the influence of the competition between the Parties ceasing to exist on the competition is large.

Additionally, while it is considered that each company possesses a certain level of excess capacity, a majority of enterprises have a small market share and it is not adequate to act as checking power to the Parties.

(3) Entry pressure

While the UKA market is in a trend of gradual expansion, its scale is still small<sup>5</sup>, and new entry is not expected. Therefore, it is considered that entry pressure is not acting.

(4) Competitive pressure from adjacent markets

Since the situation is similar to the TKA market, it is considered that competitive pressure from adjacent markets is not acting.

(5) Competitive pressure from users

Since the situation is similar to the TKA market, it is considered that competitive pressure from users is not acting adequately.

(6) Legal assessment based on the Antimonopoly Act

After the Transaction, the market share of the Parties in the UKA market will become approximately 90%, and there will emerge a significant gap from competitors. Additionally, competition previously conducted between the Parties will be lost. Meanwhile, each competitive pressure on the UKA market is limited, and the Transaction would result in creating a situation where the Parties would be able to freely control the prices etc. to a certain degree. Therefore, the JFTC concluded that the Transaction would substantially restrain competition in the UKA market.

**4. Artificial shoulder joints (excludes reverse type)**

(1) Position of the Parties and conditions of the competitors

By the Transaction, HHI will be approximately 2700, the combined market share and ranking of the Parties become approximately 30-40% and the second place, respectively, and the incremental HHI will be approximately 600. Therefore, the Transaction does not come under the safe harbor rules for horizontal business combination.

[Market share of artificial shoulder joints (excludes reverse type) in FY2012]

Rank	Company name	Market share
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<sup>5</sup> The scale of artificial knee joints (TKA and UKA) market in 2012 was approximately 31 billion yen, and the percentage of UKA in the artificial knee joints market was less than 10% in a quantity basis.

1	Company J	Approx. 40%
2	Zimmer	Approx. 20%
3	Biomet	Approx. 20%
4	Company K	Approx. 10%
5	Company L	5-10%
6	Company M	5-10%
	Others	0-5%
Total		100%

(2) Conditions of competitors

There exist influential competitors, company J with the market share of approximately 40% and company K with the market share of approximately 10%. Additionally, there exist multiple competitors such as company L and company M.

Further, it is considered that each company possesses a certain level of excess capacity.

(3) Entry pressure

While entry of overseas manufacturers is observed in late years, the scale of market is small<sup>6</sup> and the possibility of new entries frequently taking place in the future is considered relatively low.

Therefore, it is considered that entry pressure is not acting adequately.

(4) Competitive pressure from adjacent markets

Since the situation is similar to the TKA market, it is considered that competitive pressure from adjacent markets is not acting.

(5) Competitive pressure from users

Since the situation is similar to the TKA market, it is considered that competitive pressure from users is not acting adequately.

(6) Legal assessment based on the Antimonopoly Act

After the Transaction, the market share of the Parties in the artificial shoulder joints market will become approximately 30-40%, and the number of companies

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<sup>6</sup> While the scale of artificial knee joints (TKA and UKA) market in 2012 was approximately 31 billion yen, the scale of artificial shoulder joints market was approximately 1.1 billion yen.

competing in the market will reduce by one. However, there still exist company J and company K as influential competitors in the market, and there also exist other competitors. Additionally, each competitor is considered to possess a certain level of excess capacity, and there is no circumstance identifiable that will facilitate highly accurate prediction of each other's actions by the enterprises.

Therefore, the JFTC concluded that the Transaction would not substantially restrain competition in the artificial shoulder joints market because of unilateral conduct of the Parties or coordinated conduct with competitors.

## 5. Artificial elbow joints

### (1) Position of the Parties and conditions of the competitors

By the Transaction, HHI will be approximately 4600, the combined market share and ranking of the Parties become 60-70% and the first place, respectively, and the increased portion of HHI will be approximately 1900. Therefore, the Transaction does not come under the safe harbor rules for horizontal business combination.

[Market share of artificial elbow joints in FY2012]

Rank	Company name	Market share
1	Biomet	Approx. 40%
2	Zimmer	Approx. 20%
3	Company N	Approx. 20%
4	Company O	Approx. 10%
5	Company P	0-5%
6	Company Q	0-5%
	Others	0-5%
Total		100%

### (2) Conditions of competitors

While there exist company N that holds the market share of approximately 20% and company O that holds the market share of approximately 10% as influential competitors, the gap from the Parties will become remarkably large (competitors that are influential in other artificial joints markets do not hold much market share or has not entered into the artificial elbow joints market). Additionally, the Parties occupied the market as the first place and the second place with market shares of approximately 40% and approximately 20%, recognized each other as a competitor

and actively competed in the past. Therefore, it is considered that the influence of the competition between the Parties ceasing to exist on the competition is large.

Additionally, while it is considered that each company possesses a certain level of excess capacity, a majority of enterprises have a small market share and it is not adequate to act as checking power to the Parties.

(3) Entry pressure

The scale of artificial elbow market is small<sup>7</sup>, and new entry is not expected. Therefore, it is considered that entry pressure is not acting.

(4) Competitive pressure from adjacent markets

Since the situation is similar to the TKA market, it is considered that competitive pressure from adjacent markets is not acting.

(5) Competitive pressure from users

Since the situation is similar to the TKA market, it is considered that competitive pressure from users is not acting adequately.

(6) Legal assessment based on the Antimonopoly Act

After the Transaction, the market share of the Parties in the artificial elbow joints market will become 60-70%, and there will emerge a significant gap from competitors. Additionally, competition previously conducted between the Parties will be lost. Meanwhile, each competitive pressure on the artificial elbow joints market is limited, and the Transaction would result in creating a situation where the Parties can freely control the prices etc. to a certain degree. Therefore, the JFTC concluded that the Transaction would substantially restrain competition in the artificial elbow joints market.

## Part VI Economic analysis

Expenditures on artificial joints are subject to reimbursement under the national health insurance system. Under this system, regulated reimbursement prices function as de facto ceiling prices when medical institutions purchase artificial joints from wholesalers. However, the average selling prices from wholesalers to medical

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<sup>7</sup> While the scale of artificial knee joints (TKA and UKA) market in 2012 was approximately 31 billion yen, the scale of artificial elbow joints market was approximately 0.4 billion yen.

institutions (hereinafter referred to as “wholesale prices”) are below the reimbursement prices by a certain degree, and the average selling prices from manufacturers to wholesalers (hereinafter referred to as “manufacturer prices”) are, in turn, below the wholesale prices. Therefore, it is possible for the Transaction to affect these prices at each distribution stage. Additionally, the reimbursement prices are revised once every two years in accordance with the level of prevailing wholesale prices. Therefore, if competition among manufacturers declines as a result of the Transaction, causing the manufacturer prices and wholesale prices to increase, there is a possibility that future reimbursement prices will remain high.

To address these concerns, the JFTC conducted econometric analysis regarding the relationship between market structure and manufacturer, taking into account the possibility that manufacturer prices affect market structure through new entry. As a result, it was found that higher market concentration is associated with higher manufacturer prices. Based on this result, simulation analysis pertaining to the impact of the Transaction on manufacturer prices and reimbursement prices was carried out. According to the simulation results, if a Transaction similar to the Transaction hypothetically took place in FY2011, the manufacturer prices in the next fiscal year is estimated to have increased by 6.2% for UKA; 4.3-5.3% for artificial elbow joints; and 1.5-3.1% for artificial hip joints, TKA and artificial shoulder joints. This would have led to reimbursement prices in FY2014 being higher than the actual prices by 4.3% for UKA; 1.3-3.2% for artificial elbow joints; and 0.3-2.0% for artificial hip joints, TKA and artificial shoulder joints<sup>8</sup>.

These results are consistent with the investigation results described in Section 5 above, and the JFTC took them into account in making its judgment<sup>9</sup>.

## **Part VII Proposal of remedy by the Parties**

The JFTC provided the Parties with explanations on the points of issues etc. regarding Sections 5.3.(6) and 5.5.(6) above. The Parties then submitted the proposal of Remedy on UKA and artificial elbow joints (hereinafter referred to as “the Remedy”) to the JFTC as follows:

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<sup>8</sup> The reason why there is a range in the estimated values is because artificial joints are divided into multiple reimbursement categories (categories specified by the Ministry of Health, Labour and Welfare, where medical equipment that are similar in terms of structure, intended use, medical efficacy, etc. are placed into one group) and the estimated values vary across reimbursement categories.

<sup>9</sup> When simulation analysis is applied to the review of a business combination as in the present case, it has to be recognized that the results by necessity rely on a set of assumptions. Therefore, the simulation results should be interpreted as supplementary information to the results of qualitative investigation, not as a definitive conclusion on the effects of this Consolidation.

- (1) Tangible assets (e.g., inventory, design history, experimental and clinical data), intellectual property rights (patents, trademarks, know-how, etc. used in the subject goods), etc. pertaining to the Parties' leading brands corresponding to approximately 50% of the market share in the UKA market in FY2012 are to be divested;
- (2) Tangible assets (same as above), intellectual property rights (same as above), etc. pertaining to the Parties' leading brands corresponding to approximately 20% of the market share in the artificial elbow joints market in FY2012 are to be divested;
- (3) Buyers are to be enterprises which have adequate experience and capability in the orthopedics and artificial joints business and be independent of and financially unrelated to the Parties, that need to be selected in light of the criteria such as possessing the funds, specialty and incentive to maintain and develop the business subject to the divestitures, The possible buyers are to be notified to and obtain an clearance from the JFTC after concluding contracts with the buyers;
- (4) If the Parties don't reach to conclude contracts with buyers within a certain period of time, an independent third party (divestiture trustee) carries out disposal of the business listed in (1) and (2) above after obtaining an approval from the JFTC; and,
- (5) The time limit to execute the divestitures is to be within 3 months from the day the clearance from the JFTC regarding possible buyers.

#### **Part VIII Assessment of the Remedy**

On the premise that the Remedy would be taken, the Parties' combined market share and rank in the UKA market after the Transaction would be approximately 40% and the second place, respectively, and the Parties' combined market share and rank in the artificial elbow joints market after the Transaction would be approximately 40% and the first or second place, respectively. However, in both of the UKA market and artificial elbow joints market, the Parties' market share after the Transaction would be lower than the larger market share of the Parties before the Transaction.

Regarding buyers, it is considered that buyers who satisfy the requirements described in Section 7.(3) above would become independent competitors influential in the UKA and artificial knee joints markets. Whether the actual buyers satisfy the said requirements will be assessed by the JFTC after receiving reports from the Parties.

Additionally, even in the case where divestiture is carried out after acquiring the stocks in the Transaction, the time limit to take the Remedy is appropriately and clearly specified considering, for instance, the time limit to execute the divestiture is



set to be within 3 months from the day the clearance from the JFTC regarding buyers.

Based on the abovementioned understanding, on the premise that the Remedy would be taken, the JFTC concluded that the Transaction would not substantially restrain competition in any particular fields of trades.

#### **Part IX Conclusion**

On the premise that the Remedy proposed to the JFTC by the Parties would be taken, the JFTC concluded that the Transaction would not substantially restrain competition in the UKA and artificial elbow joints markets.

## **Case 8: Joint share transfer by Kadokawa Corporation and Dwango Co., Ltd.**

### **Part I Overview of the transaction**

Kadokawa Corporation (hereinafter referred to as “Kadokawa”; the group of combined companies whose ultimate parent company is Kadokawa shall be referred to as “Kadokawa Group”), mainly conducting publishing business, and Dwango Co., Ltd. (hereinafter, “Dwango”; the group of combined companies whose ultimate parent company is Dwango shall be referred to as “Dwango Group”; Kadokawa Group and Dwango Group are hereinafter collectively referred to as “the Parties”), mainly conducting portal business planned to establish a new holding company through joint share transfer.

The applicable provision in this case is Article 15 (iii) of the AMA.

The Parties are conducting a variety of businesses. Among them, “paid video distribution business”, “paid video provision business”, and “niconico” which are deemed to receive relatively large impact on competition, are discussed in II and thereafter.

### **Part II Particular field of trade**

#### **1. Product or service range**

##### **(1) Platform business**

##### **A. Service range**

Dwango Group is providing services such as niconico douga (video), niconico live (live broad casting), niconico seiga (pictures) (hereinafter collectively referred to as “niconico”) through its portal site on the internet. Through these services, Dwango Group is providing a service to providers of contents including videos, e-books, etc. (hereinafter, “contents”) allowing such providers to have their contents viewed through niconico by the service’s members, and at the same time, Dwango Group is providing viewers, who are niconico members, with a service of distributing contents. Therefore, Dwango Group is acting as an intermediary of trade between different users. (Hereinafter, a service providing such function is referred to as “platform”; and a service allowing content providers to have viewers view their contents through a platform, and a service providing contents to viewers are hereinafter collectively referred to as “range of two services”.) (Business providing contents to viewers by first providing contents to a platform enterprise which then make the contents viewable to viewers is hereinafter collectively referred to as “contents provision business”.)

At niconico, sales are made largely through (i) the charge on members who use the contents such as paid videos, and monthly registration fees from premium members<sup>10</sup>, (ii) distribution fees received from providers of contents such as paid videos, and (iii) the charge on advertising enterprises for use of advertising space on the internet. A major source of income for niconico is monthly registration fees from premium members of the above (i).

Platform service at niconico breaks down into “free video distribution business”, “paid video distribution business”, and “e-book distribution business” according to the types of contents distributed. The JFTC defined “free video distribution business”, “paid video distribution business”, and “e-book distribution business” as the service range in this case according to the types of services provided by niconico on the grounds that it is reasonable to think that there is no (or only limited) substitutability for users from the perspectives of viewers and contents providers because each business provides different type of contents such as, free and paid videos, and e-books; and that similar service is provided for each business by different competitors. As well, niconico, as a whole, is providing a unique combination of a variety of services including internet shopping function in addition to the aforementioned services through its general portal site. Originality of niconico can also be observed in a function which enables viewers to add comment to distributed videos. In consideration of such uniqueness of niconico, there is only limited substitutability with other general portal sites. Therefore, the JFTC overlappingly defined “niconico” as the service range.

In the meantime, Kadokawa Group is also operating paid video distribution business and e-book distribution business which act as a platform, as in the case of Dwango Group.

As discussed previously, enterprises operating these types of business are providing service to two different user groups, that is, viewers and contents providers. Accordingly, the service range is defined by the range of two services respectively provided to the two groups.

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<sup>10</sup> Premium members are paid members who pay monthly registration fees of 540 yen (incl. tax). Unlike general members who do not pay registration fees, premium members receive special benefits such as (i) they can view high-quality video; (ii) they have reliable access to live streaming even when there are many viewers watching it; and (iii) they can watch missed live streaming later. However, in addition to monthly registration fees, premium members have to pay for paid videos, etc., to watch them.

## B. Review on two-sided market<sup>11</sup>

Paid video distribution enterprises and niconico have various kinds of paid video contents and are competing through a lineup of offering by specializing in specific fields and/or meeting the needs of all sorts of genres. As well, the JFTC found, through the economic analysis it conducted, that there were indirect network effects<sup>12</sup> that as the number and types of contents increase at niconico, its membership grows and the number of viewers who watched distributed contents increases, and vice versa.<sup>13</sup>

For this reason, the JFTC examined the impact of conduct of this case on competition in consideration of the characteristics of two-sided market of the platform which the Parties operated.

### (2) Contents provision business

Video contents, provided to video distribution enterprises including Dwango by individuals (except for enterprises) or enterprises (including sole proprietors) and distributed to viewers by such video distribution enterprises, are divided into free and paid video contents according to whether or not payment is required for viewing. Apart from this difference, free and paid video contents are different in that while a certain amount of money is invested in creating paid video contents because they need to be profitable, free video contents are usually produced and distributed for an individual's self-expression or an enterprise's advertising purposes, and thus the free video contents as such do not need to be profitable. For this reason, based on the difference in profitability and purposes of production, it is reasonable to think that there is difference in quality as well, and thus, free and paid video contents are not deemed to be chosen interchangeably.

In consideration of this, the JFTC defined "paid video provision business" as the service range.

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<sup>11</sup> There is a variety of understanding with regard to the definition of two-sided market. Here, it is defined as a market which meets three requirements: there are two or more different types of user groups; there is a platform providing space which acts as an intermediary of trade between different types of users; and there are indirect network effects.

<sup>12</sup> Indirect network effects are observed in cases where there are two different types of user groups; and a growth of the number of users in one group decides the number of users in the other and quality of service provided by the other, and vice versa, through which the two different types of users are mutually influenced by each other.

<sup>13</sup> Economic analysis was conducted through a Granger causality test and impulse response analysis by using the result of estimation of a vector autoregressive model expressing the relationship between the number of niconico members and the number of channels provided at niconico. The result of the Granger causality test indicated causal relationships in both directions, that is, from the number of channels to the number of members, and the other way around. In the meantime, impulse response analysis showed that an increase of the number of niconico's animation channels except for those provided by Kadokawa was followed by a significant growth of the number of members and that a growth of membership was followed by a significant increase of the number of channels.

With regard to this, of the Parties, only Kadokawa Group is conducting paid video provision business.

## **2. Geographic range**

With regard to all the products and services discussed previously in 1, the Parties are operating business all over the country and users are able to receive such products and services anywhere in Japan on almost the same conditions.

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

## **3. Types of business combination**

### **(1) Horizontal business combination**

Both of the Parties are conducting paid video distribution business, and thus the conduct of this case is qualified as horizontal business combination.

### **(2) Combination of paid video distribution business and niconico with paid video provision business**

In this case, the platform operated by the Parties acts as an intermediary of trade between contents providers, the sellers, and viewers, the buyers. In this respect, the Parties have a function similar to that which retailers have in a supply chain of consumer goods, etc. where consumer goods manufacturers sell products to consumers through retailers.

Based on this consideration, the relationship of paid video provision business with paid video distribution business and niconico in this case is reasonably considered to be similar to vertical relationship of upstream market and downstream market, and therefore is to be examined in light of criteria of vertical business combination while characteristics of two-sided market are to be reviewed separately in examination of determining factors.

## **Part III Impact of conduct of this case on competition**

### **1. Horizontal business combination (paid video distribution business)**

While paid video distribution business is made of the range of two services as discussed previously in PartII 1 (1) A, the position of video distribution enterprises in the range of service in which contents providers are the users is considered to be reflected in the position in the range of service in which viewers are the users. Therefore, according to calculation of market share in the range of service in which viewers are the

users, with the conduct of this case, the total share controlled by the Parties in the market of paid video distribution business would be approximately 5%, HHI about 2,800 at maximum, the increase of HHI about 5. As a result, the conduct of this case meets the the safe-harbor criteria for horizontal business combinations.

Market share of paid video distribution business in 2013

Rank	Company name	Market share
1	A	Approx. 35%
2	B	Approx. 30%
-	Kadokawa Group	Approx. 0-5%
-	Dwango Group	Approx. 0-5%
	Others	Approx. 35-25%
Total		100%

## 2. Vertical business combination

(1) Vertical relationship with paid video provision business as upstream market, and paid video distribution business as downstream market

### A. Paid video provision business

With the conduct of this case, share of Kadokawa Group in the market of paid video provision business would be unknown, and thus the conduct of this case does not meet the safe harbor standards for vertical business combinations.

### B. Paid video distribution business

With the conduct of this case, total share of the Parties in the market of paid video distribution business would be about 5%, and thus the conduct of this case meets the safe-harbor criteria for vertical business combinations.

(2) Vertical relationship with paid video provision business as upstream market, and niconico as downstream market

### A. Paid video provision business

Same as the previous 2 (1) A.

### B. niconico

Since niconico is a service provided only by Dwango Group, the market share would be 100%, and thus the conduct of this case does not meet the safe-harbor criteria for vertical business combinations.

(3) Examination of determining factors

A. Kadokawa Group's refusal of providing paid video contents to the Parties' competitors (hereinafter referred to as "input foreclosure")

Unlike general consumer goods (tangible products), in contents provision business concerning paid video and other contents, contents data are not produced for each platform which they are provided to, but the same data are provided to multiple platforms, and thus marginal cost is extremely small, and contents can be provided to a variety of platforms as many times as wanted without additional cost. As well, as the number of platforms to upload contents increases, the chances of contents being viewed by more users also grow, translating into more profits.

In case of input foreclosure by Kadokawa Group, there would be a huge drawback caused by loss of sales opportunities on the grounds that the Parties only control about 5% of the market of paid video distribution business, and that, of all the sales of paid video contents of Kadokawa Group, sales through Dwango Group accounts for only a small portion.

As a result, it is reasonable to think that there is no incentive for Kadokawa Group to implement input foreclosure.

B. Dwango Group's refusal of acquiring various contents from the Parties' competitors (hereinafter referred to as "customer foreclosure")

Dwango Group may refuse to carry paid video contents from any entity other than Kadokawa Group at niconico it operates.

However, it could lead to lower profits for Dwango Group in terms of the charge on paid video contents to niconico members, monthly registration fees from premium members, distribution fees from paid video provision enterprises, and/or the charge on the use of advertising space to advertisers, as a result of a diminished quality of its paid video distribution service to its viewers and eventual decrease in the number of viewers, because customer foreclosure, if implemented, would reduce the number and types of paid video contents which Dwango Group carries in consideration of the two-sided market's indirect network effects, as discussed previously in Part II 1 (1) B, based on the small proportion Kadokawa Group accounts for to all the paid video contents provided by Dwango Group at the moment.

Based on the above, it is reasonable to think that there is no incentive for

Dwango Group to implement customer foreclosure.

C. Section summary

Based on the above consideration, it is deemed reasonable to think that the conduct of this case would not substantially restrain competition in any particular field of trade discussed previously with unilateral conduct by the Parties or coordinated conduct with competitors.

**Part IV Conclusion**

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.



## **Case 9 Business integration by MaxValu Kanto Co., Ltd., The Maruetsu, Inc., and Kasumi Co., Ltd.**

### **Part I Overview of transaction**

MaxValu Kanto Co, Ltd., operating supermarkets in Kanto region as a subsidiary of Aeon Co., Ltd. (hereinafter referred to as “Aeon”; the group of combined companies whose ultimate parent company is Aeon shall be referred to as “Aeon Group”) and The Maruetsu, Inc. (hereinafter, “Maruetsu”), and Kasumi Co., Ltd. (hereinafter, “Kasumi”; Aeon Group and Maruetsu are hereinafter collectively referred to as “the Parties”), the latter two also operating supermarkets in Kanto region, planned to establish a holding company through joint share transfer and Aeon planned to make the holding company a consolidated subsidiary of Aeon after the joint share transfer.

The applicable provisions in this case are Article 10 and Article 15 (iii) of the AMA.

### **Part II Joint relationships strengthened by conduct of this case**

There are already certain joint relationships formed among Aeon Group, and Maruetsu and Kasumi since Aeon holds a little more than 30% of the voting rights of Maruetsu and Kasumi respectively. Through the conduct of this case, Aeon would additionally acquire voting rights of Maruetsu and Kasumi, which make them its subsidiaries, and thus joint relationships between Aeon Group and Maruetsu and Kasumi would be deemed to be strengthened. Therefore, impact of these strengthened joint relationships on competition is to be examined.

### **Part III Particular field of trade**

#### **1. Service range**

##### **(1) Supermarkets**

Supermarkets are divided into general merchandise stores (hereinafter, “GMS”) which sell a variety of goods including food, daily necessities, and clothes, and food supermarkets with a focus on food. Both GMS and food supermarkets carry a wide variety of food, especially perishables, and are targeted mainly at consumers who buy such groceries in bulk. According to the understanding of enterprises operating GMS or food supermarkets, competition is taking place not in respective field of GMS or food supermarkets but rather in a greater field irrespective of what form, GMS or a food supermarket, is taken. This is true from

consumers' perspectives as well, and it is reasonable to think that they are choosing stores where they purchase food regardless of whether the stores take a form of GMS or a food supermarket.

As well, as other forms of business dealing in similar products sold at supermarkets, convenience stores, drug stores, DIY stores, etc. have been increasing their lineup of food recently, which is making the difference between business forms smaller. However, with regard to perishable items, the strength of supermarkets, these forms of business still do not offer as much variety as supermarkets do. For this reason, it is reasonable to think that consumers are choosing between supermarkets and these forms of business according to their needs especially in case of bulk buying of daily necessities.

Based on this consideration, the JFTC defined "supermarket business" as the service range in this case.

## (2) Small-sized supermarkets

Recent years have seen an increase of the number of supermarkets which are smaller than a regular size (generally with floor space 500 m<sup>2</sup> or less) (hereinafter, "small supermarkets") due to aging of urban population, less space for opening a large-scale store, and a restrained budget for opening stores, etc.

The Parties are no exception to this trend and Aeon Group and Maruetsu have opened small supermarkets called "My Basket" and "Maruetsu Petit" respectively.

Set up mainly in urban areas, small supermarkets are limited in store size, and thus sell a limited variety and quantity of products, compared to standard supermarkets. Since small supermarkets are targeted at single-person or small households which mainly use them for "purchasing in small quantity" or "casual purchasing", small supermarkets are deemed to be in tough competition with retailers of other business forms, compared to standard supermarkets. However, small supermarkets carry a general selection of products including perishables as well. Therefore, they are deemed to be equipped with functions of supermarkets, although to a lesser degree.

Based on the consideration above, for examination of the conduct of this case on competition, small supermarkets are to be included in "supermarket business"; and the difference between small supermarkets and supermarkets is to be considered as a determining factor.

## **2. Geographic range**

While competition between enterprises operating supermarket business is deemed to be taking place on a store-by-store basis, enterprises set a commercial zone for each store based on the area where frequent customers reside learned from customer surveys conducted in the store; and use the zone as a guideline for flyer distribution and research on competing stores. There is a little difference in the size of such commercial zones according to the store location (urban area or suburbs) and the store scale.

In this case, based on the store location and scale, the JFTC defined circular area deemed to be a commercial zone for each store (a circle with a store in the center and a radius of 500m to 3 km depending on the store) as the geographic range in this case.

### **Part IV Impact of conduct of this case on competition**

#### **1. The competitive situation in each geographic range**

There are about 300 geographic ranges where the Parties compete with each other. It is technically difficult to calculate market share of each supermarket store for every geographic range (and thereby decide whether or not the conduct of this case meets the safe-harbor criteria for a horizontal business combinations). However, it is reasonably assumed that the more the number of stores in a geographic range is, the more intense the competition is, and that the fewer the number of stores of competing enterprises in the geographic range is, the larger the impact of conduct of this case on competition is.

When it comes to the geographic range where the Parties compete with each other, there are multiple or at least one store operated by either some major supermarket enterprise or some relatively large supermarket enterprise other than the Parties (hereinafter, “major competing store”) in any geographic range. With regard to the geographic range which only has one major competing store, at least one of the following cases applies: (i) the scale of the major competing store is greater than that of any store run by the Parties, (ii) the geographic range is located in the suburbs and multiple major competing stores exist in geographically neighboring market, and (iii) in the geographic range where the store of one of the Parties is a small supermarket, there is a retailer of other forms which is in tough competition with small supermarkets.

(Note) When it comes to general pricing activities by enterprises operating

supermarket business, prices are usually set in a unified manner across all the stores in a prefecture or beyond. Therefore, the JFTC examined competitive situation in each prefecture in addition to the circular geographic range with a store in the center. As a result, however, the JFTC did not find any prefecture where competitiveness of the Parties had grown due to the Parties accounting for a majority, etc.

## **2. Entry pressure**

When an enterprise newly starts supermarket business, it needs to obtain many permissions based on a variety of laws including permission of processed meat sales businesses in accordance with Food Sanitation Act (Act No. 233 of 1947). This, however, does not constitute an institutional barrier to entry.

As well, when an enterprise operating supermarket business launches a new store with standard floor space, investment of hundreds of millions of yen is required, which is deemed to be recoverable in several years in general, and thus the scale of investment does not constitute a barrier for opening a new store, either.

When a retail store with space larger than 1,000m<sup>2</sup> is launched, an advanced notification to prefectures or cities designated by ordinance is required in accordance with Act on the Measures by Large-scale Retail Stores for Preservation of Living Environment (Act No. 91 of 1998) in order to conserve living environment of the surrounding area. Many such notifications have been submitted. As well, many new supermarkets with space of 1,000m<sup>2</sup> or smaller which a notification is not required for are also being launched.

When it comes to Kanto region which has many areas where both of the Parties operate stores, the section between Tokyo and Kanagawa of the Metropolitan Inter-City Expressway (Ken-O Expressway) which will form an outer ring road of the Greater Tokyo Metropolitan area has opened since June 2014 and other unopened routes in Saitama and Ibaraki prefectures are schedule to start service by FY2015. This development will improve traffic convenience and reduce time required to transport goods, and thus is deemed to be promoting supermarket enterprises to open new stores in areas which have been unreachable.

Based on the above consideration, a certain degree of entry pressure is deemed to be effective in any geographic range.

### **3. Competitive pressure from related market**

#### **(1) Competitive pressure from business in other forms (convenience stores, etc.)**

Products sold in supermarkets are available in other types of stores such as convenience stores, drug stores, and DIY stores although with some difference in variety. While such stores in other forms do not have as much variety of perishable items as supermarkets do, a certain degree of competition is deemed to exist in terms of prices and services for products available both in these stores and the stores of the Parties, as seen in cases of special sales, etc. Especially, as discussed previously in Part III 1 (2), small supermarkets are deemed to be in tough competition with retailers of other forms, compared to regular supermarkets.

Based on the above consideration, a certain degree of competitive pressure from business in other forms is deemed to be effective in any geographic range.

#### **(2) Competitive pressure from geographically neighboring market**

Consumers sometimes shop at supermarkets located outside the area where stores they usually use are located. In neighboring area of the geographic range defined previously in Part III 2, there are stores run by other supermarket enterprises. Here, too, a certain degree of competition is deemed to exist in terms of prices and services between these stores of competing enterprises in neighboring area and the stores of the Parties, as seen in cases of special sales, etc.

In consideration of the above, a certain degree of competitive pressure from geographically neighboring market is deemed to be effective in any geographic range.

### **Part V Conclusion**

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field of trade.

## **Case 10 Joint share transfer by The Tokyo Tomin Bank, Limited and Yachiyo Bank Ltd.**

### **Part I Outline of this case**

The Tokyo Tomin Bank, Limited (hereinafter referred to as “Tokyo Tomin Bank”) and Yachiyo Bank Ltd. (hereinafter, “Yachiyo Bank”; Tokyo Tomin Bank and Yachiyo Bank are hereinafter collectively referred to as “Parties”), both of which operate banking business respectively as a regional bank, planned to integrate their business through joint share transfer.

This transaction is qualified as a horizontal business combination because both of the Parties operate banking business. This transaction is also qualified as a conglomerate business combination (area expansion) since there are areas where only one of the Parties conducts business.

The applicable provision in this case is Article 15 (iii) of the AMA.

### **Part II Particular field of trade**

#### **1. Service range**

Main services of banking business are deposit service, loan service, and currency exchange service, all of which are provided by both of the Parties. Among the three services, deposit and loan services, a major part of the services provided by the Parties, are discussed in this case. Deposit service refers to service that receives money from depositors and loan service refers to service that lends money to companies and individuals.

While these services are provided by financial institutions other than banks such as shinkin banks and credit cooperatives, in this case, deposit and loan services conducted by city banks, regional banks, etc., banks as specified by the Banking Act, are to be discussed in order to provide thorough examination; financial institutions other than banks are reviewed as competitive pressure from related market as needed.

#### **2. Geographic range**

Main business area for the Parties for both deposit and loan services is Tokyo for Tokyo Tomin Bank and Tokyo and Kanagawa for Yachiyo Bank. Large part of users who trade with the Parties are residents and corporations in the municipalities where branches of the Parties are located, and at the same time, the Parties are conducting business activities firmly linked with communities. Accordingly, the JFTC defined geographic range by every “municipality” in this

case.

It is true that some deals go beyond the boundaries of municipalities, however, in this case, geographic range is defined by every municipality in order to provide thorough examination; and if needed, such transactions are to be discussed as competitive pressure from geographically neighboring market.

### **Part III Impact of conduct of this case on competition**

#### **1. Horizontal business combination**

For both deposit and loan services, the increment of HHI would be from approximately 0 to approximately 40, less than 150, in any geographic range defined previously in Part II 2. Therefore, the acquisition meets the safe harbor standards for horizontal business combinations.

#### **2. Conglomerate business combination (area expansion)**

##### **(1) Applicability of the safe harbor standards**

For both deposit and loan services, the market share of the Parties is 10% or less in most of all the geographic range defined previously Part II 2. Therefore, the transaction meets the safe harbor standards for conglomerate business combinations in most of the geographic range.

On the other hand, however, in some of the geographic range, the Parties have market share of approximately 15% to 20% with unknown HHI, and thus the safe harbor standards for conglomerate business combinations do not apply. Therefore, determining factors are to be examined in the following (2).

##### **(2) Examination of determining factors**

In the areas where only one of the Parties operates business, possibilities of future new entries between the Parties (potential competitive pressure) would be eliminated. However, Bank A, B, C, and D, all of which are city banks, have multiple branches and conduct business in these areas, and multiple regional banks such as Bank E and F are also doing business. Such vigorous competition has been there for some time now and will be deemed to continue. As well, recent years have seen many "net banks" start operation which do not set up branches but provide deposit and loan services through internet. While these net banks are deemed to be in competition with the Parties, shinkin banks and credit cooperatives conducting business activities by establishing branches also impose a certain degree of competitive pressure. Based on this consideration, a certain

degree of competitive pressure from related market is deemed to be effective as well.

Meanwhile, since lending for SMEs (small- and medium-sized enterprises) accounts for a major part of loan services of regional banks, there is a concern that impact on competition of loans for SMEs would be relatively large. However, in the areas the Parties operate business, city banks are actively providing loan services to SMEs and there are also many shinkin banks and credit cooperatives which lend money to SMEs as their main service in the same way regional banks do. Therefore, such concern is not valid to this case.

#### **Part IV Conclusion**

Based on the above, the JFTC concluded that the conduct of this case would not substantially restrain competition in any particular field 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.

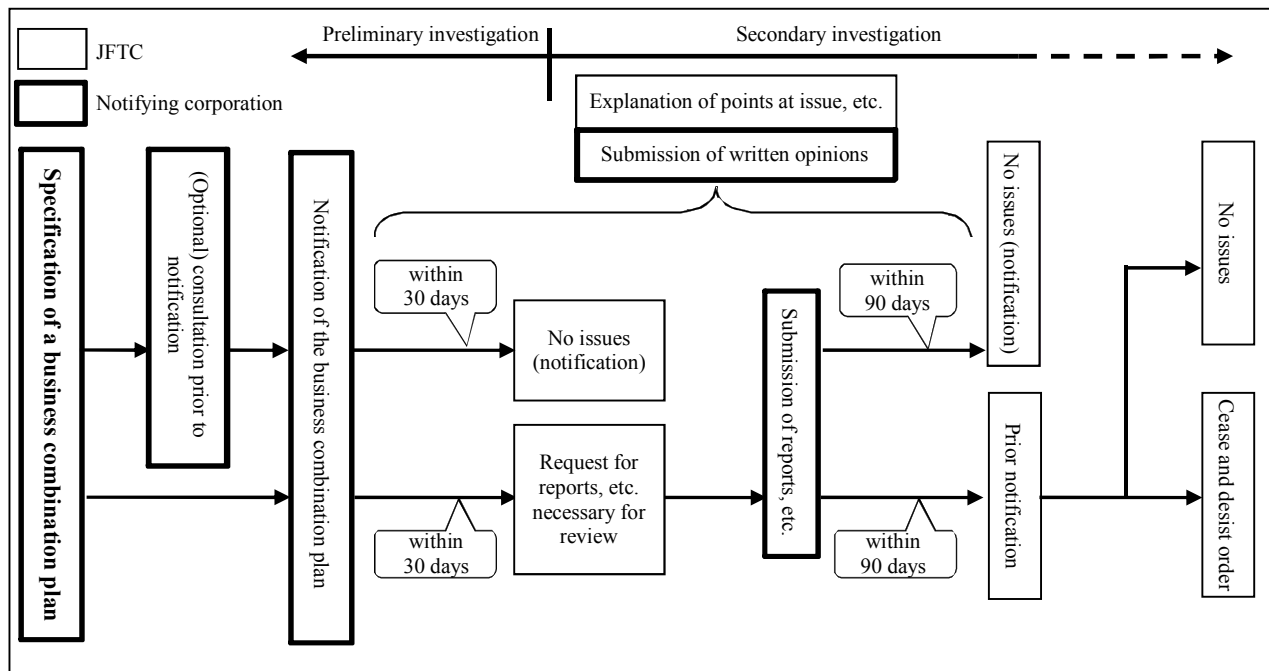
## 1. Summary of conditions requiring notification for business combinations

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 <sup>(Note 1)</sup> 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 <sup>(Note 2)</sup> 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



### 3. Safe Harbor Criteria

#### (1) Safe-harbor criteria for horizontal business combinations

In cases where the relevant corporate group after the business combination meets any of the conditions (a) through (c) below, the horizontal business combination is not normally considered to substantially restrain competition in the particular field of trade.

- (a) The HHI<sup>\*3</sup> after the business combination is no more than 1,500;
- (b) The HHI after the business combination is more than 1,500 but no more than 2,500, and the HHI increase<sup>\*4</sup> is no more than 250; or
- (c) The HHI after the business combination is more than 2,500, and the HHI increase is no more than 150.

\*3. The HHI score is calculated as the sum of the squares of the market shares of each relevant party in the particular field of trade.

\*4. When there are two parties in a transaction, the HHI increase caused by the business combination can be calculated by multiplying by two the result of multiplying together the market shares of the relevant parties.

#### (2) Safe-harbor criteria for vertical business combinations and compound business combinations

In cases where the market share of the relevant corporate group after the business combination meets either (a) or (b) below, the vertical business combination or compound business combination is not normally considered to substantially restrain competition in the particular field of trade.

- (a) The market share of the relevant corporate group after the business combination is no more than 10 percent in all particular fields of trade related to the relevant parties; or
- (b) The market share of the relevant corporate group after the business combination is no more than 25 percent and the HHI after the business combination is no more than 2,500 in all particular fields of trade related to the relevant parties.

Table 1. Processing status of notifications received in the past three fiscal years

	FY2012	FY2013	FY2014
Cases closed at the preliminary investigation	340	257	275
Cases where the waiting period was shortened among above	(127)	(80)	(119)
Cases withdrawn prior to the conclusion of the preliminary investigation	3	3	11
Cases which were sent to the secondary investigation	6	4	3
<b>Total</b>	<b>349</b>	<b>264</b>	<b>289</b>

\* Please refer to the website of the JFTC for state of notifications in FY2014.  
(<http://www.jftc.go.jp/dk/kiketsu/toukeishiryō/joukou.html>)

Table 2. Processing status of secondary investigation in the past three fiscal years

	FY2012	FY2013	FY2014
Cases concluded by the secondary investigation	5	3	2
Cases decided to raise no issues given the implementation of remedies	3	1	2
Cases in which a cease and desist order was issued	0	0	0

\* The above table shows the number of notifications processed in each fiscal year regardless of whether they were received during the same fiscal year.

Table 3. Transition of the number of business combination plans that include a foreign enterprise in the Parties

	FY2011	FY2012	FY2013	FY2014
Integration plans between Japanese enterprises and foreign enterprises	8	12	7	7
Integration plans between foreign enterprises	14	14	11	23
<b>Total</b>	<b>22</b>	<b>26</b>	<b>18</b>	<b>30</b>

\* The above table counts the number of integration plans (even if multiple notifications are made for one integration plan).